

The Land Registry registration gap is well known to those dealing with property transactions. The principle that beneficial interests in property pass upon legal completion, with legal title passing on registration, is recognised in section 27 of the Land Registration Act 2002.

In simpler property transactions (for example when registering a transfer of ownership from one proprietor to another), applications are currently taking the Land Registry anywhere from one to three months to successfully register. Certain more complex applications, however, are taking up to two years to register.

Ownership and the Town and Country Planning Act 1990

When read in conjunction with secondary legislation, section 65 of the Town and Country Planning Act 1990 (TCPA) requires notice of planning applications to be given to the owner of the land relating to the application.

For the purposes of the TCPA, the owner of freehold land is considered to be the “estate owner in respect of fee simple”. In practice, this is taken to mean the registered proprietor of the land at the Land Registry.

It is easy to envision instances where, because of the registration gap, the beneficial owner of the land (who ought, in practice, to receive such notice) is not yet registered with the Land Registry as the legal owner. It is foreseeable, therefore, that in some instances the former owner of the land in question will be served with the requisite notice, due to their name still being noted upon the registered title. It would only be in the case of the applicant being aware of the existence of the “correct” (i.e. beneficial) owner that a notice would be served on it, too.

Enforcement

The above position creates only a minor inconvenience and a small amount of increased costs in serving multiple notices when making planning applications (that would not otherwise be required if the registration gap were to disappear).

The stakes become considerably higher in an enforcement scenario. Section 172 TCPA states that a notice shall be served by the local authority on:

- The owner and occupier of the land to which the notice relates
- Any other person with an interest in the land, being an interest that, in the opinion of the authority, is materially affected by the notice

It is highly likely in practice that the recipient of the enforcement notice will be the registered proprietor at the Land Registry, so it will be the legal owner tasked with complying with the notice before the end of the prescribed period.

Subject to any successful appeal made, a failure to comply with an enforcement notice is a criminal offence.

Impact

Two potential issues – each equally problematic – arise out of the issue of the registration gap:

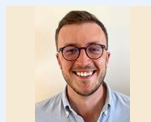
- The local authority, in relying upon the Land Registry’s information, may be using information up to two years out of date. Not only does this create uncertainty as to whether the legal owner is, in fact, correct, but it also creates a further administrative burden in terms of further investigations needing to be carried out to ascertain either the “correct” (i.e. beneficial) owner, or those persons who may materially be affected by the notice.
- In the absence of such investigations being undertaken, if the beneficial owner is not known yet, it is this party that is responsible for the alleged breach of planning control, and they may either be unaware of the taking of enforcement action or may escape formally being served with a notice they otherwise ought to have received.

When considering disposals of land, it is also important to note the decision in *Thompson v. East Lindsey District Council* [2002] 3WLUK 100, which confirms that sale of the land before the expiry of the enforcement notice compliance period is insufficient to provide a defence to the criminal liability associated with the enforcement notice. Regardless of any sale, a seller who has had an enforcement notice served on them would still need to show that they had done everything they could reasonably be expected to do to comply with the enforcement notice (as required under section 179(3) TCPA).

Selling a property when liable to comply with an enforcement notice, whether that be a *bona fide* purchase or not, will therefore not allow a seller to avoid liability in respect of an enforcement notice.

We remain hopeful that the Land Registry's service levels will continue to reduce. However, in the meantime, these issues remain, and will continue to place both further burden on enforcement officers from an investigation perspective, and further impacts upon legal owners who may have properly disposed of the land prior to the alleged breach of planning control taking place.

Contacts



Will Swarbrick

Associate, Leeds

T +44 113 284 7360

E will.swarbrick@squirepb.com



Naomi Darling

Trainee, Leeds

T +44 113 284 7185

E naomi.darling@squirepb.com