

8 August 2011

Christchurch City Council

By email: [ian.thomson@ccc.govt.nz](mailto:ian.thomson@ccc.govt.nz)

Attention: IAN THOMSON

### TAYLORS MISTAKE BACHES

- 1 Thank you for the documents provided to me on Tuesday and the opportunity to respond. This 'reply' should of course be read in conjunction with the Application save repeating much of the material which is already detailed in the Application.
- 2 Mr Snoep has provided some commentary, a transcript of matters relating to the Baches from the Sumner Borough Council Minute Books and amendments to/comments in respect of the various floor plans.

### Baches established before 1931

- 3 Mr Snoep accepts that all the Baches were established before 1931, however suggests that their establishment was unlawful on the basis that that the Bach Owners had no interest in the land which they occupied. There is no suggestion that the Baches required planning permission any time before they were established in 1931. Whether or not the Baches had an interest in the land is irrelevant – the issue being whether the Baches were "*lawfully established*" in a planning sense (See para. 11 & 13).

### Modifications

- 4 The critical issue appears to be modifications to the Baches since they were established – whether these modifications affect existing use rights. This issue is addressed in the application. Importantly is when the modifications were made – before or after the Baches required planning permission, and ultimately whether the effects of the Baches including the modifications are the same or similar in character, intensity and scale to the Baches pre-planning permission being required.
- 5 There is unfortunately no complete documentary history for each of Bach. That said, as evidenced by the transcript provided by Mr Snoep, the Baches were regulated and it seems unlikely modifications would have been undertaken without being noticed and/or approved by the Council – certainly this was a requirement of the licences that were issued. From the transcript it appears the Baches were closely watched and regulated.
- 6 Mr Snoep has suggested that modifications to the Baches since their establishment have been significant and that the onus is on the applicant to "*verify and support the claim without any lingering doubt that the baches are similar to what they were, at least from 1962 onwards*". The test of course is 'on the balance of probabilities'.
- 7 It is not at all clear if and when modifications were made to the each of the Baches, or whether planning permission was required for modifications.
- 8 Baches 48, 49, 51 55 56, 57 and 58 were permitted activities up until 1986 being zoned Residential under both the 1962 and 1972 Schemes. There is no evidence to suggest that modifications were made to these Baches after 1986 when planning permission for these

Baches was likely first required. Mr Snoep's position is that modifications **may** have been made to these Baches affecting the floor area. Only in respect of Baches 48 and 49 does Mr Snoep suggest that modifications were undertaken after 1977 and 1967 respectively. There is no evidence however that the modifications were undertaken after 1986 or that they otherwise required planning permission.

- 9 In respect Baches 28, 30, 31, 32, and 33 (which likely required planning permission under the 1962 Scheme) Ordinance 20 of the 1962 Scheme provided for modifications to these Baches provided the modifications did not increase the extent to which the Baches failed to comply with the Scheme. These Baches were likely non-complying not being accessory to farming. Any modifications would not have increased this level of non-compliance on the basis that they did not increase the density or effect of *dwelling houses* in what was then a rural zone. Ordinance 20 remained in effect until it was replaced by the 1972 Scheme.
- 10 There is no objective evidence (such as photographs) to support Mr Snoep's amended floor plans or that the effect of any modifications is to increase the overall effects of the Baches. A review of the photographs shows the effect of the Baches as being the same or at least similar today as it was when the Baches were established or in 1962 whether the modifications occurred before or after 1962.
- 11 Given the Baches were all lawfully established, the modest character and scale of the Baches and intensity of their use, it is difficult to see how any such modifications, even to the extent suggested by Mr Snoep, might increase the overall effect of the baches on public access, use of the areas affected by the Baches for recreation including for picnicking, sunbathing and shade or visual amenity. Ultimately, the Act is concerned with the overall effect of the use (including any modifications) as opposed to percentage increases in floor areas.

#### **Treatment of the Baches: Groups or individual Baches**

- 12 Given the nature of the effects and consideration of the Baches in groups in the past, it seems appropriate to deal with the Baches as groups or clusters being as follows:
- 12.1 Group 1: Bach Nos. 28, 30, 31, 32 and 33;
- 12.2 Group 2: Bach No. 47;
- 12.3 Group 3: Bach Nos. 48, 49, 51;
- 12.4 Group 4: Bach Nos. 52, 55, 56, 57 and 58.
- 13 That said little likely turns on the treatment of the Baches individually or in groups. Whether Groups 3 and 4 are treated as separate groups or one group makes no difference to the outcome.

#### **Bachs 33 and 28**

- 14 Mr Snoep's comments in respect of Bach 33 appear to be incorrect. Mr Snoep suggests that the deck or balcony was added in 1977 or was unlawful.
- 15 Modifications to Bach 33 were carried out in 1953 including French doors from the then proposed extension opening out on to a balcony. It seems very unlikely that the French doors would have opened out on to nothing, in particular for 20 years following the extension being complete. A balcony of some sort was clearly intended as part of the 1953 modifications whether it was carried out in 1953 or sometime later. The modifications to Bach 33 are well-documented and set out in Tab 11 of the Application.
- 16 Mr Snoep suggests Bach 28 is significantly larger than the original Bach following the original Bach being rebuilt in the 1960's. The photographs included in the Application show the Bach being the same or similar size – certainly the effect of the 'new' Bach is the same or similar to the original Bach.

- 17 The treatment of Baches 33 and 28 by Mr Snoep highlights the danger in using amended floor plans to suggest proportionate increases in effects and also the unreliability of the plans as against objective evidence (photographs or other documentation) as provided with the Application.

**Conclusion**

- 18 None of the documents provided by Mr Snoep affect the Bach Owner's views as set out in the Application.

Yours faithfully  
WHITE FOX & JONES



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