IN THE MATTER OF:

UNAUTHORISED DEVELOPMENT AT BEACONS EDGE, PONTITHEL, THREE COCKS, POWYS

ADVICE

---

1. I am instructed by Powys County Council ("the Council"), and am asked to consider a series of questions arising from the planning history of a site located at Beacons Edge, Pontithel, Three Cocks, Powys ("the site").

BACKGROUND

2. The planning history, insofar as pertinent to the questions raised, can be summarized as follows:

    a. On 10 April 1989 the Council granted planning permission, subject to conditions, for "conversion of guest house into hotel/motel and chalets" (B-4961). The approved plan shows 7 "motel" units. Condition 6 of the permission prohibited the use of the individual motel units as "independent permanent residential units", stating that they should "only be occupied by guests of the adjoining hotel".

    b. I have been provided with a letter from the owner's solicitor dated 24 February 2006 in which it is said that works of conversion referred to in this permission were carried out to the hotel/motel, but that the "chalets"

were not built.

c. On 11 March 1991 the Council granted planning permission for "new design of Motel Units and extension to function room and private accommodation …in accordance with the application and plan submitted to the council" (B006022). Although not clear on its face that it was permitting the *construction* of motel units, the submitted and approved plan referred to in the permission shows the provision of 6 motel units. Once again, the permission was subject to conditions, including one which mirrored Condition 6 on the 1989 consent. Condition 4 provided that "Before development commences the access at the west end of the site shall be closed off …" and Condition 5 stated that "Before development commences the access shall be constructed" as approved in the 1989 consent.

d. At some unspecified time following the grant of the 1991 permission, the then owner of the site constructed one motel unit. The letter from the owner's solicitors referred to above asserts that this was one of the units approved by the 1991 permission. I am instructed that this unit was not constructed in accordance with the plans approved under the 1991 permission. Those plans showed each unit sub-divided into four individual bedsits with four external doors to each unit. What was constructed was a unit comprising a kitchen diner and 2 bedrooms. Moreover, I am instructed that the completed unit had an additional small window in one of the elevations, not shown on the approved plans (the letter from the owner's solicitors suggests that in fact two additional windows were introduced). None of the other development referred to in this permission was undertaken.

e. At some unspecified point in time the constructed motel unit began to be used as a permanent residential dwelling. In January 2004 the owner

submitted plans showing amendments to the design of this unit, and requested that these be "treated as minor amendments to the originally approved plans". The development control manager of the council replied on 23 February 2004, stating that "I am satisfied with the amendments" and emphasized that all the other conditions on consent B5561 dated 15 January 1990 must be complied with. Clearly, both the date and reference number of the permission are incorrectly cited in this letter.

f. On 16 February 2005 the owner submitted a new application for 6 new holiday bungalows (i.e in addition to the one already built) and a new access (the access way and the configuration of the bungalows on site on the submitted plans is very different to that approved under the 1989 and 1991 permissions). I am assuming that this application was neither determined nor appealed.

THE ISSUES

3. Against this factual background, the owner's solicitors have written to the council to argue that both the 1989 and 1991 permissions have been implemented. The dispute revolves around the 1991 permission, with the owner asserting that he is entitled to complete the development permitted under that consent by constructing the remaining 5 motel units.

4. I am asked to consider the following questions:

Is the 1991 Permission a valid planning permission capable of being enforced?

5. I assume the question is whether the planning permission is capable of being implemented, rather than enforced.

6. This raises two questions:

    a. Was the development permitted by the 1991 permission begun before the expiry of the permission (i.e within five years)? and

    b. If so, were the operations that are now relied upon as constituting implementation lawful?

7. It will be noted that the first question is not addressed in the correspondence between the owner's solicitors and the council. The discussion has incorrectly focused on whether the unit as built is or is not in accordance with the approved plans. Whether the unit accords with the plans is a question which is relevant to the issue of whether enforcement action should be taken, a matter to which I shall return later. The question that needs to be addressed now is whether the 1991 permission is still alive, or whether it has expired.

