UPPER TRIBUNAL (LANDS CHAMBER)

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Royal Courts of Justice, Strand,
London WC2A 2LL

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RESTRICTIVE COVENANTS – DISCHARGE OR MODIFICATION – proposal to demolish four properties and erect a 4-5 storey building of 33 flats in breach of single private dwellinghouse covenants – whether covenants obsolete – practical benefits of substantial value or advantage

AN APPLICATION UNDER SECTION 84 OF THE LAW OF PROPERTY ACT 1925

BETWEEN:

QUANTUM (BARROWSFIELD) LIMITED

Applicant

-and-

ANDREW JOHN BELL AND ANDREA LYNNE BELL (1)
DEBRA GAIL JACOBS (2)
GERALD MARTIN DODD AND ELIZABETH JANET DODD (3)
BARROWSFIELD MANAGEMENT COMPANY LIMITED (4)

Objectors

Re: 2, 3, 4 and 5 Barrowsfield,
South Croydon,
CR2 9BZ

Judge Elizabeth Cooke and Mrs Diane Martin MRICS FAAV
Heard on: 1-4 November 2022
Decision Date: 5 January 2023

Martin Hutchings KC, instructed by Walker Morris, for the applicant
Jonathan Wills, instructed by W Davies Solicitors, for the objectors

Introduction

1. This is an application for the Tribunal to modify single dwellinghouse covenants that burden the titles of properties known as Nos. 2, 3, 4 and 5 Barrowsfield in Sanderstead, South Croydon. The applicant, Quantum (Barrowsfield) Limited, is the freehold owner of the properties and has planning permission to demolish the houses currently standing on the properties and to construct a 4/5 storey building of 33 flats on the whole site.

2. The first, second and third objectors live at Nos. 1A, 1B and 1C Barrowsfield. Initially the owner of No.1 Barrowsfield, Mr Stephen Drysdale, was also an objector to the application, but by the time of the hearing he had withdrawn his objection. The fourth objector, Barrowsfield Management Company Limited, was formed in September 2020 to acquire the freehold of the access road to the objectors' properties; the first to third objectors are shareholders in it.

3. We made an accompanied visit to Barrowsfield on the morning of 1 November 2022, and are grateful to the first to third objectors for allowing us into their homes; we also walked through the recreation ground to the south of Barrowsfield to understand the setting of the proposed development and the objectors' properties.

4. The applicants were represented by Mr Martin Hutchings KC and the objectors by Mr Jonathan Wills and we are grateful for their submissions.

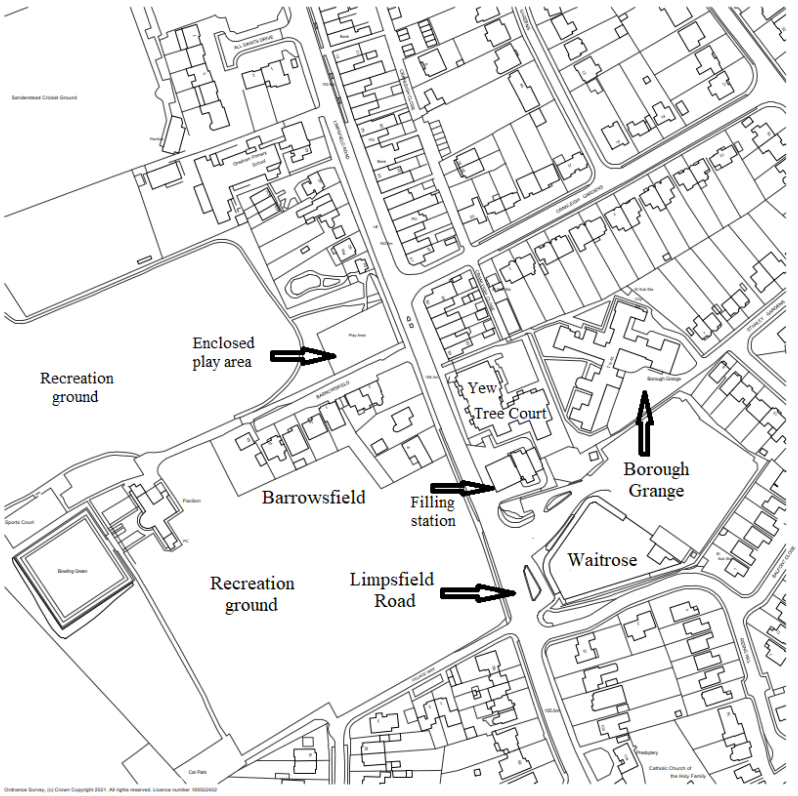
5. In this decision we set out first the factual background to the application, and then the legal background. We then consider the evidence of fact and the expert evidence given for the parties before explaining our conclusion.

The factual background

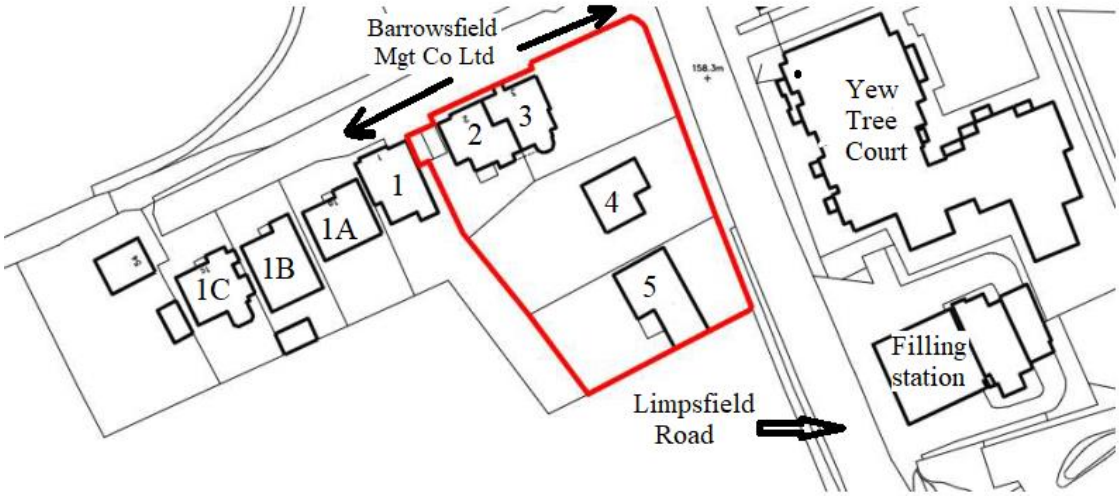
6. Sanderstead is a settlement in the London Borough of Croydon, described in the Croydon Local Plan 2018 as "… a predominantly 1930s suburb, with a village character focused on the pond and church, surrounded by substantial green space…". The wider Sanderstead Character Area is described as: "… a suburban place located on a hilltop, with residential areas surrounded by large scale green open spaces such as Mitcheley Wood and Kings Wood. The predominant residential character consists of detached housing on relatively large plots on the hillsides leading to the centre, planned estates of semi-detached houses on the top of Sanderstead Hill, and some local authority planned estates with public realm toward Hamsey Green."

