Tel. 0118 974 6463
Email: mark.turner@wokingham.gov.uk
Date: 22 February 2008
My Ref: A/2007/2198
Your Ref: JRF/0101(08-01)-01

Mr. J.R.Freeth
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Development Control
P.O. Box 157
Shute End, Wokingham
Berkshire RG40 1WR
Fax: (0118) 974 6484
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Dear Mr. Freeth

RE: ALTERATIONS AT YEWGATE, REMENHAM HILL, REMENHAM, HENLEY-ON-THAMES

I write further to your letter and accompanying plans dated6 February 2008.

I acknowledge your concerns regarding the use of the word "implementation" in Condition 3 of planning permission reference number F/2001/3179. I would advise that were such a condition imposed today the word "implementation" would be not be used.

I have investigated the condition and its potential effect on your clients' and their proposed development. In addition to the Oxford English Dictionary definition it may be of use to refer to *Aylesbury Vale DC v Florent (QBD) Queens Bench Division 2 April 2007.* [2007] EWHC 724 (GB). This case gives credence to your argument that the use of the word "implementation" implies completion and not merely commencement as seems to be the situation in this instance.

I would therefore agree with you that until the scheme permitted under F/2001/3179 is completed your clients still benefit from rights under the Town and Country (General Permitted Development) Order 1995 (as amended).

I would advise that I have not considered the proposed amendments in detail. Your explanatory statement indicates that the proposals would either be *de minimus* or permitted development. If your client wishes formal confirmation of this I would suggest an application for a Certificate of Lawful Proposed Development may be appropriate.

In conclusion the enclosed application is considered to be superfluous and will therefore not be registered.

I trust the foregoing is of use but please feel free to contact me directly should you require further assistance.

Yours sincerely,



Mr Mark Turner
Senior Planning Officer

John R Freeth. *DipTP(Oxford), MRTPI*
Chartered Town Planner

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February

Planning Services
Wokingham Borough Council
PO Box 157
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Shute End
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RG40 1WR

Case Officer | Wednesday, 06 ~~January~~ 2008
Planning
07 FEB 2008
Copies | My ref: JRF/0101(08-01)-01
Replied

DH 7487 4608 7GB

Dear Sirs,

Application for planning permission
Alterations to existing dwellinghouse
At: Yewgate, Remenham Hill, Remenham, Henley-on-Thames, RG9 3EP
By: Miss B A Williams

Please find enclosed for your attention my client's application in respect of the above. The application includes:

1. This letter (6 copies)
2. Completed Application Forms & Certificate of Land Ownership (6 copies)
3. List of Drawings and the Drawings so listed (6 copies of each)
4. Explanatory Statement (6 copies)

No application fee is payable in respect of the application; because it is made further to Condition 3 of the planning permission granted under ref F/2001/3179, which removed the permitted developments rights that would have normally have allowed the proposed alterations to proceed without the need for any further planning permission from the Local Planning Authority (LPA).

No Design and Access Statement is required in this case, as the proposals relate to alterations to an existing dwellinghouse, which is not located within a "designated area" – please see the Town & Country Planning (General Development Procedure) Order 1995, as amended, Article 4C.

An issue that the LPA needs to consider arises from the detailed wording of the said Condition 3. The Condition relates to the period following the "implementation" of the development permitted under the said reference. Implementation is defined in my dictionary (The Concise Oxford Dictionary) as being commensurate with completion. Although the development permitted under the said reference has been commenced, it is a very long way off being completed or implemented. Hence there is a probability that Condition 3 has not yet taken effect (and will not do so until "substantial completion" of the approved development has been achieved): and that the proposed works, which relate only to the existing building

and not the extensions approved under the said reference, in fact still benefit from the normal permitted development rights relating to dwellinghouses. Should the LPA conclude that this is the case, then I shall be grateful for written confirmation of the same. In that event, the enclosed application will be superfluous and can be abandoned. Should the LPA conclude to the contrary, I shall be grateful for notice of its reasons for so concluding.

In the event of the enclosed application being necessary, then I trust you have all the documentation required to register and process the application. However, should that not be the case, please advise me further as appropriate. In this context, please do not return any bulk documentation as that can only add to handling times and costs.

Should any matter arise from the processing of the application that would benefit from discussion or additional information, again please do advise me further as appropriate.