8. Condition 1 of the permission provides that its duration "is limited as specified overleaf". Reason 1 of the reasons for the conditions printed overleaf states "Conditions imposed by the above mentioned Act". Although not expressed as well as it could have been, this is likely to be construed as meaning that condition 1 limits the permission as provided for by s.191 of the Town and Country Planning Act 1990. At the material time this section provided that development must be "begun not later than the expiration of five years beginning with the date on which permission is granted".

9. Section 56(2) of the 1990 Act provides that for "the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any *material operation comprised in the development* begins to be carried out" (emphasis added). Subsection (3) states that this rule applies to s.91, and defines "material operation" to include "any work of construction in the course of the erection of a building" and "the digging of a

trench which is to contain the foundations, or part of the foundations, of a building".

10. Case law makes it clear that even very minor works will constitute a "material operation" (*United Refineries Ltd v Essex County Council* [1978] JPL 110). The issue that this case raises is not whether a material operation took place within the relevant five year period, but whether that material operation was "comprised in the development" (i.e related to or formed part of the operations permitted by the consent). This issue was considered by Ouseley J in *Commercial Land Ltd/Imperial Resources SA v Secretary of State for Transport, Local Government and the Regions* [2003] JPL 358, in which he ruled that differences between the approved plans and the operations relied on is not in itself fatal to the argument that the development has been commenced:

> **"It is, in my judgment, necessary for an Inspector dealing with this sort of problem to consider not just the existence of differences between the plans and the operations relied on, but also to consider the significance of those differences. It is insufficient just to mark and measure the existence of differences. In my judgment this can be seen either as a question of the correct approach in law, or as a question of whether an Inspector has had regard to material considerations. Consideration of the similarities, or degree of compliance of the operations relied upon, with the approved plans is also relevant, together with substantial usability of those works in the permitted development, and the degree of alteration required to them in order for them to effective to that end. I do not consider that the Inspector took those other matters into account or examined the significance of the differences which he found to exist."**

11. The case was referred back to the inspector who decided that the works relied upon did not form part of the permitted development because the vast majority of

what had been built would have to be demolished in order to build what had actually been permitted (see *R (on the application of Imperial Resources SA) v FSOS* (2003) EWHC 658 Admin.). What the case demonstrates is that only in extreme cases is it possible to argue that none of the material operations in fact relate to that which was permitted. In the present case, it is clear that the works that were carried out (putting in the foundations, building the walls, putting on the roof etc.) formed part and parcel of what was permitted. To use Ousely J.'s phrase, regardless of whether the finished product was what was permitted, the works that were done were substantially usable for that which should have been built.

12. Accordingly, it follows that the 1991 permission was implemented.

13. The next question which arises is whether it was lawfully implemented. This question raises three further questions:

    a. Were conditions 4 and 5 pre-commencement conditions in the sense explained in *F.G Whitley and Sons v Secretary of State for Wales* (1992) 64 P&CR 296?

    b. If so, were they complied with?

    c. If not, would it now be rational for the Council to take enforcement action because of the failure of the owner to comply with the conditions?

14. If one applies the approach taken by Sullivan J in R (on the application of *Hart Aggregates Ltd) v Hartlepool BC* [2005] EWCH 840 (Admin.) it is difficult to construe conditions 4 and 5 as conditions precedent in the sense that a failure to comply means that the construction of unit 1 falls outwith the permission. The conditions in question do not expressly prohibit development taking place before the stipulated actions have been carried out. The alternative test alluded to in that case (whether the condition goes to the heart of the development) is virtually

impossible to apply.

15. My view is that confronted with a case such as this a court is likely to rule that the conditions are not true pre-commencement conditions. The factors likely to influence the decision are (a) the precise wording of the conditions, which do not contain an express prohibition (b) the period of time that has elapsed since Unit 1 was built without the Council taking enforcement action and (c) the fact that if construed as non pre-commencement conditions it leaves it possible for the Council to take enforcement action if the conditions have not been complied with.