7. The location plan below shows the Barrowsfield cluster of properties situated on the west of Limpsfield Road within Sanderstead recreation ground, which forms part of the designated Metropolitan Green Belt. Limpsfield Road is an important north-south route through Sanderstead. Opposite the application site is a 2/3 storey development of "later living" flats, known as Yew Tree Court, which was built in 2015 and designed to blend in appearance with the parade of retail shops running northward from it on the same side of the road. To the south of Yew Tree Court is a petrol filling station and beyond that, on the same side, is

a Waitrose supermarket and car park. Behind Yew Tree Court is an older 3 storey development of 30 retirement flats known as Borough Grange.



8. The larger scale plan below shows the application site with planning permission outlined red and the location of all the numbered properties at Barrowsfield. The section of road owned by Barrowsfield Management Company extends from the entrance off Limpsfield Road as far as the boundary between Nos.1 and 1A. The remainder of the road is owned in sections by the owners of Nos.1A, 1B and 1C respectively.



9. Barrowsfield (by which we mean the L-shaped area comprising the applicant's property, the four properties Nos. 1 to 1C, and the roadway) was sold by Esme Arkwright in 1908 and subsequently purchased by Mr Donald and Mrs Millicent Kyle, who lived in Nos. 2 and 3 which was built as a single house early in the 20th century. In 1963 Mr and Mrs Kyle sold the plot for No.5 to developers subject to a covenant that allowed the building of only a single dwelling house. At some point the house now known as No. 4 was built for occupation by the Kyles' daughter and the land transferred without the burden of a covenant. Later No.1 was built, and Mrs Kyle lived there with Mr and Mrs Kyle's son Peter after Mr Donald Kyle's death. In 1988 the land where Nos. 1A, 1B and 1C are located was sold for development, subject to a covenant restricting use of the land to three dwellinghouses. In 1993 Peter Kyle and others (as personal representatives of Mrs Kyle) sold Nos. 2 and 3, by now converted into two dwellings, subject to a restrictive covenant in each case that the property would be used by one household only. No. 1 was assented to Peter Kyle in the course of the administration of the estate and later purchased by Mr Drysdale.

10. We say more in the following section about the consequences of this series of transactions.

11. On 23 January 2020 planning permission was granted on the application site by The Council of the London Borough of Croydon for "Demolition of existing buildings and erection of 4/5 storey building comprising 33 self-contained flats (5 x one bed, 15 x two bed, 13 x three bed), vehicular access on Limpsfield Road, 26 carparking spaces (including two disabled carparking spaces), integral cycle storage for 64 cycles, integral bin storage, hard and soft landscaping, boundary treatment and communal amenity space at roof level". 31 conditions were placed on the permission.

12. The applicant had an option over the application site when planning permission was granted and subsequently acquired the site on 21 May 2020. Application was then made for discharge of 15 of the conditions. By a notice dated 6 August 2020 the council confirmed conditional discharge of three conditions, but refused to discharge the other 12 conditions without provision of further detailed information.

13. However, the pre-commencement conditions have been discharged. The planning permission will expire on 22 January 2023, and the applicant intends to make a sufficient start to ground works before that date to preserve the permission.

14. The applicant intends to make an application pursuant to section 73 of the Town and Country Planning Act 1990 to change some of the details of the construction of the development; matters covered will include wall thicknesses, riser widths and an internal substation on the ground floor, but no draft application has been made available to the Tribunal.

15. So there remain a number of uncertainties about the final form of the development first because conditions remain to be discharged and second because it is not known what will be applied for under section 73.

The legal background

16. The application properties are burdened with covenants derived from three documents, as set out below.

17. The register of title to all the properties in Barrowsfield (that is, Nos.1 to 5, 1A, to 1C and the roadway) records that they are subject to the following covenant imposed in the 1908 conveyance by Esme Arkwright:

> "*COVENANT … only [to] erect detached private houses with their outbuildings and appurtenances thereon… and the plans and elevations of each house to be previously submitted to and approved by or on behalf of the Vendor (Esme Francis Arkwright) whose approval shall not be unreasonably withheld"*

18. None of the objectors claims to have the benefit of the 1908 covenant.

19. The 1963 transfer of No. 5 contained the following covenant:

> ' *....and the transferee (JW Geary (Contractors) Ltd) so as to bind the land hereby transferred and to benefit the remainder of the land comprised in Title Number SY 108099 and the plot immediately to the North West of the land hereby transferred hereby covenants with the transferor (Donald Viggo Kyle and Millicent Olive Kyle) and with Gordon Brian Humphreys and Patricia Margaret Humphreys (to whom such plot has recently been transferred) as follows:-*
>
> *TO observe and perform the restrictions or stipulations particulars of which are set forth in the Schedule hereto*
>
> *<u>THE SCHEDULE referred to</u>*
>
> .....
>
> *2. NO buildings shall be erected on the said land other than a single private dwellinghouse with or without the usual garage or other outbuildings appurtenant thereto*
>
> *3. NO buildings shall at any time be erected on the said land unless the plans and specifications shall previously have been approved by the said Gordon Brian Humphreys and Patricia Margaret Humphreys or their successors in title the owners for the time being of the said plot immediately to the North West of the said land hereby transferred which consent shall not be unreasonably withheld.'*

20. The applicant in its statement of case accepted that the objectors are the successors in title to the covenantees, Mr and Mrs Humphreys, and there has been no suggestion that the objectors are not entitled to the benefit of this covenant.

21. The 1993 transfers of Nos. 2 and 3 each contained the following covenant:

'(b) The Purchasers hereby covenant jointly and severally with the Vendor and with the owners of the adjoining properties and to the intent that the burden of this covenant may run with and bind the Property and so that this covenant shall be for the benefit and protection of the adjoining properties and every part thereof to observe and perform the restrictive covenants and conditions set out in Schedule V…

…

SCHEDULE V

Restrictive covenants

1. *…*
2. *Not to use the Property for any trade or business and that the Property shall be used for the occupation of one household only.'*

22. It will be recalled (paragraph 9 above) that this covenant was imposed after the land that is now Nos.1A, 1B and 1C had been sold. In its statement of case the applicant said that it accepted that No. 1 was entitled to the benefit of this covenant but that if the other objectors claimed the benefit of it they were required to prove their entitlement.

