

# Ownership of land memo example



**ASSIGN  
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MEMO

From: Jessica Smith

To: Mary Rhodes

Re: The Daniels Family

Planning Permission

The case of *Price & Ors v Leeds City Council* [2005] EWCA Civ 289 is distinguishable from the situation of our clients on the basis that in that case it was not disputed that the local authority had title to the occupied land whereas here the Daniels are the owners of the land having purchased it from Norman Guild. However, *Price* remains significant in that it raises the issue of the operation of Article 8 of the European Convention on Human Rights which enshrines the right to the respect for everyone's " private and family life, his home and correspondence" and provides that:

"(2) There shall be no interference by a public authority with the exercise of this right, except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country..... or for the protection of the rights and freedoms of others."

While the issue here is not the same as in *Price* where Article 8 was being raised as a potential defence to a claim for possession which was undeniable on other grounds since the gypsies had not been granted a licence or any other right to occupy, it may be argued that the requirement that the Daniels

vacate or be served with an Enforcement Notice restraining their use of the land for residential purposes is a similar infringement of Article 8.

*Mid-Bedfordshire DC v Thomas Brown & Ors* [2004] EWCA Civ 1709 turned upon the question of the appropriateness of suspending an injunction requiring land to be vacated for so long as would allow practical compliance but not until determination of a planning application. However, it is of assistance in that it applies the principles established by the House of Lords in *South Bucks DC v Porter* [2003] 2 AC 558 followed and applied by two decisions of the Court of Appeal in *Davis & Ors v Tonbridge & Malling DC* [2004] EWCA Civ 194 and *Coates & Ors v South Bucks DC* [2004] EWCA Civ 1378 and details the competing interests and discretionary principles which a court in deciding whether to grant such an injunction should weigh: the practical problems of enforcement facing the court if an injunction is breached, the council's position on the planning merits, the possibility that the council might come to a different planning judgment, the planning history of the site, the degree of flagrancy of the breach of planning controls, the availability of suitable alternative sites, the right granted by Article 8 and, of particular significance in this case, humanitarian considerations of health, safety and education in particular, those adversely affecting any children involved. In the light of these criteria, our clients are assisted here by the special needs of Charlene and the health of Michael and Jane particularly in view of the fact that the restricted availability of suitable alternative accommodation will lead to a fragmentation of the family unit with adverse implications for the care of the elderly couple. On these principles it is possible to recommend that our clients obtain an injunction

suspending any attempt to remove them pending determination of a planning application by them.

The principles to be applied in determining such a planning application are set forth in *South Cambridgeshire DC v First Secretary of State & McCarthy & Ors* (2004). In the first instance the planning inspector will be required by s. 54A of the Town and Country Planning Act 1990 to weight the relevant material considerations against the relevant local development plan and policies. In *R (on the application of Evans) v First Secretary of State & Anor* [2005] EWHC 149. Here Newman J held that as a matter of principle where an application for planning permission was made in respect of greenbelt land (where residential development would ordinarily be presumed against) gypsy status alone could not be determinative of any case. Therefore, our client's case will have to be considered on its individual merits with the presumption against greenbelt development being weighed against the rights bestowed by Article 8 and a consideration of the availability of alternative accommodation.

Given the strength of our clients' Article 8 rights, the issue of alternative accommodation is likely to be critical. In *Robert Simmons v (1) First Secretary of State & (2) Sevenoaks DC* [2005] EWHC 287 it was common ground that the development of a gypsy site in a greenbelt area was inappropriate. It was held that for such development to be allowed "very special circumstances" were required to justify it. In that case, the planning inspector allowed a defence to the Enforcement Notice on the basis of a lack of alternative sites. This was challenged by the Secretary of State who was criticised by Newman J for basing his decision upon a lack of evidence of <https://assignbuster.com/ownership-of-land-memo-example/>

searches for alternatives by the applicant. Thus in the case of our clients there will have to be “ clear evidence” from empirical sources available to the local authority of a lack of alternatives. We should be encouraged by the concession that there is currently only one space available on local authority sites in the area but it must be acknowledged that this fact alone will not be conclusive of a complete lack of reasonable alternatives.

Our clients’ case is weakened by the fact that residential care or bed and breakfast accommodation is available for Michael and Jane. In *Leanne Codona v Mid-Bedfordshire DC* [2004] EWCA Civ 925, it was held that a local authority might escape violation of Article 8 by offering bed and breakfast accommodation provided that this was of reasonable quality and duration. If, in addition, the site available to Henry and Sandra allows Charlene to continue to attend William de Ferrers school, the local authority may succeed in refusing planning consent to our clients without violating their Article 8 rights or the other principles governing the grant of permission to gypsies for development on greenbelt land.

### School Exclusion

Assuming that the school from which Dean has been excluded was a maintained school, the School Standards and Framework Act 1998 will apply. Section 64 of the Act allows the head teacher to exclude a pupil for one or more fixed periods up to a maximum of 45 days in any one school year. There is therefore nothing objectionable in principle to an exclusion of 5 days. Since the exclusion does not exceed 5 days, the headmaster is not under the duty imposed by s. 65(4) to inform the LEA and the governing

body of the exclusion and afford the governor's the opportunity to consider the exclusion under the procedure laid down in s. 66 and Schedule 18 of the Act unless by being so excluded Dean has lost the opportunity to take a public exam.

However, such exclusion is subject to s. 68 of the Act which requires a head teacher to " have regard to any guidance given from time to time by the Secretary of State". This guidance is currently contained in DfES Circular 10/99. Dean's Head Teacher would appear to be in breach of this guidance. His decision to send Dean home " on the spot" and failure to inform his parents contravenes paragraph 1 of Annex D of the Circular:

" A head teacher who excludes a pupil should make sure the parent is notified immediately, ideally by telephone, and that the telephone call is followed by a letter within one school day. *An exclusion should normally begin on the next school day* [emphasis supplied]."

Paragraph 6. 2 of the Circular states that " exclusion should not be decided in the heat of the moment unless there is an immediate risk to the safety of others in the school or the pupil concerned". While Dean's use of violence is sufficiently serious to warrant exclusion, the head teacher has failed to abide by para. 6. 3 which requires him to consider " all the relevant facts and firm evidence". In particular, he is obliged to " check whether an incident appeared to be provoked by racial or sexual harassment".

Dean's parents should have been informed of their right to state their case to the Governing Body's Discipline Committee. Paragraph 7 of Annex D is ambiguous in Dean's case. It states that " if the exclusion is fewer than 5

days” the Discipline Committee cannot direct reinstatement but should consider any statement from the parent; reinstatement is available for exclusions of “ more than 5 days in a term”. Nonetheless, our clients should state their case to the Discipline Committee. Even where reinstatement is not available (which given the duration of the exclusion and the fact that Dean will be back at school before the Committee can be expected to meet) they will be enabled to give their views and the Committee (para. 11) can consider whether to add information to Dean’s record (para. 16). Thus, even though the “ damage has been done” by the exclusion, the full circumstances of the incident can be explored and Dean’s record corrected accordingly.