

**Case Name:** *R v The Knightland Foundation & Anr.* 2018] EWCA Crim 1860

**Full case:** [Click Here](#)

**Commentary:** This case is not from the Planning Court but is of interest.

The Court of Appeal upheld the decision of the Crown Court to stay a prosecution brought for failure to comply with an Enforcement Notice as an abuse of process.

The Respondents had failed to comply with an Enforcement Notice issued in 2014 to cease using the property as 18 self-contained residential units. After unsuccessfully appealing the Enforcement Notice, the Respondents made a planning application for use of the property as a hotel. The Council's planning officer indicated that this seemed acceptable in principle. However, there was then correspondence between the Council's enforcement officers and the planning team revealing that the enforcement team were determined to press ahead with the prosecution and to apply for a confiscation order under the Proceeds of Crime Act 2002 ("POCA"). A member of the enforcement team then set out a detailed criticism of the planning application in internal correspondence to the planning team and the planning application was subsequently refused.

The judge held that although the Respondents may not have had a legitimate expectation that their planning application would be granted, they did have a legitimate expectation that it would be determined on its merits. On the evidence of the correspondence between the enforcement team and the planning team, the judge concluded that the evidence pointed directly to improper influence having been brought to bear on the planning team to refuse the application.

The judge found that the enforcement officer had ignored both local and national planning guidance to the effect that enforcement by way of prosecution should be a last resort and the 2016 planning application was a highly material consideration in determining whether to initiate a prosecution, a decision over which the local authority has a wide degree of discretion.

The improper handling of the planning application tainted the whole process of the prosecution which had as its focus maximising the returns to the authority from a POCA order.

The judge concluded that "The way in which the determination of the 2016 application had been conducted led him to conclude that it would have been oppressive to have allowed the prosecution to proceed. Notwithstanding the degree of criticism that might well be laid at the respondents' doors for failing to carry to comply with the Enforcement Notice, this could not override the culpable acts and omissions for which the local authority as a whole were responsible."

*Case summary prepared by Town Legal LLP*