23. The objectors in their statement of case explained that the 1993 transfers each imposed the covenant for the benefit of "the whole of Barrowsfield" apart from the property sold, and "Barrowsfield" is defined as "the land comprised in title number SY108099 … immediately before the registration of a transfer of part thereof to JH Geary (Contractors) Limited dated 13 October 1988". On that basis the objectors say that they are entitled to the benefit of the 1993 covenants. Mr Hutchings KC in his skeleton argument said that "For the purposes of the Application, A accepts that Rs are, variously, and as explained and qualified below, entitled to the benefit of the Covenants except those contained in the 1908 Conveyance", and the only qualification he expressed in connection with the 1993 covenants was that "Rs, or their predecessors in title, are clearly not named as parties to the 1993 Transfers". We observe that this decision relates only to the application for modification and/or discharge of the covenants and is not a decision about whether the respondents are entitled to the benefit of specific covenants.

24. Section 84 of the Law of Property Act 1925 provides:

> "(1) The Upper Tribunal shall … have power from time to time, on the application of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction on being satisfied-
>
> (a) that 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 (in a case falling within subsection (1A) below) the continued existence thereof would impede some reasonable user of the land for public or private purposes or, as the case may be, would unless modified so impede such user; or

…

(c) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction;

and an order discharging or modifying a restriction under this subsection may direct the applicant to pay to any person entitled to the benefit of the restriction such sum by way of consideration as the Tribunal may think it just to award under one, but not both, of the following heads, that is to say, either—

(i) a sum to make up for any loss or disadvantage suffered by that person in consequence of the discharge or modification; or

(ii) a sum to make up for any effect which the restriction had, at the time when it was imposed, in reducing the consideration then received for the land affected by it.

(1A) Subsection (1)(aa) above authorises the discharge or modification of a restriction by reference to its impeding some reasonable user of the land in any case in which the Upper Tribunal is satisfied that the restriction, in impeding that user, either –

(a) 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;

and that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the discharge or modification.

(1B) In determining whether a case is one falling within section (1A) above, and in determining whether (in any such case or otherwise) a restriction ought to be discharged or modified, the Upper Tribunal shall 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.

25. An application was made to the Tribunal on 5 February 2021, seeking discharge of the 1908 covenant under ground (a) or alternatively modification under ground (aa). None of the objectors claims the benefit of the 1908 covenant and we revert to it briefly in the concluding section of this decision.

26. The applicant seeks modification of the 1963 and 1993 covenants under grounds (aa) and (c) to permit implementation of the planning permission, subject to imposition by the Tribunal of any further restrictions necessary to protect the amenity of the objectors' properties. By the time of the hearing the applicant was relying only on ground (aa) and at the end of the hearing, the applicant handed up proposals for covenants which it proposed the Tribunal should adopt as conditions for modification. It was the applicant's case that the restrictions provide the objectors with only limited benefits and that money in the order of £14,400 for No.1A, £10,423 for No.1B and £8,431 for No.1C would be adequate compensation for their loss.

27. The objectors say that the 1963 and 1993 transfers provide them with practical benefits of substantial advantage and value so that the Tribunal has no jurisdiction to modify them. Their expert witness assessed the diminution in value which would result from modification to permit implementation of the planning permission at £135,000 for No. 1A, £132,650 for No. 1B and £115,375 for No. 1C, together with a loss of £1,600 from the value of the roadway.

28. As we said above (paragraph 2) Mr Stephen Drysdale of No. 1 was originally one of the objectors. His title is different from those of the owners of Nos. 1A to 1C, because it was the last property of the original L-shaped estate to be sold. On 25 August 2022 the applicant entered into a deed of settlement and release with Mr Drysdale, by which Mr Drysdale agreed to withdraw his objection to the application and to allow landscaping works for the application site to take place on his boundary and from within his land. The Tribunal and the objectors have seen a copy of the agreement in which sums payable to Mr Drysdale were redacted.

29. Mr Hutchings reminded the Tribunal that the application site includes the plot of No.4, which is not burdened by the 1963 or 1993 covenants. We will consider how this affects the application later in our decision.

The factual evidence

30. Mr Alastair Morris is a director of the applicant and managing director of Quantum Group Limited. He grew up in Croydon, and the majority of his previous development experience has been in the area, formerly with Gladedale and since 2014 with Quantum. He therefore has extensive experience of working with the council to obtain planning permission and his approach has been to put forward development proposals which are then modified as required by discussion with planning officers during the application process. He had expected that to happen for this site but, during the process of the application, the council changed its policy and would not enter into further discussions without submission of a pre-application enquiry. The result was that the planning permission was granted subject to a mixture of conditions about which there had been no opportunity for discussion. However, despite the large number of objections to the application, Mr Morris understood that the council's planning officers were keen to see the application site redeveloped as a gateway to Sanderstead. The proposed development is designed in an L-shape, with the long section facing out onto Limpsfield Road and a short return facing onto Barrowsfield. The height of the building would be three storeys adjacent to the Barrowsfied properties. Along Limpsfield Road the height would rise to four and five storeys, with the top floor having a mansard roof and projecting dormer windows.

31. Mr Morris explained that only a few of the conditions of the planning permission had been discharged to date because he was awaiting the outcome of this application before making further applications for discharge. He acknowledged that this left the Tribunal without any clear view of what the completed development would look like, but he felt that reliance could be placed on the professionally qualified planning officers to ensure that the privacy of neighbours would be adequately protected when conditions were discharged. A further reason for the pause in seeking discharge of conditions was price inflation. The original

design was for a concrete framed construction and this may not now be the most cost effective method, so an alternative may be submitted for approval.

32. As part of the agreement reached with Mr Drysdale, the applicant had prepared revised landscaping and boundary plans which included a 3m high acoustic fence on the boundary to No. 1 and further proposed tree planting close to that boundary. Mr Drysdale would also allow the applicant to provide a 1.8m high timber fence on his boundary with No. 1A. The purpose of the revisions was to mitigate the visual and noise impacts of the proposed development (at ground level) on the objectors at Nos. 1A to 1C. The revised plans were provided to the Tribunal, but we understood that they had not been submitted to the council for approval. Mr Morris accepted that until the planted trees were mature they would not hide the proposed development from the view of Nos. 1A to 1C. By the end of the hearing it was proposed that mature specimens would be planted at 12 m and 8m high.

33. A major concern of the objectors is the potential for overlooking of their properties from roof terraces, at third floor and fourth floor levels of the proposed development, by up to 136 residents from 33 flats. Mr Morris said that residents of only 28 flats would be able to use the terraces, gaining access by key fob. The residents of the five housing association flats would not have access to the roof areas. This was a condition of the Sage Housing which had agreed to take the relatively small number of flats.

