

Q/0246/13

WARSASH

MS DIANE RIDLEY

AGENT: MS DIANE RIDLEY

PROPOSED APPLICATION FOR DEED OF RELEASE

30 SOLENT BREEZES HOOK LANE WARSASH HANTS SO31 9HF

Report By

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Introduction

Solent Breezes is a holiday home park comprising holiday chalets and mobile homes and associated facilities. The mobile homes are predominantly owned and managed by a holiday company. The chalets are in private freehold ownership.

The early planning history of Solent Breezes predates Fareham Borough Council succeeding Hampshire County Council as the local planning authority on 1 April 1974. On 3 October 1966 Hampshire County Council entered into a planning agreement under Section 37 of the Town and Country Planning Act 1962 with the then owner of Solent Breezes. That agreement contained a covenant which restricted the chalets then existing (excepting a few specified chalets) or any chalets constructed subsequently to "occasional residential occupation for holiday and recreational purposes".

"Occasional residential occupation for holiday and recreational purposes" was defined in the legal agreement as "occupation between 1st March and the 31st October inclusive and at other times only at weekends between the hours of 5.0 pm on a Friday and 9.0am on Monday and between the hours of 5.0pm on any day preceding a public holiday and 9.0am on the day immediately following the same public holiday". Many of the chalets were also subject to a planning condition restricting their use to occasional residential occupation for holiday and recreational purposes.

In 2011 planning appeals were allowed against the enforcement notices issued in relation to breaches of the relevant occupancy planning conditions by the owners/occupiers of Chalets 19, 57 & 58. These successful planning appeals resulted in the granting of an unrestricted planning permission for the residential use of the chalets involved. At the meeting on 1 February 2012, the Committee authorised the Solicitor to the Council to enter into Deeds of Release on behalf of the Council releasing the owners of the Chalets 19, 60, 61 and 85 Solent Breezes from the occupancy covenant contained in the planning agreement of 3 October 1966. The Committee passed the same resolution with regards Chalets 57 & 58 at the meeting on 28th March 2012.

In the relatively recent past, some chalet owners have sought and obtained Certificates of lawfulness for the all year round residential use of their chalets in breach of the planning conditions restricting residential use to certain months of the year. The Council was legally bound to grant the certificates where the applicants provided evidence to demonstrate that the relevant planning condition had been breached for a period of ten years or more.

Following the granting of the Certificates, the all year round occupation of the chalets became lawful and the Council became unable to taking planning enforcement action against the breach of the conditions.

In May of this year the Council granted a Certificate of Lawfulness for use of Chalet 30 as a permanent residence as no applicant demonstrated that the relevant occupancy condition had been breached for more than 10 years. The owner of Chalet 30, Ms Diane Ridley, has now requested the release of the 1966 occupancy restrictive covenant.

Planning Considerations - Key Issues

The Legal Test

It is appropriate for the committee to apply the same test as the Lands Tribunal would apply if an application were to be made to them for discharge of the covenant previously referred to in the 1966 agreement. The power to discharge a covenant is set out in section 84 of the Law of Property Act 1925. This section provides that to discharge the covenant the Upper Tribunal (Lands Tribunal)

must be satisfied that either:

(a) by reason of changes in the character of the property, or the neighbourhood, or other circumstances of the case which the Upper Tribunal may deem material, the restriction ought to be deemed obsolete, or

(aa) that the continued existence thereof would impede some reasonable user of the land for public or private purposes.

In considering whether the covenant would impede some reasonable user of the land the tests are whether:-

(a) the covenant does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them; or

(b) is contrary to the public interest;

The Upper Tribunal also, in considering the impediment test, has to take into account the development plan and any declared or ascertainable pattern for the grant or refusal of planning permissions in the relevant areas, as well as the period at which, and context in which, the restriction was created or imposed and any other material circumstances. Thus in applying the impediment test the range of factors may be wider than was considered by earlier Committees when looking at obseletion.

Matter for consideration

The matter for the committee to consider and make decision on at this meeting:-

Whether or not the Council should agree to the request for the grant of a deed of release from the covenant contained in the 1966 planning agreement in respect of Chalet 30 which was earlier this year granted a certificate of lawfulness to allow use as a permanent residence, on the ground that the continued existence thereof would impede some reasonable user of the land for private purposes.

Given that the owner of the chalet enjoys the benefit of relief from the restrictive occupancy planning condition, if the Council were to enforce the covenant against the owners of this chalet, then it would impede their reasonable use of the chalet. Being that a certificate of lawfulness has been issued, the covenant does not secure any practical benefit to the local planning authority and should in these circumstances be released.

