

time to cash in on the criminal lifestyle

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How local planning authorities can benefit from a POCA confiscation order and deter future breaches of planning law.

Abstract

Up to a third of any assets recovered from a confiscation order under the Proceeds of Crime Act 2002 (POCA) can be retained by local planning authorities (LPA), which will go some way to replenish valuable council funds. This has been possible since 1 April 2006. However despite the potential monetary rewards the Act remains underutilised by local authorities.

The following case is an example of how section 6(3)(a) of POCA can be used to its highest level. The judge made a confiscation order (based on turnover not profit of criminal activity) of £760,000. Of the sum recovered 50 per cent will go to the treasury and the other 50 per cent will be divided between the collection agency and the council's investigation team.

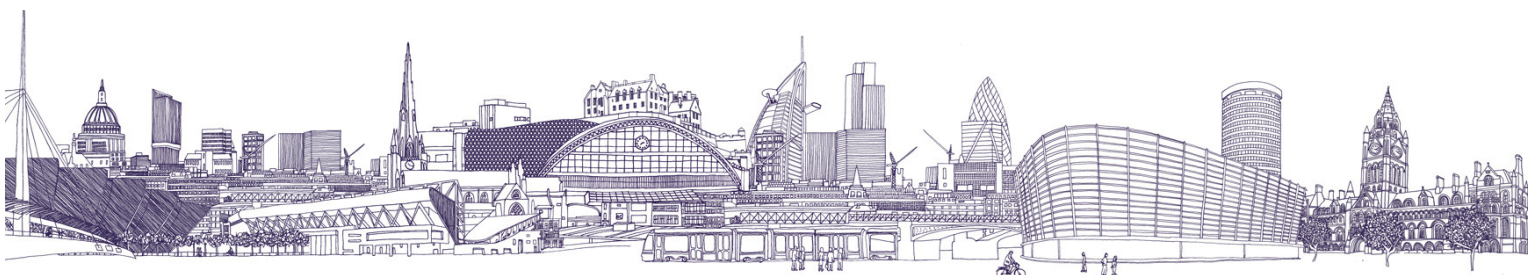
The case

In *Basso & Anor v R* [2010] EWCA Crim 1119 the defendants were judged to have (and enjoyed) a criminal lifestyle under the meaning set out by POCA. As such any benefit from their criminal conduct could be seized under a confiscation order by the court. One offender was adjudged to have received the benefit of £1,881,221.19 from his particular activities and after considering his financial position the judge determined £760,000 of this sum could be retrieved. The recoverable amount of the second offender was judged to be nil due to him being bankrupt.

In June 1999 Mr Del Basso and Mr Goodwin ('the offenders') applied for 201 parking spaces for those attending football matches at Bishop's Stortford Football Club ('the Football Club'). The application was granted conditional planning permission. A further application was made for a 'park and ride' airport parking facility for passengers using Stansted Airport which was rejected in July 2000. The 'park and ride' facility was put into operation regardless and the offenders were advised to cease operations. This was ignored and in January 2003 the LPA served an enforcement notice. The offenders failed to comply with the planning enforcement notice and were prosecuted in November 2007. Following the trial the business not only continued but expanded. A second prosecution commenced, again for failure to comply with the enforcement notice. In June 2007 the offenders were convicted and fined by the Crown Court. The defendants appealed. However, despite Mr Del Basso's claims of altruistic motives it was adjudged that he acted purely for personal profit. The appeal was refused. The court ruled that the 'park and ride' facility had become criminally unlawful once the enforcement notice became effective and by maintaining the facility the offenders were judged to have a criminal lifestyle.

The result

The court considered the offenders to have enjoyed the benefits of this particular conduct making a confiscation order under POCA appropriate. The judgment was handed down in July 2009.



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The offenders appealed again claiming the business had only realised £180,000 in profits once the costs of running the business and supporting the Football Club (which Mr Del Basso was chairman of) had been subtracted from the turnover. The appeal was rejected once more. POCA states that the maximum sum of a confiscation order is based on the income received by the offender and does not take into consideration what happens to said income. The result was the sum of £760,000 being retrieved through the confiscation order. Up to a third of this went to the LPA.

How it works

The use of confiscation orders are a novel way of ensuring compliance with an enforcement notice. Previously there was little incentive for the offender to comply as the potential benefit of continuing their activity often outweighed the fines imposed on them.

However there are two preconditions to the Crown Court proceeding with a confiscation order (section 6 of POCA).

- 1) The defendant must be convicted of an offence or offences in proceedings before the Crown Court.
- 2) The prosecution must request the court to proceed under section 6 of POCA or the court must think it appropriate to do so.

Judgment must then be made concerning the defendant having a criminal lifestyle. If the court judges the offender to have such a lifestyle it must decide whether the defendant has benefitted from the criminal conduct in a general or particular sense (see section 75 & 76 of POCA for the statutory definitions). If the defendant has

benefitted from that particular conduct (of not less than £5,000) the court must decide the recoverable amount. Then a confiscation order can and should be made. This ensures the sum of which the offender benefitted is retrieved. If these criteria are met POCA can apply to all types of offence.

Failure to comply with enforcement notices is a criminal offence for which the offender must bear the consequences. With appropriate judgment and investigation by the LPA, POCA could be an effective weapon to deal with repeat offenders. The bonus is that the LPA can prosper, or at least recover some, if not all, of their costs as a result. Merely fining an offender is often not enough of a deterrent, but a confiscation order under POCA is a very real and effective one that LPA should take advantage of.

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