34. The third floor roof terrace in particular would be closest to the objectors' properties and face outwards across their gardens, but would be set back from the edge of the building by a sedum roof, of 5.86m maximum depth. The latest, unapproved, plans showed that the edge of the terrace would be bounded by a 1.1m high and 0.57m wide planter from which an evergreen hedge would grow to a further 0.45m in height. The fourth floor roof terrace, including a play area, would also have a view across the objectors' gardens. It would be bounded similarly by a 1.1m high planter and evergreen hedge, but the planter would be 0.91m wide to allow for the roots of small evergreen trees such as olives. When asked about the likelihood of these features being maintained for the lifetime of the proposed development, Mr Morris said that the responsibility would be placed on the management company for the block. The quality of the flats would be high and the residents would expect good maintenance. By the end of the hearing it was proposed that the roof terraces should also have a 1.7m high opaque screen on their western faces to prevent overlooking of the objectors' properties.

35. We turn now to the factual evidence of the objectors.

36. Mr Andrew Bell explained that he and Mrs Bell bought No. 1A in 1996, eight years after the house had been built. They chose to buy in Barrowsfield because it is in the heart of historic Sanderstead village, and enjoys seclusion and privacy with open views to the north and south across the recreation ground. Mr Bell is a chartered architect with no objection in principle to development on the application site. However, he observed that recent developments on Limpsfield Road have generally been low density and low rise with the highest, at three storeys, involving redevelopment of a three storey fire station and the two/three storey Yew Tree Court replacing an office building of similar height. Mr Bell supplied a collection of historic and contemporary photographs to demonstrate how the

historic character of Sanderstead, including the shopping parade on the east side of Limpsfield Road and the recreation ground, has been retained.

37. Mr Bell's principal concern is that the height, at up to five storeys, and density of the proposed development, with a rooftop children's area and communal terraces, is more appropriate to an urban site than an open suburban setting. It would dominate and detract from its surroundings, causing damage to the character of the area and harm to neighbouring properties from overlooking of the gardens and intrusion on the quiet seclusion and privacy currently enjoyed. Mr Bell had found on the applicant's website a CGI image of the proposed development as it would look from the recreation ground, in its context alongside Nos.1 to 1C Barrowsfield. He felt that had the planning committee seen this image they would have understood better the overbearing scale and height of the proposed four to five storey building.

38. Mature trees and shrubs along the boundary between the application site and No.1 would mostly be removed to accommodate parking for 14 cars along that boundary at the rear of the development, closest to the objectors' properties. Cars and delivery vehicles using that area would create noise, disturbance and pollution on a constant and regular basis. He and the other objectors fear that the provision of only 26 car parking spaces for 33 flats will generate an overspill of vehicles needing to park elsewhere, and be likely to cause parking in the Barrowsfield access road. He acknowledged that in the planning officer's report to the council reference was made to an overnight parking stress survey, which recorded 47 spare spaces within 200m of the application site. He agreed that there is a barrier which can be closed across the entrance to Barrowsfield and that signage offered by the applicant would help to deter parking by residents of the proposed development.

39. In the application for planning permission the applicant had supplied CGI representations of the proposed development as it would be seen from Limpsfield Road. Mr Bell has computer modelling facilities in his architectural practice and had used details from the plans approved in the planning permission to produce a model of the proposed development, and using that model he produced pictures showing how it would be seen from the gardens of the Nos. 1, 1A and 1B when the objectors in their gardens looked towards it. The images show a massive building dominating the view to the west. Obviously its impact is greater for No. 1A than for 1B because of proximity, but in both cases the view is large and inescapable, although in reality the edges would be softened by the existing planting at the fences on the east edge of the gardens of Nos. 1A and 1B. He acknowledged that that view would be in the periphery of their vision if they were looking south across the playing field, but felt strongly that with many of the existing trees and shrubs removed the mass would be very visible on the skyline. Mr Bell was asked in cross-examination whether the figures representing residents on the terraces were shown at a correct scale, and whether trees to be retained in the garden of No. 1 were correctly accounted for in the visibility lines; Mr Bell maintained that the images were as realistic as the software permitted.

40. In addition to potential overlooking from the communal roof terraces, there would be 21 habitable rooms and six private balconies in the upper three floors of the proposed development overlooking the objectors' gardens and causing light pollution at night. These gardens are small, but south-facing, and provide extensions to the living space of the houses which are used year-round. Mr Bell produced images from his model showing views across

the objectors' properties from the windows, balconies and terraces in the western elevation of the proposed development, taking account of the proposed 3m high acoustic fencing between the application site and No. 1, and the proposed 1.8m high fencing between Nos. 1 and 1A. The images portray a clear view into the objectors' gardens. Mr Bell was concerned that the proposed 1.1m solid barrier to the fourth floor terrace was not sufficiently high for a children's play area, and agreed that a solid barrier to 1.7m high would be preferable. He acknowledged that many of the overlooking windows were in bedrooms, and that those on the plot of No. 5 would look out mainly at the recreation ground, but commented that bedrooms are often used as home offices. An admitted limitation of the software was that it showed what could be seen from the surface of the windows, rather than from inside the new flats. Another limitation of the images was that they did not show all the vegetation in the objectors' gardens. Mr Bell also acknowledged that not all residents of the building would be using the same roof terrace, and they would not do so at the same time.

41. In considering the computer-generated images of Mr Bell's model we bear in mind that he is not an expert witness and his evidence is admissible only as evidence of fact. We accept the images as evidence of fact, produced by a computer on the basis of dimensions supplied by Mr Bell.

42. Mr Bell explained that although Nos. 1 to 1C are in close proximity to each other, each house is private, with no sense of overlooking. The exception is a first floor balcony on stilts that had been constructed to the rear of No. 1 by Mr Drysdale in 2019 and from which the garden of No. 1A is overlooked. This balcony was constructed without planning consent but Mr Bell had agreed with Mr Drysdale that he would not report it to the council provided that its use was limited to sitting out for coffee in the morning. Relations between them had since deteriorated and the unauthorised structure has now been reported to the council. Mr Bell acknowledged that the loft conversion in No. 1B, with its three dormer windows, could also give rise to potential overlooking of the garden at No. 1A.

43. Ms Debra Jacobs has lived at No. 1B since 1999, but has lived in Sanderstead since the age of seven. She is chairperson of the fourth objector, the Barrowsfield Management Company Limited, which was formed to purchase the roadway between No. 1A and Limpsfield Road from the Kyle family which it did on 6 November 2020. Ms Jacobs referred to a letter dated 12 November 2020 sent by the applicants' solicitors to her as 'The Owner/Occupier, 1B Barrowsfield' stating that the restrictive covenant did not restrict the size, mass, location or configuration of any building or structure, so their client would be at liberty to implement the development with planning permission and this would not be a breach of the covenant. The letter went on to propose a short deed of variation for which her legal costs up to £1,500 plus VAT would be met. In the alternative the applicant would make an application to this Tribunal "… which will be timely and costly for all parties concerned." Ms Jacobs felt that she and the other objectors were being bullied/frightened into agreeing to a modification of the covenants by the threat of court proceedings.

