Neutral Citation Number: [2024] UKUT 123 (LC)

Case No: LC-2023-354

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPLICATION UNDER SECTION 84 OF THE LAW OF PROPERTY ACT 1925

20 May 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RESTRICTIVE COVENANTS – discharge – covenant restricting use of land to agricultural purposes – whether covenant was obsolete or could be discharged without injury - s.84(1) (a) and (c), Law of Property Act 1925 – application refused

BETWEEN:

STRUAN GORDON ROBERTSON

Applicant

-and-

JAMES AND ALEXANDRA PACE

Objectors

Land at Ebbsfleet Farm,
Ebbsfleet Lane,
Ramsgate,
CT12 5DL

Upper Tribunal Member Mr Mark Higgin FRICS FIRRV
12 March 2024
The Rolls Building

Mr Christian Fox instructed by Girlings Solicitors LLP, for the applicant
Mr James Fuller instructed by Excello Law, for the objectors

The following cases are referred to in this decision:

Re Fermyn Wood [2018] UKUT 0411 (LC)
Re Truman, Hanbury, Buxton & Co. Ltd's Application [1956] 1 QBD 261
Ridley v Taylor [1965] 1 WLR 611

1.

Introduction

1. This is an application under s.84, Law of Property Act 1925 for the Tribunal to discharge a covenant that burdens the title of farmland situated between Sandwich and Minster in Kent ('the application land'). The covenant prevents the use of the land for any purpose other than agriculture.

2. The applicant, Mr Robertson, is the registered owner of the application land which forms part of Ebbsfleet Farm. He purchased the land in 2000.

3. I inspected the application land on 1 March 2024 accompanied by Mr Robertson and Mr Mark Chandler of Finn's, representing the objectors, Mr and Mrs Pace. I also inspected the benefitted land ('the benefitted land') which mostly comprises an area of woodland but also includes a narrow strip of land to the west of the woodland which is used for agricultural purposes by the applicant under a tenancy from the objectors. The benefitted land additionally includes most of a former farmyard and buildings to the south of the woodland. The land was acquired by the objectors in or around 2013. Whilst on the site visit, I noted the position of a solar farm, an anaerobic digester, and various former farm buildings, all of which were also located to the south of the woodland. The significance of these items will become apparent later in the decision.