16. As to whether conditions 4 and 5 were in fact complied with, I have little information on this issue. The letter from the owner's solicitors appears to contain fairly strong evidence that condition 4 was complied with (and I agree with them that the condition did not require the access to be kept closed permanently thereafter), and that condition 5 was either complied with prior to commencement or prior to expiry of the permission. If the solicitors are correct about these matters, the issue of lawful implementation does not arise.

17. In any event, on the facts of this case, it would be difficult to justify enforcement action on the basis of failure to comply with these conditions prior to commencement of development, since in substance both appear to have been complied with at some point.

18. By way of summary, therefore, the 1991 permission was in my opinion lawfully implemented and is still alive. The owner has the option of completing the development in accordance with the approved plans.

If the 1991 permission is a valid permission what is the effect, if any, of the letter of 23 February 2004? What is the status and effect of this letter?

19. Although not completely clear from my papers, it appears that the letter of 9th January 2004 sought amendments to the designs of all 6 units permitted by the 1991 permission. This amendment was granted by way of an informal letter, in which it was implicitly accepted that these were minor amendments.

20. The 1990 Act does not contain any provisions which permit a local planning authority to amend approved plans without a planning application being submitted either under s.62 or s.73. Accordingly, the practice (widely instituted) of accepting minor amendments is without statutory authority.

21. However, there have been examples of cases where local authorities have found themselves bound by letters approving minor amendments. One such example is *Camden LBC v SOSE* (1993) 67 P&CR 59, where an officer replied stating that "in my view the variations are ... minor and would not constitute development requiring planning permission". When the council tried to take enforcement action on the basis that the development had not been built in accordance with original, unaltered plans, the Inspector quashed the enforcement notice on the basis that the officer had acted with the ostensible authority of the Council and accordingly the Council was estopped from taking enforcement action . The High Court agreed, noting that there was no evidence before it that only the planning committee or the Head of Planning had the authority to grant such amendments.

22. There has, however, been a radical change in the approach the courts now take to informal determinations by local authority officers. In *R v Sussex CC Ex p Reprotech (Pebsham) Ltd* [2002] UKHL 8) the House of Lords made it clear that there was no scope within planning law for the operation of estoppel. A council cannot be estopped from taking action against unauthorized development merely because an officer has purported to grant a waiver of a condition on a planning

consent, or has agreed that a development may proceed in a manner otherwise than formally approved.

23. It follows that on the basis of that there is no scope for estoppel in planning law, the letter has no legal status. It is not a determination of the council on a planning application, because no new planning application had been submitted by the owner to change the design or to vary the conditions attached to the original consent.

What is the status of each structures erected on the site?

24. Each of the units must be constructed in accordance with the 1991 permission. Enforcement action may be taken if any of the units are not constructed in accordance with plans approved under the 1991 consent.

25. Unit 1 is an example of unauthorized development. What was approved was a four bedroom unit, each with its own external door. What has been constructed is a bungalow with a kitchen diner and two bedrooms. Moreover, the fenestration is not as shown on the approved plans. Arguments to the effect that the changes are *de minimis*, or that the internal arrangements fall outwith the definition of development, are without merit. What has been built is clearly different from that which was approved. The point was expressly addressed by the House of Lords in *Sage v SOSETR* [2003] UKHL 22:

"As counsel for Mr Sage accepted, if a building operation is not carried out, both externally and internally, fully in accordance with the permission, the *whole* operation is unlawful. She contrasted that with a case where the building has been completed but is then altered or improved. The demonstrates the fallacy in Mr Sage's case. He comes into the first category not the second."

26. If it were possible to build unit 1 as constructed without breach of planning control (on the basis that the alterations from the approved plans are de minimis), it would not have been necessary for the owner's architect to seek a minor variation of those plans. The fact is that, even leaving aside the *Sage* point regarding internal changes, putting in additional windows would materially change the exterior of the building and would require planning permission.

Expediency of Enforcement Action

27. In the case operational development, enforcement action cannot be taken "after the end of the period of four years beginning with date on which the operations were substantially completed" (s.171B(1). It follows that it is no longer possible to take enforcement action against the construction of unit 1, which it appears was completed as long ago as 1998. Neither is it possible to take enforcement action against its use, contrary to Condition 2, as an independent permanent residential unit because in the case of use as a dwelling house the time for taking action is limited to four years (s.171B(2)).