44. Ms Jacobs' concerns were the same as those of Mr Bell and in addition she was concerned that the increased movement of cars and people close to her home would cause her dog to bark constantly as it does when people walk in the recreation ground along the rear fence of her garden. She acknowledged that there would be two gardens between her property and the proposed development but said that her dog had good hearing and would pick up noises

made by children, the banging of doors and vehicles parking. It was put to Ms Jacobs that her second floor attic gives her a view into her neighbours' gardens, but she maintained that she sits down at her desk when in her office and does not stand at the window. She agreed that residents of the proposed development would also be likely to sit on their balconies rather than stand.

45. Mrs Janet Dodd and her husband have lived at No. 1C since December 2013, although her family associations with Sanderstead go back over 80 years. The house was chosen for its secluded position within easy reach of shops and facilities. Mrs Dodd shared the concerns of Mr Bell and Ms Jacobs but had a particular concern that the proposed development, and the prospect of cars and/or delivery vehicles being parked on the road outside the development, would make it more dangerous to turn right out of Barrowsfield into Limpsfield Road. She agreed that once vehicles could pull into the development to park that would not be a problem.

The expert evidence

The applicant's evidence on amenity

46. Expert amenity evidence was given for the applicant by Dr Chris Miele MRTPI IHBC, a senior partner at Montagu Evans who specialises in aspects of town planning relating to townscape and visual impact as well as amenity matters arising from developments. He is a chartered town planner with a PhD in the history of architecture and town planning from New York University. He had been instructed to report on amenity issues arising from the proposed development and whether the covenants provide practical benefits of substantial value or advantage to the objectors. He had visited the application site and the rear facing rooms and gardens of the objectors' properties.

47. Dr Miele referred to the character of the area, as described in the local plan, and concluded that the covenants do deliver some practical benefits because they limit the density of development on the application site, but not benefits of substantial advantage. He did not consider Barrowsfield to be a secluded and tranquil location because of its proximity to the road and its noise, nearby commercial uses, the proximity of a children's playground and playing fields and the close spacing of the objectors' properties. He concluded that the density benefit of the covenants therefore makes no real difference to these perceptual influences.

48. Dr Miele did not see that the proposed development would harm the visual amenity or character of Barrowsfield to a substantial extent. He did not consider a five storey building to be inappropriate, even though it would be higher than any other building in the surrounding area. The east side of Limpsfield Road with its retail frontage, including the food store and filling station, is designated as a Local Centre, rather than simply a suburban street. Planning policy requires best use to be made of land, and height is only one aspect of mass. The design of the building successfully breaks down its mass and bulk, reducing its apparent height and scale in a way consistent with the local authority design guide. The staggered building line of the frontage has gaps that produce shadows and the overall mass is further reduced by corner inset balconies, and by mansard roofs set behind a parapet.

49. Although the consented scheme includes landscaping conditions which have yet to be discharged, Dr Miele's report had been written based on the approved landscaping plans and had not taken the revised plans into account, but he said he considered them to be acceptable. He acknowledged that there was little space between the proposed parking area and the boundary to No. 1 in which to achieve the proposed planting and that only planting within the site boundary could be approved by the council for discharge of that condition, but felt that could be resolved by careful specimen selection.

50. Dr Miele commented that the orientation of the proposed development is essentially at 90 degrees to the objectors' properties, which look south over the open recreation ground. This is the main amenity for the objectors' properties and would remain so into the future. Most of the windows in the western elevation of the proposed development, visible to the objectors' properties, are bedrooms which would have curtains drawn when lit. Other living spaces are set back from the façade of the building behind balcony areas. The only area from which light could be intrusive is the residential lobby to the north elevation, but this is likely to be minimal as illumination of the common spaces will be controlled by timers.

51. As to the objectors' concerns about disturbance and overlooking from the rooftop amenity areas, Dr Miele agreed that the areas would be available to 115 residents of 28 flats, but did not consider that the areas would be heavily used to the detriment of the amenity of the objectors. The number of residents using them would depend on time of day and week, the weather, and the demographic of the residents. The play area on the roof would not be heavily used because there is an enclosed play area adjoining the entrance to Barrowsfield. It would be in the interests of the occupiers of the proposed development to ensure that neighbours did not create disturbance in the amenity areas and this can be controlled through the terms of a management agreement. The boundary planters would push people back from the edge and the views from those areas would be outwards towards the recreation ground.

52. Dr Miele agreed that when standing in the gardens of the objectors and looking east towards the application site, the proposed development would be plainly visible but he said that the wider skyline would not be interrupted and that separation distance is a factor. Mr Bell's images assume that someone in the objectors' gardens is looking sideways to the application site and having their whole view filled by the proposed development, whereas in reality they would continue to be aware of the considerable expanse of open land immediately beyond the garden fences, which give an open aspect to the gardens. Planting of a 2.5m to 3m high specimen, such as a Japanese Acer, in the garden of No. 1A would materially reduce the potential for awareness of the development. The retained trees in the application site would also play a role in mitigating the potential for intrusion. The images produced by Mr Bell to show the outlook from the proposed development across the objectors' properties had the limitation of being created at the outer edge of the building rather than from inside the rooms. Residents in bedrooms would not be looking out in contemplation and if a bedroom was used as an office the occupant would be seated and looking out at the view and the sky.

53. Dr Miele thought that the objectors' concerns about lights and noise arising from the vehicle movements in the parking area would be addressed by the proposed 3m acoustic fencing, which would work as a baffle to both headlights and noise. It was Dr Miele's experience that this had been used successfully in other developments. Existing road noise from Limpsfield Road would be heard less than at present as a result of the proposed development.

54. Dr Miele accepted that in reviewing the concerns of the objectors he had not differentiated between the impact on each property separately, but acknowledged that the practical benefits provided by the covenants were greatest for No. 1A.

55. Dr Miele saw some benefits in the proposed development for the objectors in ensuring a planted boundary and a better entrance to Barrowsfield, with greater safety resulting from greater passive surveillance.

56. Dr Miele's opinion on alternative forms of redevelopment which would not breach the covenants was that when considering the whole site the council would be likely to want more than replacement houses to comply with national guidelines on intensification on a previously built site. However, individual applications to rebuild each house would be hard for them to resist.

