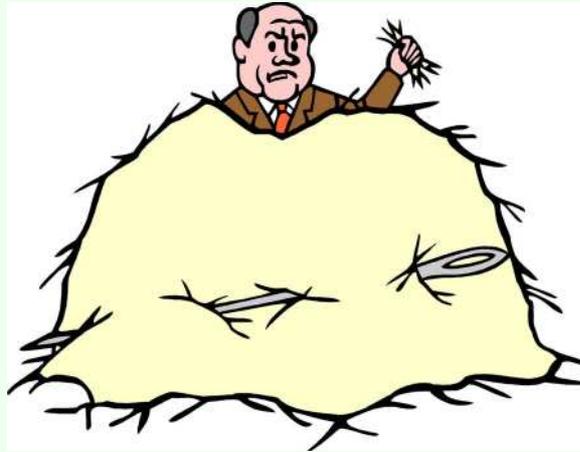


## TOWN and COUNTRY PLANNING: ENFORCEMENT

### WHEN AN ENGLISHMAN'S HOME IS HIS HAY STACK !!



#### R.A. Fidler and Reigate & Banstead B

Planning procedures and English law have been challenged by the farmer/entrepreneur, R.A. Fidler at Honeycock Farm, Salfords in Surrey. Mr Fidler's Appeal to retain a dwelling built and occupied clandestinely, has just been dismissed by the High Court<sup>1</sup>. He intends to invoke the 'Human Rights Act' in the European Court.

Mr Fidler has engaged in a series of planning disputes with Reigate and Banstead Borough Council for almost a decade over his land and buildings adjacent to Axes Lane, five kilometres north-east of Gatwick Airport.

#### Planning Appeal Report

Earlier decisions and essential elements of the case are summarised in the Planning Inspector's report following an enquiry on 23-25 January, 4-8 & 12 February and 3 March 2008 and can be found by Googling "APP/L 3625/c/07/2036100"<sup>5</sup>.

A bizarre aspect concerns the new dwelling which Mr Fidler constructed without consent, concealed within a gigantic shield of straw bales and under tarpaulins and plastic sheeting during construction. He admitted that he had to carry out construction clandestinely until a period of four years had elapsed following substantial completion and occupation as he was aware that the council would not have granted planning permission for a new dwelling. Mr Fidler argued that the dwelling is lawful and immune from enforcement action because of the 'four-year rule'. The council refuted his claim that it had been substantially complete four years before their enforcement notice was served.

#### Planning Compensation Act 1991 S.171B

Essentially, Mr Fidler's argument relies on the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991<sup>4</sup>: Part 1, S 4 (Time Limits on Enforcement Action) which states under Clause 171B (Time Limits):

- (1) *Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.*
- (2) *Where there has been a breach of planning control consisting in the change of use in any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*
- (3) *In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.*

**‘Four-year’ and  
‘Ten-year Rule’**

- (4) *The preceding sub-sections do not prevent -*
- (a) *The service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect;*
- or*
- (b) *taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the Local Planning Authority have taken or purported to take enforcement action in respect of that breach.*

Clarification introduced under Section 171B<sup>4</sup> is commonly known referred to the 'Four-year' and 'Ten-year Rule' and has assisted in resolving disputes where development has not been authorised or where conditions attached to a planning consent have been breached or not complied with. The rules assist to bring closure on matters which might otherwise remain contentious and costly to resolve. The rationale being that if unapproved development has taken place openly, without being drawn to the notice of the local planning authority, its impact is unlikely to be significant or worthy of enforcement.

The decision of Mr Fidler's 2008 Planning Appeal<sup>5</sup> refers to **five key development stages** which had been identified by the Council, based on Mr Fidler's evidence:

**Dispute on date of  
completion**

1. The footings and over-site had been constructed by September 2000.
2. In mid-September the straw bales were stacked around three sides of a square to facilitate the construction of a dwelling within the shelter provided.
3. Work on the house proceeded until October 2001 when the Fidler family moved in.
4. Towards the end of May or beginning of June, 2002 the gable over the large back window was bricked up and finished with coping stones. This according to Mr Fidler is when the house was complete.
5. The straw walls were removed in July 2006, revealing the dwelling as built.

**‘House not complete  
until coverings  
removed’**

The Council submitted that it was not until the straw bales had been removed that the house could be regarded as finished or substantially completed as intended. It argued that it had never been the intention of Mr Fidler to live in a dwelling encased by walls of straw with sheeting over the top. Furthermore, whilst he might have been willing to do so until such time as he believed the dwelling had become lawful, a straw-encased structure was not how Mr Fidler would have conceived the project in its final finished form.

In support of his argument, Mr Fidler reasoned that the straw bales were placed about 3m from the walls of the house thus enabling the house to be opened and ventilated, allowing natural light to penetrate through the sheeting in a manner similar to the canvas of a tent. Openings in the straw bales also enabled coming and going and the ingress of further light. In this way, he explained, it had been possible to enjoy a satisfactory living environment encapsulated by the straw bales and this state of affairs could have continued if necessary beyond July 2006.

