

Landmark victory brings new rights for chalet owners

By chief reporter

A landmark legal victory won by holiday chalet owners in Cornwall has secured new rights for hundreds of thousands of people across the country.

Scores of chalet owners at Atlantic Bays, in St Merryn, near Padstow, launched legal action against the owners of the park after their maintenance fees more than doubled in the space of a year.

And lawyers successfully argued in the High Court that the chalets on the park were "dwellings" and were therefore protected under the Landlord and Tenant Act 1985.

After an 18-month legal struggle, delighted chalet owners now believe they are due thousands of pounds in refunds from owners Martin and Rebekah Francis, who bought the site for £1.35 million two years ago.

But the ruling – now the leading judgment in the country – also has national connotations, offering greater rights to the hundreds of thousands of people owning similar property in parks across the UK.

Solicitor and chalet owner Charles Knapper, who started preparing the case in November 2008, said the implications of the ruling by His Honour Judge Jeremy Griggs were "huge".

He said: "The case is enormous. So many people now have this added protection but they don't know about it."

The site, formerly known as Point Curlew, was first established in 1975 and had been run as a cooperative between the chalet owners – who each have 999-year leases – making them responsible for the entire site, including the club house, bar and other amenities.

When Mr and Mrs Francis bought the site in April 2008, after the park's management company ran into financial difficulties, owners of the 155 chalets believed they had been absolved of that responsibility, leaving them with only maintenance fees to pay.

But trouble flared when fees of £1,250, excluding VAT, were imposed in 2008 and then increased to £2,710 in 2009 and £2,800 in 2010.

The dispute resulted in group action by the owners of nearly 100 chalets, whose case was initially prepared by Mr Knapper, a senior partner at Fursdon Knapper in Plymouth.

"The central issue was whether the chalets should be defined as dwellings," Mr Knapper said.

"At the end of the day, what is the difference between these chalets and a flat that is let out on Plymouth Hoe, where one is protected under the Act and the other isn't? There isn't a difference and people should have that protection.

"The judge found, rather robustly, that these were dwellings.

"The case is of such importance that when Mr and Mrs Francis applied for permission to appeal, it was on the grounds that it was of national importance and therefore should be decided by the Court of Appeal.

"That was later withdrawn, which makes this the leading judgment in the country."

Chalet owners believe one consequence of the ruling is that, because they were not consulted on work on the park as required by the Act, they are only liable to pay fees running to a few hundred pounds and are therefore entitled to large refunds.

One chalet owner, who asked not to be named, said: "The charges in 2008 were completely and utterly unreasonable as we were being asked to pay for things for which we were no longer responsible. It was a matter of principle.

"Throughout these last two years the atmosphere on the site has been extremely uneasy. For many chalets owners this has destroyed their enjoyment of a place where they have holidayed with their children and grandchildren."

The £8,000 charges for 2010, which will be consulted on, include fees for a large number of improvements on the park.

Park owner Mrs Francis said the court was still to rule on the chalet owners' obligations under their leases, which were not varied when they bought the site.

She also expects it to rule whether the fees were "fair, reasonable and within the leases" and whether "works had been carried out to a sufficient standard".

Mrs Francis said there had been "very, very low maintenance fees" charged by the park "for years", which meant major improvements, to sewage treatment and amenity centre among others, were necessary.

She said: "It is not our fault that they didn't look after the park for 20 years. We are trying to put right 20 years of neglect for their benefit as well as ours."

Mrs Francis said they were eager to "to get the dispute resolved", saying they had already spent £150,000 on legal fees.

She said they had the support of many chalet owners, adding: "We want a good relationship with the chalet owners, we want to go forward."

Mrs Francis also welcomed the judgment that the chalets were dwellings, saying they were "happy" to follow the Act "to the letter".

She said: "We are not against them having protection because we think it is a good thing.

"It also protects us, in some respects."

A date for a three-day court hearing to determine the current dispute has yet to be set.

In a 13-page judgment handed down on March 24, His Honour Judge Griggs, sitting as a deputy judge of the High Court of Justice, said the central issue was the "meaning of the word dwelling".

"The definition does not confine the use of the word to a principal home. In common parlance one regularly talks about a 'holiday home'. There seems to be absolutely no reason why someone can not have two or more homes.

"Plainly it would be inappropriate for there to be security of tenure for someone taking a lease of holiday accommodation. But in my judgment that does not undermine another principle about which Parliament has been concerned, namely that unscrupulous landlords should not be able to exploit tenants who are required to contribute to the management costs of an estate."

Ruling that the "service charges which the landlords seek to impose" were subject to the Landlord and Tenant Act 1985, the judge added: "Although no doubt some of the chalets are owned by people or businesses to let out on short-term holiday lets, it is apparent that many of them are used by the lessees as second homes or holiday homes where they spend considerable time.

"Such tenants are every bit as much deserving of being protected from unscrupulous landlords as are tenants of accommodation which is their primary home."