Valuation evidence for the applicant

57. Expert valuation evidence for the applicant was given by Mr Ruaraidh Adams-Cairns FRICS of Savills, an RICS Registered Valuer with 39 years' post-qualification experience who is a specialist in the field of residential valuation.

58. It was helpful that the expert valuers had agreed the current market value of the objectors' properties, at £900,000 for No. 1A, £947,500 for No. 1B and £887,500 for No. 1C. The roadway was valued at its purchase cost in 2020 of £16,000.

59. Mr Adams-Cairns was instructed to give his opinion as to the diminution in value, if any, to the objectors' properties that would be caused if the covenants were to be modified and the development completed. He had inspected the application site in February 2022, and the objectors' properties in June 2022, and had read the report of Dr Miele. In his report Mr Adams-Cairns considered the various concerns of the objectors, based on the approved plans but not the later amendments to landscaping and boundary proposals.

60. The objectors' principal concern was that the proposed development would be overbearing. Mr Adams-Cairns considered that although the larger and more visible part of the proposed development would be significantly higher than the objectors' properties, it would not be significantly overbearing. When considering their concerns at being overlooked and having a view of the proposed development, Mr Adams-Cairns expressed the view that the main aspect of the gardens is to the south, and not towards the application site and that the gardens already suffer from overlooking between the existing houses. He had seen Mr Bell's images of the views from the objectors' gardens towards the proposed development, but considered them to be misleading in not taking account either of the shrubs and plants within the gardens or of those to be retained on the application site. The shortest distance between the windows and balconies in the west elevation of the proposed development and No. 1A would be 31.9m, which is a long way in terms of the perception of being overlooked. He acknowledged that if residents were looking out from a balcony that would feel more intrusive than if they were inside behind windows.

61. He acknowledged that there would be an increase in noise from the proposed development compared with the present four houses, but considered that the fencing, landscaping and distances involved would mean this would not be significant in valuation terms. Similarly, the additional light pollution from windows would mainly be at night with curtains drawn and not significant from a valuation viewpoint. Mr Adams-Cairns considered that there would be some betterment to the objectors' properties arising from improved access into Barrowsfield, cessation of use of the access and road by Nos. 2 and 3 and the fact that the mass of the building would be likely to reduce the impact of noise from Limpsfield Road.

62. In summary it was Mr Adams-Cairns' opinion that on arrival at Barrowsfield there would be an awareness of a large modern residential building, more usually found in a more central urban setting. There would be no negative awareness of the building from within the objectors' properties, but they would be able to glean an impression of its height and extent from their gardens. There would be some degree of overlooking but not materially worse than that which already exists. There would be a marginal loss in amenity which would have an impact on value, but only in relation to the rear gardens. Mr Adams-Cairns had considered whether some purchasers would not wish to buy a house in a road with a large block of flats at the entrance, but concluded that if that was the case it would require a material drop in demand to lead to a drop in value. It was his opinion that although prospective purchasers would see the proposed development at the end of the road, they would focus more on the property they were viewing and its garden with views.

63. Mr Adams-Cairns' approach to putting a value on the loss of amenity to the gardens, based on his experience of valuing houses with different sized gardens and with access to shared gardens, was to apportion 15% of the total value of each house to the garden. In his opinion 33% of the garden value would be lost at most, diminishing with distance from the development. He accepted that he could provide no evidence to support either of the percentage figures he adopted, but used them to assess the loss of value to each property at £14,400 for No. 1A (1.6% of total value), £10,423 for No. 1B (1.1% of total value) and £8,431 for No. 1C (0.95% of total value). He did concede that he may have underestimated the impact on No. 1A with insufficient differential between Nos. 1A and 1B.

Valuation and amenity evidence for the objectors.

64. Expert valuation evidence for the objectors was given by Mr Peter Roberts FRICS CENV of Dalton Warner Davis LLP, an RICS Registered Valuer with 27 years' post-qualification experience who specialises in valuation and expert advice; he also gave his views on amenity.

65. Mr Roberts had inspected the objectors' properties and the locality in March, and May 2022 and relied on the images produced by Mr Bell from his model. Mr Roberts' report was 152 pages long, with a further 118 pages of appendices, and included much analysis and commentary well beyond the scope of his instructions and of his expertise. We have ignored his comments on the law. We regard his comments on the planning process as irrelevant, and note only that (as Mr Hutchings KC observed) he conceded at paragraph 13.55 of his report that "It is therefore clear to me that the extent of harm caused to the Objectors in considering the planning application was addressed by LPA officers and Committee

members purely in accordance with planning policy... This is therefore an example….where the decision to grant planning permission could be considered to be correct on the basis that the policy tests are satisfied such that there is no harm in planning terms…..".

66. Turning to amenity, it was Mr Roberts' opinion that the proposed development would cause irreversible harm to the objectors' use and enjoyment of their properties as a result of: loss of privacy, a perception of significant overlooking, noise intrusion from the flats and amenity areas, artificial light pollution from the upper floors and roof space, a loss of tranquillity and protection from the urban environment, replacement of a village feel by an 'edge of city' sense, replacement of the eastern skyline by a modern block of flats, an increase in long term unauthorised parking in Barrowsfield, and potential excessive noise from pedestrian and vehicle movements. He concluded that the practical benefits of the covenants in restricting development on Nos. 2, 3 and 5 to single dwellinghouses are of substantial advantage to the objectors because they protect them from all the harm of the proposed development.

67. Mr Roberts was challenged on his qualification and experience in respect of the amenity matters on which he made his assessments of harm and he acknowledged that he was not an expert in those matters. He was asked to comment on two reports, one on skyline/daylight distribution and one on external daylight, sunlight and overshadowing, which were produced for the applicant on 14 October 2022 by Base Energy and submitted as late evidence. (Earlier reports submitted to the council with the planning application had only analysed the impact on No. 1, since this is the closest property to the proposed development.) The reports used 3D modelling of the existing and proposed developments, and the objectors' properties, in order to apply Building Research Establishment ("BRE") guidelines in assessing the impact that the proposed development would have on the habitable windows and garden/amenity areas of the neighbouring dwellings. Both reports concluded that, from a planning perspective, the proposed development would be acceptable in complying with BRE guidelines. Mr Roberts commented that no prospective purchaser would commission this type of report.