**‘Intention to enjoy  
outlook’**

When questioned by the council's advocate on whether it was his intention to live behind a wall of straw bales with no outlook other than towards a wall of straw and with very limited amounts of natural light, Mr Fidler said he could have gone on living that way if need be.

The Inspector regarded Mr Fidler's answer as disingenuous, concluding that, whilst people may chose to live in caves or enclosures with little or no light or outlook, this could not be regarded as Mr Fidler's ultimate intention. He also reasoned that Mr Fidler had built a traditional house with a large number of windows. Had he intended to look out on straw bales 3 metres away then it begged the question why one would go to the trouble of inserting windows at all. The presence of windows, he argued, demonstrated Mr Fidler's intentions for outlook, not least from the tall picture window in the northern elevation at both floor levels which lights the central hall/gallery area.

<p><b>“Clandestine purposes”</b></p> <p><b>HELD: “Removal of coverings an essential building operation”</b></p> <p><b>Human Rights Act 1998</b></p>	<p>Mr Fidler had also suggested that the straw walls might be put back in bad weather or that the straw was simply part of his accepted hay and straw dealing business. The Inspector dismissed such arguments, concluding that the sole purpose of arranging the bales as walls was to conceal the dwelling during the process of construction and that it was never Mr Fidler's intention to build a house which would remain permanently encased by walls of straw and covered in sheeting; that it had always been his intention to remove the straw walls thus revealing his edifice once he thought that sufficient time had passed for the lawfulness of the construction to be secured. It was not a normal living environment to have limited natural light, no outlook and poor ventilation, nor such an environment intended as a final outcome. Rather it was a situation that would only be tolerated by Mr Fidler and his family for the time until the four years had passed.</p> <p>Mr Fidler's appeal to the High Court<sup>1</sup> has been rejected and the Inspector's finding upheld<sup>5</sup>. In his summing-up as reported on the BBC News Channel (3 February 2010), Deputy High Court Judge, Sir Thayne Forbes said ...<i>"In my view, the Inspector's findings of fact make it abundantly clear that the erection/removal of the straw bales was an integral - indeed an essential - fundamentally related part of the building operations that were intended to deceive the local Planning Authority and to achieve by deception lawful status for a dwelling built in breach of planning control..."</i>.</p> <p>Mr Fidler now plans to take his fight to the European Court of Human Rights declaring that ...<i>"This house will never be knocked down. This is a beautiful house that has been lovingly created. I will do whatever it takes to keep it..."</i>. He may well argue that Item 2 of Article 8 (Schedule 1)<sup>8</sup> applies - that</p> <p style="padding-left: 40px;"><i>... "There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country for the prevention of disorder or crime, for the protection of health, or morals, or for the rights and freedom of others ..."</i></p> <p>The matter may continue.</p>
<p><b>Useful Guidance</b></p>	<p><b>Background References and useful website downloads:</b></p> <ol style="list-style-type: none"> <li>1. News report: High Court Appeal, Wednesday 3 February, 2010.  <a href="http://news.bbc.co.uk/1/hi/england/surrey/8495412.stm">http://news.bbc.co.uk/1/hi/england/surrey/8495412.stm</a></li> <li>2. News report: Hey presto! Farmer unveils the 'illegal' mock-Tudor castle he tried to hide behind 40ft hay bales: <i>London Evening Standard</i> 25.01.08  <a href="http://www.thisislondon.co.uk/news/article/23434067-hay-presto-farmer-unveils-the-illegal-mock-tudor-castle-he-tried-to-hide-behind-40ft-hay-bales.do">http://www.thisislondon.co.uk/news/article/23434067-hay-presto-farmer-unveils-the-illegal-mock-tudor-castle-he-tried-to-hide-behind-40ft-hay-bales.do</a></li> <li>3. The Property Law website 04.02.2010: 'User for four or ten years'  <a href="http://www.propertylaw.uk.net/planningenforcementuser.html">http://www.propertylaw.uk.net/planningenforcementuser.html</a></li> <li>4. Planning and Compensation Act 1991 (c. 34): Part 1: (Enforcement and Time Limits etc.)  <a href="http://www.opsi.gov.uk/Acts/acts1991/ukpga_19910034_en_2">http://www.opsi.gov.uk/Acts/acts1991/ukpga_19910034_en_2</a></li> <li>5. Appeal decisions from the enquiry of 23-25 Jan, 4 - 8 and 12, February and 3 March 2008: Honeycrook Farm, Axes Lane, Salfords, Surrey RH1 5QL                  'Google' - "APP/L3625/c/07/2036100"</li> <li>6. Robert Fidler -v- 1 Secretary of State; 2 Reigate and Banstead Borough Council Case CO/426/2003 in the Royal Courts of Justice, Wednesday, 1 October 2003  <a href="http://www.casetrack.com/ct4plc.nsf/items/4224">http://www.casetrack.com/ct4plc.nsf/items/4224</a></li> <li>7. ODPM Circular 10/97: Enforcing planning control: Legislative provisions and procedural requirements                  'Google' - "Circular 10/97"</li> <li>8. Human Rights Act 1998                  'Google' - "Human Rights Act"</li> </ol> <p style="text-align: right;">© R.H. Hulls: February 2010</p>