28. It is possible to take enforcement action against the units which the owner began to construct in 2007 if those units are not in accordance with the 1991 permission. Whether it is expedient to do so depends on whether the variation from the approved plans causes any planning harm. I do not have all the information on this issue, but it appears to me that it would be difficult to make the argument that different internal arrangements and the introduction of one or two small additional windows causes harm warranting enforcement action.

29. However, one concern that I do have is that having constructed the units in a manner different from that approved, the owner may, once four years have elapsed, seek to argue that the units were not built pursuant to the permission and accordingly are not controlled by the conditions which appear on the consent (including, importantly, the prohibition against using them as independent

permanent dwelling houses). An example of this is provided by *Handoll v Warner Goodman Streat* [1995] JPL 930, in which consent was given for a bungalow subject to an agricultural occupancy condition. The bungalow as built was located 90 feet away from the site for which permission had been given. The court held that the building as built was without permission, and the agricultural occupancy condition did not attach to the building.

30. Clearly, whether a building as built is at such variance from that which was approved that it can be described as not being what was approved is a matter of fact and degree. The present case probably falls within a grey area. Rather than take the risk, I advise that the council invite the owner to submit a planning application to vary the design. He should be given the reassurance that the Council will consider the issue of design only, given that the fall-back position is that he can build what has already been approved. The Council should openly state that the reason is so that the same conditions can be attached as were attached to the 1991 permission. If he refuses to co-operate, the Council would in my opinion be justified in taking enforcement action in order to protect its position.

CONCLUSION

31. I have addressed each of the matters raised in my instructions. If my instructing solicitor would like any of the matters addressed in greater depth, or there are further issues arising from the above analysis, I am available to advise further and can be contacted via my clerk.

Satnam Choongh
Number 5 Chambers
Birmingham-London-
Bristol

29 May 2008

IN THE MATTER OF DEVELOPMENT AT BEACONS EDGE PONTITHEL

ADVICE

Lynne Coughlan

Principal Solicitor

Legal Services Powys County Council

Cambrian Way

Brecon

Powys LD3 7HR

IN THE MATTER OF DEVELOPMENT AT BEACONS EDGE PONTITHEL

ADVICE

1. I have already advised extensively in conference and have also visited the site.

Instructions

2. This written Advice endorses the advice I gave in conference although as a result of the site visit considerably more information is now available about the current and past uses of the main "hotel/motel" building and the chalet building constructed in about 1998. The site visit was carried out in agreement with Mr Mrs Hopkins and was conducted after the conference taken place. The most important matters to arise from the site visit centred on essentially the use of Beacons Edge being run as a business providing accommodation to visitors with ancillary residential accommodation, which had not been previously understood in terms of the planning history after the grant of planning permission.

3. In my opinion, the history of the site in a planning context is somewhat difficult to piece together and the main objective is to secure a way in which the future of the site

can be satisfactorily resolved in both the interests of the County Council and the current occupiers Councillor and Mrs Hopkins.

Factual matrix

4. The relevant planning permission for the purposes of this advice was granted on 11 March 1991. Five planning conditions are attached to it. Condition 2 says that the motel units shall not be occupied as independent permanent residential units, they shall only be occupied by guests of the adjoining hotel.

5. Condition 4 states the before development commences the access at the west end of the site shall be closed off in materials to be agreed in writing by the District Planning Authority. Condition 5 states that before development commences the access to the motel shall be constructed in accordance with the previously approved condition 10 on B. 4961 dated 10 April 1989. This is a reference to the 1989 planning permission. That planning permission was granted as a result of a section 106 agreement dated 13 April 1989. I note from the Second Schedule to the section 106 agreement that the application in 1988 was for planning permission to convert a guesthouse to a hotel/motel with swimming pool and seven chalets.