68. Although he had concluded that the practical benefits are of substantial advantage, Mr Roberts went on to consider whether money would be an adequate compensation for modification or discharge of them and to assess the diminution in value which would arise from implementation of the proposed development. In an extraordinary and ill-judged departure from usual valuation practice, Mr Roberts chose to assess the likely extent of diminution in value at Barrowsfield not by reference to comparable evidence, which he said was not available, but by analysis of two previous decisions of this Tribunal concerning application sites in Tonbridge Wells and Newbury. He had even gone so far as to inspect those sites. His initial conclusion from that analysis, and his experience of compensation claims for blight and injurious affection under compulsory purchase law, was that the loss of value to the properties at Barrowsfield would be 15% for No. 1A (£135,000), 14% for No. 1B (£132,650) and 13% for No. 1C (£115,375). Mr Roberts subsequently acknowledged that his range from 13% to 15% was narrow, considering that No. 1A was closest and likely to be most affected, and that the range might actually be 10% to 15%. Mr Roberts acknowledged that a development on the application site which was no higher than two or two and half storeys high, behind a screen, would have a relatively small impact on the objectors' properties so that the damaging element was height rather than a flatted development per se. Mr Roberts also acknowledged that he could have sought evidence of

the impact of flatted developments above three storeys in height on the value of nearby detached properties by widening his search outside the immediate locality.

69. With regard to the Barrowsfield access road belonging to the company, Mr Roberts concluded that modification to permit the proposed development would cause a 10% loss of the agreed value of £16,000. This would, he said, arise from the additional time required to deal with traffic issues caused by the prospective development, which would be a motivation for a hypothetical seller to pass on responsibility for it at a lower price. He subsequently acknowledged that as Barrowsfield is a private road, public parking is not available and in practice can be managed by the use of a barrier.

Discussion and conclusion

The 1908 Covenants

70. No copy of the 1908 conveyance can be found. All that is recorded on the register of title is the text of two covenants, one to erect only detached private dwelling houses and one to have plans approved by Ms Arkwright. The latter is obviously a personal covenant and is in any event obsolete. Mr Hutchings KC argues that the covenant to build only detached houses is equally a covenant made only on a personal basis with the vendor. No words are recorded to the effect that the covenant is made with the vendor and her successors in title, and there are no words annexing the benefit of the covenant to the land. Even if it was possible to identify any benefited land in 1908 (from the text of the now lost conveyance) it is not now possible to identify any land that benefits from it.

71. Mr Hutchings KC points out that where the original and only beneficiary of the covenants is dead, that is sufficient for the covenants to be found to be obsolete under ground (a).

72. We agree, and we discharge the covenants on ground (a) as to the whole of the application site.

The 1963 and 1993 covenants

73. The applicant seeks modification of the 1963 and 1993 covenants under ground (aa) of s.84 so that it can implement the planning permission granted on 23 January 2020. The Tribunal only has discretion to modify the covenants under that ground if we can be satisfied that those covenants, in impeding implementation, do not secure to any of the objectors practical benefits of substantial value or advantage. It was acknowledged by all the experts that the property which would most affected is No.1A, since it is situated closest to the application site and the proposed development. We have that in mind when considering the issue of substantiality.

74. We approach the analysis by looking at the questions posed by *Re Bass Ltd's Application* (1973) 26 P&CR 156, at 158:

75. **Is the proposed use reasonable?** The proposed development has planning permission and it would be difficult therefore not to regard it as a reasonable use of land, especially as the purpose of the proposed use is to provide housing. Mr Wills made much of the fact that the occupiers of the five affordable housing units would be excluded from the play area on the roof, and referred to the provisions of the London Plan 2021 concerning the need to provide safe access to play areas within new developments. For that reason he argued that the proposed use is not reasonable. We disagree; the qualification on access to the roof is not of the applicant's making but is a requirement of the housing association, made in the light of their experience with their clients. We make no comment on that and we take the view that it is appropriate to regard the proposed use of the building as the provision of housing, which is of course a reasonable use especially as it has planning permission; we are not concerned with the housekeeping arrangements of individual lessees nor with the way the housing association manages its business.

76. **Do the covenants impede that use?** It is not in dispute that they do.

77. **Do the covenants in impeding that use secure practical benefits to the objectors?**

78. Here we have to address the question whether we should ignore the proposed development insofar as it stands on No. 4, because the objectors do not have the benefit of any covenants over that property. We take the view that we should not do so. The covenants binding Nos. 2, 3 and 5 prevent this proposed development. They do not prevent a 20-storey block of flats on No. 4 (although planning policy certainly would). But they do prevent this proposed structure, L-shaped and of a height varying between 3, 4 and 5 storeys, comprising 33 dwellings and featuring roof gardens and a rooftop play area. But for the covenants on Nos. 2, 3 and 5 this development could go ahead. Our assessment is of the proposed development before us; it would be wholly unrealistic for us to take the view that it could go ahead so far as its middle section is concerned and we are to look only at the sections of the building that stand on Nos. 2, 3 and 5.

79. However, in assessing any benefit conferred by the prevention of this development we have to bear in mind that the objectors are not protected from some different development on No. 4. There is nothing to prevent a flatted development there, of unknown height and density. So it is not the case that we are comparing the proposed development with a development of four single dwellings across the whole application site.

80. With that point dismissed, our first observation under this head is that the covenants in preventing the proposed development secure no practical benefits to the fourth objector, the limited company that owns the eastern half of the road. The company has no feelings and will be unaffected by the appearance of the building and by any noise or overlooking. Wear and tear on the road will be diminished because whereas at present Nos. 2 and 3 have vehicular access, the car park for the development will be round the back and approached from Limpsfield Road. We understand the objectors' concerns about unauthorised use of the road; but there is a barrier at the entrance to the road and we see no reason why it cannot be kept closed, secured by a card entry system, so that access is controlled as it is for so many private roads. We think it unlikely that anyone will risk actually parking across the barrier.

81. Accordingly so far as the fourth objector is concerned the Tribunal has discretion to modify the 1963 and 1993 covenants.

82. So far as the other objectors are concerned, however, we take a different view.

83. Insofar as the first, second and third objectors are concerned, the covenants in preventing the proposed development provide protection from (1) a change in the character of the setting and neighbourhood of their homes, from (2) the noise and light of 33 households, from (3) overlooking from the rear windows and rooftops of the new building, and from (4) the view of a structure of up to five storeys from their rear gardens and from some of their internal upstairs rooms. To some extent this was conceded by Dr Miele, but in any event we think that these are all obvious practical benefits conferred by the covenants, even though we do not go all the way with the objectors' characterisation of the neighbourhood – it is hard to describe it as tranquil, even though the objectors' properties are at some distance from the main road and the shops.

84. The objectors also claimed that the covenants protect them from congestion and unauthorised parking in their private road. It will be clear from what we said above (paragraph 80) about the fourth objector that we do not accept this. Provided that the objectors take the easy step of closing their barrier, the development will if anything improve the amenity of the road from them.

85. **Are those practical benefits of substantial value or advantage?** This is the crucial question.