Yours faithfully,



John R Freeth

Encs

cc Miss B A Williams

(c) Sweet & Maxwell Limited

Aylesbury Vale DC v Florent
(QBD) Queen's Bench Division
2 April 2007

Where Reported

Summary

Cases Cited

Legislation Cited

Case Comments

Where Reported

[2007] EWHC 724 (QB)

[2008] J.P.L. 70

(2007) 151 S.J.L.B. 505

Summary

Subject: **Planning**

Keywords: Enforcement; Injunctions; Local government; Noise; **Planning** conditions; **Planning** permission

Catchphrases: **Planning** conditions; Enforcement; Restraining breach of **planning** control by injunction

Abstract: The applicant local authority applied for a final injunction to compel the respondents (F) to comply with a condition of **planning** permission relating to shooting noise levels at their farm, and an interlocutory injunction restraining F from operating any form of shooting at the farm until an approved shooting scheme, required by another condition of the **planning** permission, had been fully implemented. F's farm, where they ran a clay pigeon shooting club, abutted a motorway. F had applied unsuccessfully for a certificate of lawfulness of existing use and development in respect of the shooting activities at the farm, which the local authority thought were in breach of the maximum permitted without **planning** permission. Although an enforcement notice had been issued requiring cessation of the use of the land for shooting, the local authority had then granted **planning** permission subject to conditions that provided for shooting to cease unless an approved shooting scheme, designed to ensure that the shooting noise levels were reduced, had been implemented and for shooting thereafter to take place only in accordance with the scheme. The conditions also specified shooting noise levels that could not be exceeded. The scheme required the creation of bunds or sound barriers. A very large amount of inert material was required for their construction. The creation of the bunds took considerably longer than originally contemplated because their height had to be increased. Meanwhile the local authority continued to receive complaints from local residents regarding excessive shooting noise from the farm. Tests showed that the shooting noise levels were being exceeded. The local authority sought injunctions under the Town and Country **Planning** Act 1990 s. 187B to prevent any shooting until the scheme had been implemented and to prohibit shooting exceeding the relevant noise levels. F submitted that (1) **planning** permission was not needed for the shooting at the farm; (2) the approved scheme had been implemented as required by the **planning** condition since it had been put in place even though it had not

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been completed; (3) the court should not exercise its discretion in favour of granting an injunction.

Summary: Application granted in part. (1) The enforcement notice had not been withdrawn and had not been appealed by F before the date on which it was to take effect. Although it was possible in principle both to seek **planning** permission and to argue that none was required, it was not open to F to adopt such a stance where an extant enforcement notice prohibited the very use of land that was said to be lawful, Newbury DC v Secretary of State for the Environment [1981] A.C. 578 HL distinguished. Further the burden of proving the historical use of the land for shooting operations over a continuous and uninterrupted period of 10 years rested on F and they had failed to produce the amount and quality of evidence required to demonstrate that user. In that regard the refusal of a certificate of lawful use and development tended to confirm that F had not discharged the burden of proof. (2) The condition that required the scheme to be "implemented" had to be construed as referring to completion of the **implementation** of the scheme, since the condition would be rendered effectively meaningless if it meant that shooting could continue for however long it took F to complete the bunding work. In the circumstances shooting should have ceased on the expiry of 12 months from the granting of the **planning** permission. An injunction enforcing that condition in accordance with its terms would mean that no shooting would be permitted at the farm for a period of several years while the bunding work was completed. Balancing the interests of F against the rights of nearby residents it would not be appropriate to grant an injunction the effect of which would be to prevent shooting taking place for so long a period. (3) The condition relating to shooting noise levels was a separate freestanding condition that did not depend on the approved shooting scheme. There had undoubtedly been breaches of the condition. The breaches had been prolonged and persistent. Little real effort had been made by F to reduce the noise levels. The local authority had been entitled to adopt guidance on clay target shooting noise control from the Chartered Institute of Environmental Health. The argument that that guidance should not have been adopted because of the high background noise at the farm was rejected. It was appropriate to enforce by injunction the provisions of the condition relating to noise levels.

Judge: Gray, J.

Counsel: For the applicant: Gregory Jones, Juan Lopez. For the respondents: Alun Alesbury

Solicitor: For the applicant: Sharpe Pritchard. For the respondents: Parrott-Coales

Cases Cited

Newbury DC v Secretary of State for the Environment, [1981] A.C. 578; [1980] 2 W.L.R. 379; [1980] 1 All E.R. 731; 78 L.G.R. 306; (1980) 40 P. & C.R. 148; [1980] J.P.L. 325; (1980) 124 S.J. 186 (HL)

Legislation Cited

Town and Country **Planning** Act 1990 (c.8) s. 187B

Case Comments

Enforcement; Environmental noise; Final injunctions; Interim injunctions; **Planning** conditions. Aylesbury Vale District Council v Florent J.P.L. 2008, Jan, 70-86

Breach; Enforcement notices; Firearms; Injunctions; Noise; **Planning** conditions; Sporting events. Noise: **planning** conditions Env. L.M. 2007, Oct, 11-12

Development; Licensing; Noise; Statutory nuisance. **Planning** update (September) S.J. 2007, 151(35), 1194,1196,1198

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