6. The number of chalets permitted in 1991 was subsequently reduced to 6 and they are shown on the plans.

7. The 1991 planning permission was not granted subject to a section 106 agreement nor does it incorporate the terms of the earlier permission. The 1991 planning permission was for *new design of motel units and extension to function room and private accommodation.*

8. The County Council has already taken advice from Counsel. For the avoidance of doubt, I agree overall with that advice save in relation to some aspects of the planning history which now, in the light of subsequent information, appear to be wrong. The general conclusion of earlier counsel is that the 1991 planning permission was lawfully implemented. I agree. This issue is of course separate from any enforcement action and the way the development should be completed.

The 1991 scheme

9. To put matters in context, the 1991 scheme involved extension to the then existing guesthouse on site was to create a 10 letting bed motel with associated dining room, function room and bar facilities together with private residence facilities arranged over three floors. In combination with the six chalets there were 10 letting bedrooms proposed in the main building which permitted hotel/motel development of letting rooms all of which utilised the dining and bar facilities in the main building.

10. Ancillary to that hotel/motel use is the residential accommodation comprised in the planning application and permitted by the planning permission.

Current proposal (2010 scheme)

11. The current proposal is that the occupiers will complete the development in accordance with the 1991 consent. One bungalow was completed in 1998 and another albeit of different dimensions from the original scheme is close to completion construction.

12. From the site visit it is clear that the original three storey building has not been constructed. In fact, substantial work at considerable expense will be required to be carried out if the development is to be completed in accordance with the planning

permission as the current owners contend through their planning agents. However, clearly some elements of the scheme beyond enforcement action.

13. If the current owners do not intend to complete the building(s) in accordance with the 1991 plans then they will need to submit a further application to vary. So far, the only application made to vary which has not yet been determined, involves the chalet buildings. However, it is also clear that the current building design was completed some time ago and may be immune from enforcement action in any event.

Chalet 1

14. In relation to the advice of counsel obtained on 29 May 2008 there is a suggestion that at some time in the past the constructed motel unit was used as and became permanent residential accommodation and used as a separate dwelling. However, from the site visit it is clear that chalet 1 has not been used as separate living accommodation as a dwelling house falling within C3 Use Classes Order 1995 as amended. In addition, no application has been made for a certificate of lawfulness in relation to that use.

15. Mrs Hopkins also confirmed on site that chalet 1 is let out on short-term lets or as holiday accommodation. It is clear on all available evidence that chalet 1 has probably never been used as a separate dwelling house.

Main building-1991 permission- 2012 CLU

16. I turn now to the issue of the way in which the main building or "hotel/motel" building has been used and the certificate of lawfulness application and subsequent grant.

17. In 1992 an application was made (B/6589) to raise the roof level and extend the property to the south west. The plans incorporate private residential accommodation in the upstairs floor. Although the application was approved it was not implemented

as this would be at odds with and contradict, the implementation of the 1991 planning permission.

18. The 1991 planning permission permits the use of the accommodation in conjunction with the hotel/motel use with common areas, toilet accommodation, the provision of guest accommodation etc. At some stage and prior to 2001 the upper ground floor level was converted to a single apartment on a single floor comprising entrance hall, cloakroom, sitting room, lounge/dining room, kitchen and three bedrooms.

19. The present upper ground floor accommodation is used by Mr and Mrs Hopkins as residential accommodation for their sole use without any use by guests of the chalets or flats 1 and 2.

20. At the site visit, it was manifest that the two lower ground floor apartments had not been rented out for some considerable time. Mrs Hopkins said that she had let out the apartments from time to time for holiday short rental accommodation. However, she had provided the apartments mainly for [redacted] She wanted somewhere for them to be able to stay.

21. Mrs Hopkins also told us that there had been a staircase which connected the lower ground floor apartments to the floor above. However, the staircase had been removed and therefore there were the two apartments below and the living accommodation above.

