

HONITON ST PAULS
(Honiton)

No.03/F0168
(Enforcement)

Date complaint received:
10 April 2003

Land Owner: Oak Tree Parks Limited, Weston Super Mare

Land Occupier: Numerous

Location: The Cedars, Otter Valley Park, Honiton

Alleged Breach of Planning Control: Occupation of chalets contrary to planning condition requiring use as holiday accommodation only.

SUMMARY

Members will recall that at the meeting held on 07 April 2009 consideration was given to a report concerning a failure to comply with Enforcement Notices issued to a number of residents of chalets at The Cedars. A number of the residents are taking civil action against the owners of Otter Valley Park and members therefore resolved to bring a report back to committee in January 2010 with an update on the litigation case, before any further prosecution action is pursued. A copy of the report is attached for member's information.

THE CURRENT SITUATION

Following the meeting in April a letter was sent to the twenty residents who were still believed to be in breach of the Enforcement Notice advising them of the committee resolution. The letter also advised that it would not be necessary for an Enforcement Officer to visit at that stage but it may be necessary to do so in January 2010. There has been no further visit to the site and the Enforcement Officer is not aware of any change in circumstances. It is considered therefore that the 20 residents have failed to comply with the requirements of the Enforcement Notices, although a further visit to each occupant may be necessary to gather the necessary evidence.

In a recent e-mail the Solicitor representing residents at The Cedars states:-

"The current position with regard to the litigation which is being pursued by two lead Claimants is that there was a Pre-Trial Review on 14th August 2009 in the Bristol District Registry. A split liability trial was ordered on that date, as we had been trying to obtain previously.

Directions were also made for the exchange of witness statements and for the matter to be listed for a liability trial with a seven day time estimate.

We, as the Claimant's solicitors had to provide availability dates for sides' legal representatives, the parties and their witnesses by 11th September. That we did.

Unfortunately there have been difficulties particularly relating to the availability of Oak Tree Parks' legal team and their witnesses. This meant that the only availability dates they gave in the six month period between 1st November 2009 and 30th April 2010 covered periods in January, February or March. My clients and witnesses were willing and able to attend in November and December.

At the Pre-Trial Review His Honour Judge McCahill indicated that he did not have any certain available dates until March 2010 but the dates may become free before Christmas. In the event I was contacted by the Court Listing Officer at the end of October who advised that the dates of

8th, 9th, 10th and 14th, 15th and 16th December had become free. I confirmed to the Court that my legal team, parties and witnesses could attend then. Oak Tree Park's solicitors subsequently wrote to the Court and said that neither their Counsel nor witnesses could attend.

As a result of that the matter is still waiting to be listed, and the Court Listing Officer now advises me that there are no definitely free dates until July. He is going to try and list it earlier if at all possible and, he has indicated that if the other side consistently allege they are not available the matter may just get listed whether they are available or not. Since writing this e mail I have heard that the court have listed the matter for a six day trial commencing on 3 August 2010. I am assured that if an earlier date becomes free they will try and slot it in sooner, but that is dependent on other cases settling AND all our and the other side's witnesses being free to attend.

All of this means that due to no fault at all on the part of my clients the liability issue is not going to be resolved before Christmas.

I have asked the Listing Officer to consider with the Judge whether the matter could be released to a different Judge in order to try and get an earlier hearing date say in the spring. Until more information is forthcoming I am in some difficulty giving any further indication as to timetable.

Probably on the worst case scenario the liability trial will be concluded by the end of August 2010.

Might I venture to suggest therefore that any enforcement action is stayed until after that date or this matter simply be listed for review at another development management committee meeting at that date. As you can appreciate my clients and I am trying to press this ahead as swiftly as possible in the face of some difficulties with regard to listing as you can see from the above."

Comment

Members will be aware that the enforcement notice on this site was served following a resolution by the former Development Control Committee in May 2005. Following the issue of the Enforcement Notices which took effect at the end of 2005 and gave the residents until 2006 to comply, an appeal was made on behalf of the landlord of the site and the residents affected. The appeal inspector decided in March 2007 to uphold the Notices. Consequently there has already been considerable delay in securing the compliance with the Notices and it now transpires that those delays are being compounded for reasons outside the control of the Local Planning Authority. It is therefore recommended that the Council brings this matter to a conclusion by pressing ahead with prosecution for non compliance with the Enforcement Notices as directed by the Inspector who imposed a new deadline of 30 months for Oaktree Parks Ltd and 24 months from March 2007 for the residents affected. The longer period expired at the end of September 2009. Whilst the Inspector agreed that time should be allowed for the residents' separate legal action against their landlord, he did not agree an open ended timetable and considered that 24 - 30 months should be sufficient for the legal action to be resolved. The Council cannot and should not wait what is now an inordinate length of time to bring this matter to a conclusion.

Human Rights Consideration

It is considered likely that taking the recommended enforcement action could result in certain residents losing their only home if they cannot comply with the planning condition. In considering what action to take, due regard has to be given to The Human Rights Act 1998 Article 1, first Protocol (Protection of Property) and Article 8 (Right to respect for private and family life).

Due consideration has been given to both Articles but it is considered that, in the circumstances the action proposed is proportionate to the breach of planning control. The European Court has held that these Articles do not give an absolute right to occupy a dwelling and the planning

legislation is a legitimate way of regulating development. Failure to take such action would not only allow the occupation of the chalets contrary to planning policy but also act as a precedent and encourage other planning breaches in similar circumstances.

RECOMMENDATION

The Head of Legal, Licensing and Democratic Services be authorised to instigate appropriate legal action after 30 June 2010 unless the claimants' circumstances change on advice from their lawyers..