86. Taking the benefits one by one, we begin with the setting and neighbourhood of the objectors' homes. Our site inspection provided us with a clear understanding of the nature of the objectors' properties, the nature of the existing (but dilapidated) properties on the application site, and the context for the proposed development. The neighbourhood is urban; the immediate setting of the objectors' houses has a lot to recommend it; but that immediate setting is not really tranquil, lying as it does alongside a busy road and next to a children's playground. The very pleasant green space to the west and south will be unaffected. True, a large new building will be added to the scene. We bear in mind that No. 4 could be developed as flats so that the covenants do not protect the objectors from some intensification of development nearby and some change in their immediate setting. The protection to the setting and neighbourhood provided by the prevention of a large building spanning the whole of the application site is a benefit, but it cannot be said to be of substantial value or advantage.

87. Second, the noise and light of 33 households. We bear in mind that noise may emanate from the roof terraces as well as from balconies and open windows, and from the movement of vehicles in the car park. We bear in mind that all the objectors are shielded by No. 1, and that an acoustic fence is likely to dampen vehicle noise. Light from the building will be visible in the evening, but will not be visible to the objectors from inside their houses and so will trouble them only in warm weather when they may be in their gardens in the evenings. We bear in mind that the covenants do not protect the objectors from a flatted development at No. 4 which would generate some light and noise in any event. We are not able to regard

the protection from noise and light from the development as a practical benefit of substantial value or advantage.

88. Third, there is the overlooking of the objectors' properties.

89. Obviously there will be overlooking. People will be able to see into the objectors' gardens from the balconies on the west side of the new building, from inside the building through the western windows, and from the roof. We note that the roof terraces are on the area now occupied by Nos. 2 and 4. The overlooking on the west side cannot be entirely prevented but much of it on the lower floors can be mitigated by tree planting on the boundary if successful. We were unimpressed by last-minute attempts to persuade us that quite tall trees could be planted in a restricted space to screen the objectors' properties; there is no evidence about the success rate of such plantings and of the care that would be needed to ensure that the trees thrived.

90. Overlooking from the roof might be less significant. We do not expect there will be crowds on the roof terraces, despite the numbers of people that will have access. We do not have confidence in the proposals for screening with olive trees, which will be heavily dependent on careful maintenance, and with opaque screens. The latter will spoil the outlook for residents of the new building and we are not confident that a residents' management company would keep them in place.

91. In considering overlooking, we were assisted by Mr Bell's images of his computer model representations of the proposed development. Some criticisms were made by the applicants of their accuracy, but Dr Miele accepted that the model had been produced using best and genuine endeavours, within the limitations of a massing model. In fact no evidence was produced by the applicant to the effect that there was any inaccuracy in the visual representations; criticisms of their accuracy were made by counsel in cross examination on the basis of "common sense" and without any technical basis. As we have already indicated, we accept Mr Bell's factual evidence that the computer model was produced using accurate measurements and that, for example, the images of people on the roof were derived from human-sized height (Mr Bell said 1.8 m) and were represented as they would be seen by a person standing at the point of view chosen by the programme. There are of course different points of view available but that does not change the accuracy of these views. So far as overlooking was concerned the model does not have internal depth and so views from windows represent what could be seen from the outer surface of the glass.

92. Turning to the effect on individual objectors, we are unable to find that the covenants in preventing the overlooking of the back gardens of Nos. 1B and 1C are conferring a practical benefit of substantial advantage. Yes, there is a benefit, but the residents whether inside or on the roof of the development are too distant for this to be a significant matter. In particular the roof garden at the northern end of the property, on what is now No. 2, is separated from the garden of No. 1C by buildings as well as by distance.

93. By contrast the overlooking is a significant matter for No. 1A. In saying that we disregard the existing balcony at No. 1 which was built without planning permission. Mr and Mrs Bell's garden will be overlooked from the roof terraces and from the western elevation of

the new building, separated only by No. 1, and we regard protection from that overlooking as a practical benefit of substantial advantage. Here we disagree with Dr Miele; we found him to be a credible and authoritative witness, although perhaps one who is inclined to see benefit in development to outweigh its harms. We bear in mind that the Bells' garden could well be overlooked in the future by flats on No. 4. But the covenants by restricting development to a single dwelling on No. 2 prevent the overlooking from a three-storey roof-terrace, and by preventing the development of a building of the proposed size across the whole application site the covenants are protecting the residents of No. 1A from this intensity of overlooking from the whole building. This is a practical benefit of substantial advantage.

94. Accordingly as a result of the overlooking of No. 1A the Tribunal does not have discretion to modify the covenants.

95. Finally there is the view of the building from the objectors' gardens and houses.

96. Even without Mr Bell's helpful images, it is obvious that this is a very large building. We are wholly unpersuaded that the objectors in their gardens only look south and will only see it in their peripheral vision. The building is overbearing and will transform the outlook from No. 1A, dominating the western sky. We find, again, that the covenants in preventing that are conferring a practical benefit of substantial advantage on No. 1A. We reach the same conclusion for No. 1B, bearing in mind that the new building will be visible from inside the second floor office, as well as from the garden.

97. By contrast, and with some hesitation, we take the view that the mass of the building from the garden of No. 1C will be unwelcome but not – after a short while – hugely noticeable.

98. Therefore, again, the Tribunal does not have a discretion to modify the 1963 and 1993 covenants.

99. That being the case there is little we need say about the valuation evidence. We observe, however, that as so often in s.84 cases we have been presented with polarised valuation evidence which was unhelpful to the Tribunal in a number of respects. We were disappointed that neither valuer fully examined the particular and different impact of the proposed development on the different objectors' properties; they each adopted a valuation approach which simply used a sliding scale to account for distance. The applicant and its expert consider that the modification would lead to no more than a marginal loss of amenity to the neighbouring properties, creating a loss of value in the order of 1-2%. The objectors and their expert consider that modification would lead to irreversible harm to the enjoyment of their properties and a substantial loss of value in the order of 10-15%. Neither valuation expert based their selection of percentage loss on evidence from the market which could be examined at the hearing, each relying essentially on their long professional experience. We did not find this helpful and it is an approach which we strongly discourage. It will be unsurprising that we found Mr Roberts' analysis of two previous Tribunal decisions a uniquely inappropriate method of establishing loss of value to the objectors' properties in this case. We note that Mr Adams-Cairns' attribution of 15% of the value of the property to its garden makes it almost impossible to regard loss of value to the garden as being of

substantial value to the property owner; but we regard that attribution as arbitrary and unevidenced.

100. However, in light of the conclusion we have reached we do not need to make any findings about loss in value to the objectors' properties.

Conclusion

101. In conclusion, we discharge the 1908 covenants across the whole of the application site. But we have no discretion to modify the 1963 and 1993 covenants and so far as those covenants are concerned the application fails.

Judge **Elizabeth Cooke** Member **Mrs Diane Martin MRICS FAAV**

5 January 2023

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.