22. Next, in the planning history of the site is an application made for a certificate of lawfulness in March 2012. It is a confused and confusing application. The covering letter dated 8 March 2012 says that it is for an existing use of 2 lower ground floor self-contained apartments. Pre-application discussions had taken place. It is not said in the application form that there had been any breach of a planning condition but it was an application for an existing use. From an interview note on site Mrs Hopkins

said that the two flats were separate and independent of the main dwelling. Mrs Hopkins stated that they had always been used separately from the dwelling. Various council tax documents were submitted and there was interrogation of the information when the applicants were asked to provide further information. I have seen the council tax returns and they are all in the name of [redacted] The applicants produced the estate agents particulars and documentation which said that the property was formerly a restaurant and divided into three residential units and a detached two bedroom bungalow.

23. However, it does not seem to me that this was the case. There is no evidence that chalet 1 was ever used as separate residential accommodation in its own right and it is not used now as residential accommodation.

24. Flat 1 and flat 2 were described in the sales particulars as self-contained units ideal as granny accommodation or for letting. I do not know whether Mr and Mrs Hopkins used the accommodation in that way when they bought in 2001 but from the information provided by Mrs Hopkins, that has not been the case for some considerable time. Instead, they have been used as accommodation [redacted] ancillary to a residential use of the first floor or alternatively they have been let out. Neither of which would be contrary to the 1991 planning permission. They have in fact been used as an ancillary accommodation.

25. The report to committee for the certificate of lawfulness does not address the issue of C3 uses or use as separate dwellings nor is the application made on that basis. I note also that the 10 year rule has been applied when statute provides that a change to a residential use is subject to the four year rule. The certificate specifically refers to the 10 year rule rather than the four year rule relating to residential use.

26. The terms of the certificate of lawfulness granted immunity for the use of the lower ground floor as two self contained apartments. In that sense, they are self-contained.

27. This does not establish a separate C3 use. The certificate of lawfulness confirms that the two flats are now physically separate from the living accommodation above. If it were to be contended by the current owners that this establishes a C3 use, in my opinion such an argument should fail. Immunity is only granted in relation to the extent of the certificate. It confirms it is separate accommodation. The staircase no longer exists. There is no physical connection between the two apartments/flats and the accommodation above. However, the mere fact that there is no physical connection does not establish that they are separate residential units. The evidence submitted in support of the application does not establish that to be the case.

28. There is no prohibition in terms of the planning permission preventing [redacted] to occupy the lower ground floor accommodation in conjunction with their residential accommodation at first floor level. It does not establish in any way that the lower ground floor flats are separate residential accommodation or separate planning units. This is not the case as presented in the application and is not the case as a matter of law. In order to succeed I would have expected information demonstrating that there were, for example separate utility bills, agreements showing that the properties had been rented out and any other evidence demonstrating the separate residential use. What the certificate establishes is that the two flats are physically separate and are immune from enforcement action in the sense that the staircases have been removed and enforcement action could not be taken to have the two flats physically linked as was intended in the original planning permission. I have looked at the plans in relation to the original configurations of the lower ground floor area which consisted of bedrooms, shower rooms and a common hallway accessed from stairs from the above floor. Two flats have been created and are now physically separate. It is only to that extent that the certificate of lawfulness grants immunity.

29. Mr & Mrs Hopkins have not applied for a certificate of lawfulness relating to the first floor accommodation. It is likely however that since 2001 at least, they have used it as

residential accommodation without having the communal and guest facilities or indeed as a restaurant or bed and breakfast accommodation nor does it provide a function room.

Analysis of 1991 permission

30. However, the 1991 planning permission envisaged that the use of the premises would be as a business use for a hotel or motel providing accommodation with ancillary residential accommodation for the owners or operators of that business use.

31. In my opinion, it is arguable that the existing use of Brecons Edge remains a motel/hotel use with guests occupying the chalet buildings and the flats. I have had particular regard to the Town & Country Planning (Use Classes) Order 1987 (as amended) at Class C 1. As advised by Circular 03/2005 at paragraph 59 The C1 "*Hotels class includes not only hotels, but also motels, bed and breakfast premises, boarding and guesthouses. These are premises which provide a room as temporary accommodation on a commercial fee paying basis, where meals can be provided but where residential care is not being provided*". In other words, motels and hotels fall within the same use class.