Recommendation

That provided the applicants agree to pay the Councils legal costs for the Deed of Release, that the Committee authorises the Solicitor to the Council to enter into a Deed of Release

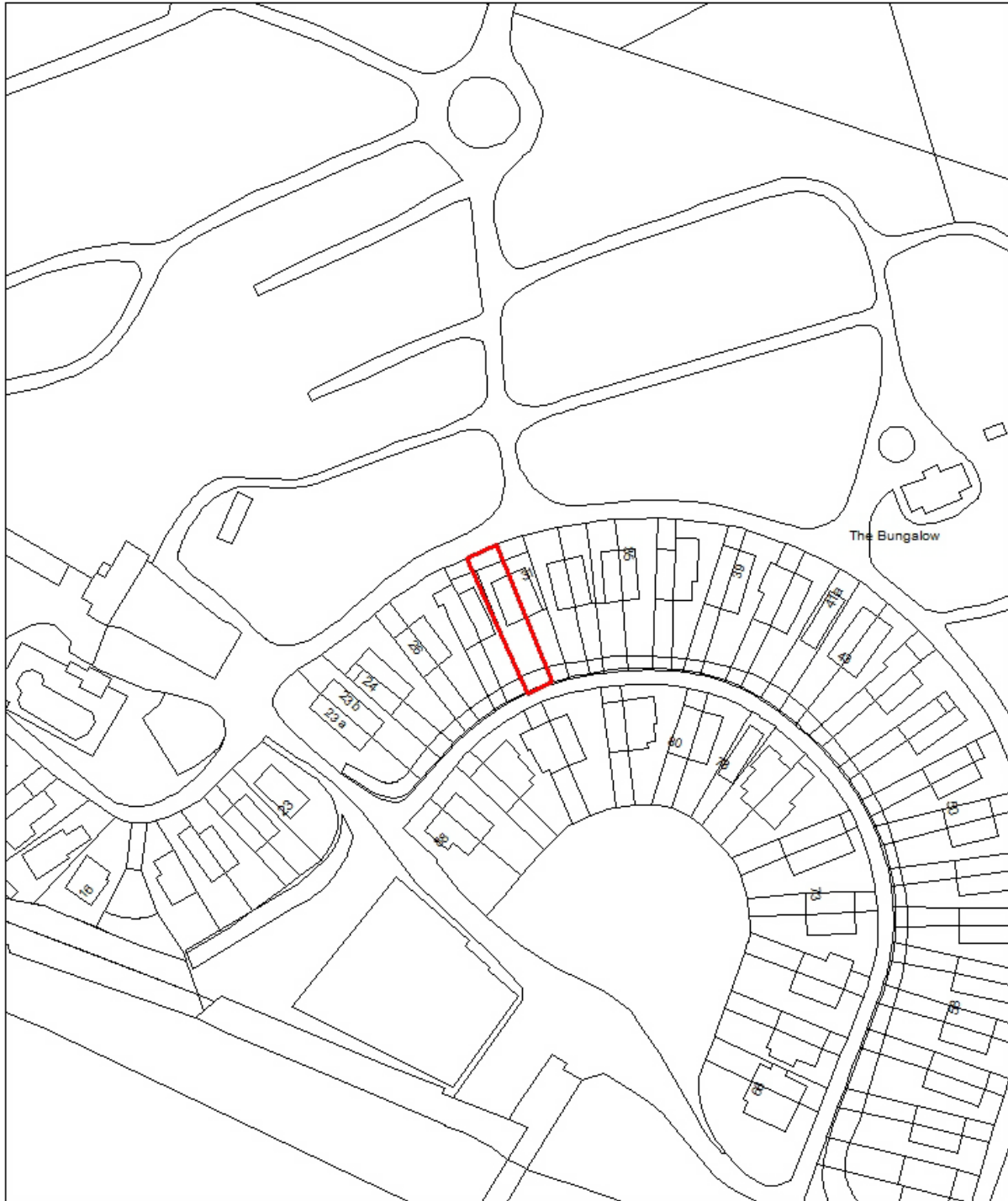
on behalf of the Council releasing the owner of Chalet 30 from the occupancy covenant contained in the planning agreement of 3 October 1966.

Background Papers

Miscellaneous items reported to Planning Committee on 1 February 2012 (Q/0409/11) and 28th March 2012 (Q/0091/12).

FAREHAM

BOROUGH COUNCIL



30 Solent Breezes
Scale 1:1250

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