32. I have looked at the Brecons Edge website and it is clear that the accommodation occupied by Mr and Mrs Hopkins is in conjunction with the letting of chalet 1 and presumably the same is proposed for the next unit which is nearing completion. This would also apply to the letting of what are called flats 1 and 2.

Resolving the present position

33. I do not know whether Mr and Mrs Hopkins would agree that this is the case. It should be discussed with them. If they disagree, then the appropriate way of resolving the issue is for an application to be made for what they consider to be the existing lawful use of the existing main building, the two flats and chalet 1 and the use of the

chalet nearing completion and the chalets they wish to construct under the 1991 permission.

34. If they do not agree, then in my opinion this gives rise to a complex planning situation and with enforcement implications against Mr and Mrs Hopkins if they intend to complete the 1991 planning permission. The 1991 planning permission has not yet been completed because a number of the chalets have not been constructed or the construction of unit 2 has not been completed. Chalet 1 is the only one which has been constructed and completed. The 1991 planning permission ties the use of those chalets both completed and as yet not built to the use of the motel or hotel use with its ancillary residential accommodation. Condition 2 says that the motel units shall not be occupied as independent permanent residential units and they shall only be occupied by guests of the adjoining hotel. Despite the changes that have taken place two flats 1 and 2 in terms of their physical configuration it also seems to me that the scope of the 1991 planning permission is that they must be used as part of the motel or hotel business.

35. For the avoidance of doubt and as I have already said in conference I agree with the previous advice given to the County Council that it is not bound as a matter of law by the actions of Mr Evans when writing on 23 February 2004 that he was satisfied as to the amendments.

36. I also agree with the advice that chalet 1 in terms of its construction is immune from enforcement action. Chalet 2 is close to completion but has not yet been completed. It is not built in accordance with the plans attached to the 1991 planning permission and if the Council so wishes, it could take enforcement notice action. This should also be explained to Mr and Mrs Hopkins. This position is also applicable to the as yet unbuilt chalets. They must comply with the plans attached to the 1991 planning permission and not the 2004 purported amendments.

37. Needless to say, the Council has a discretion whether to enforce against chalet 2 bearing in mind that Mr and Mrs Hopkins were warned about its non-compliance with

the 1991 planning permission and yet they have chosen to continue to build a chalet which differs considerably from the 1991 plans.

38. As will be evident from this Advice if Mr Mrs Hopkins disagree with the interpretation of the 1991 planning permission and the effect of the subsequent changes, then enforcement action will have to be considered.

39. Alternatively, there is nothing to prevent a fresh application which seeks to regularise the current position on site. I envisage that this could include permitting the residential element of the main building being ancillary to the business of letting out the chalets and flats 1 and 2 in conjunction with the construction of chalet 2, that the remaining chalets are built in accordance with the 1991 plans and linked to a section 106 agreement that ties the occupation of the residential accommodation in the main building to the letting of holiday chalet accommodation.

Overall conclusions

40. In my opinion, the position with regard to the changes that have taken place since the 1991 planning permission present a complex planning problem. In my opinion flats 1 and 2 are not separate residential units falling within C3. Changes have taken place to the main hotel building which are immune from enforcement notice action. However, it seems to me that the first-floor residential accommodation is still ancillary to the business of a motel or the letting of rooms/provision of accommodation.

41. The method of resolving any issues is first discuss matters with Mr and Mrs Hopkins and if there is dispute, to request them to make applications for certificates of lawfulness. If that is not done and the position is not resolved then enforcement action can be taken.

42. Alternatively, although I very much bear in mind that the County Council has shown considerable forbearance and has in the past suggested that a fresh application be made to regularise the planning position, that this should be pursued. It is of course a matter for Mr and Mrs Hopkins as to whether they make any such application.

43. I shall be pleased to advise further as is necessary and those instructing me should not hesitate to contact me on any matter arising out of this Advice.

Cornerstone Barristers

2-3 Gray's Inn Square

London WC1R 5JH

IAN ALBUTT

7 May 2013