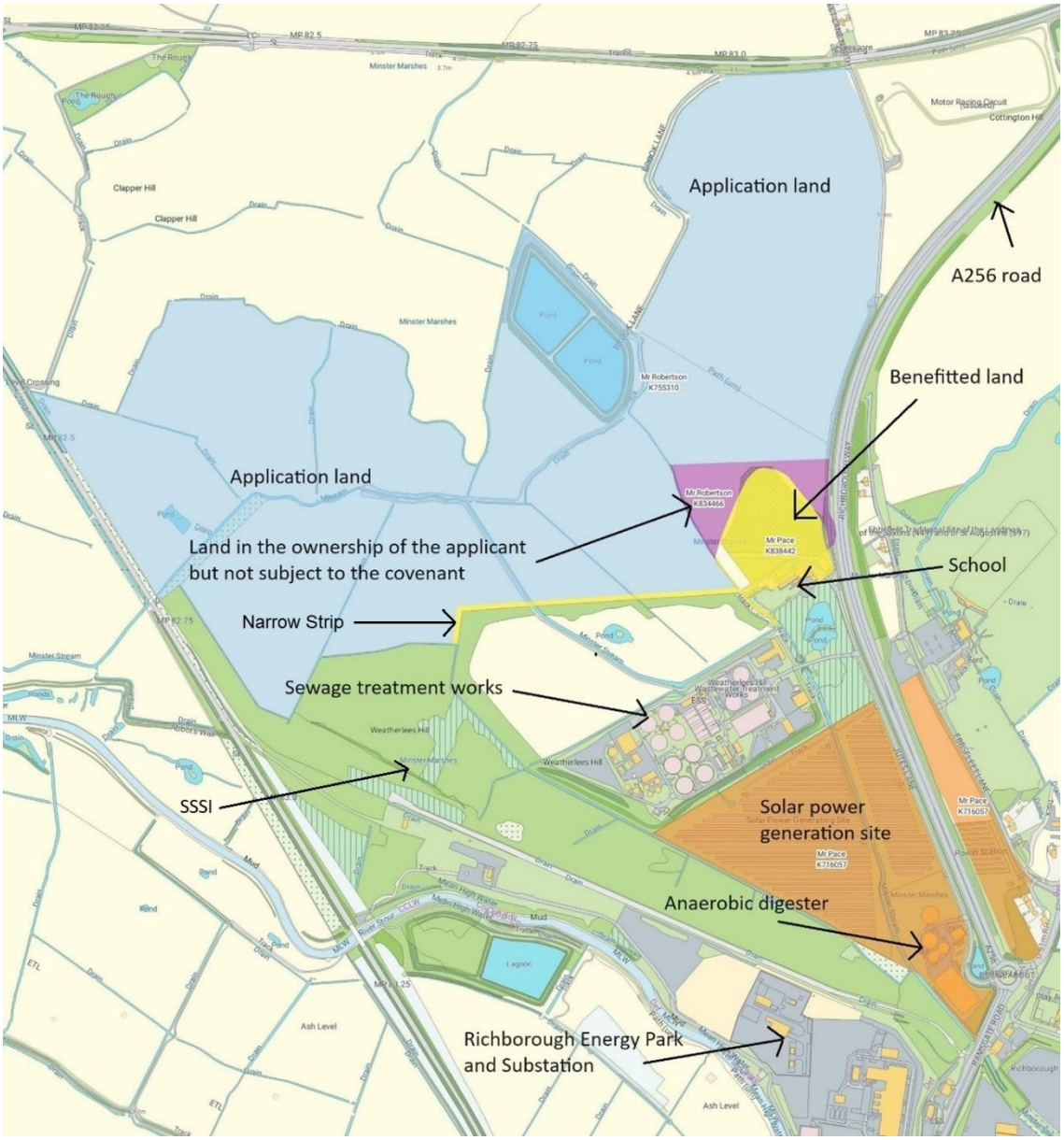
4. At the hearing the applicant was represented by Mr Christian Fox of counsel and the objector by Mr James Fuller, also of counsel. I am grateful to them both.

The facts

5. The application land extends to about 215 acres (87 hectares) and is mostly used for arable farming. It is located about 1.25 miles southeast of Minster and 3.5 miles north of Sandwich. Canterbury is 11 miles to the west and Margate 4.5 miles to the north. It is bounded in the west by the railway line that links the village of Minster and the small town of Sandwich. The A256 Richborough Way dual carriageway forms part of the eastern boundary, the remainder runs along the side of a minor road, Ebbsfleet Lane North. In topographical terms the land is part of the Minster Marshes and is traversed by the Minster Stream and a series of drainage channels. It also contains two large ponds let to a local angling club and is best described as flat. Open farmland extends to the north and west.

6. The benefitted land is located at the south eastern corner of the application land and covers an area of about 9 acres. It was said by Mr Fuller to occupy an elevated position, but this was not apparent from my inspection. The principal part of it is approximately triangular in shape. It was planted as woodland in the early 1990s.

7. The plan below shows the location of some of these elements together with the 580 metre strip of land mentioned in paragraph 3, as well as an area of land which partly surrounds the benefitted land and is owned by the applicant but is not burdened by the covenant.



8. At the time the covenant was imposed Richborough Power Station, which was situated about 0.5 miles south of the benefitted land, was still in operation. Opened in 1962, this 336 megawatt coal fired station was equipped with three 97 metre tall cooling towers and a 127 metre chimney stack. Located in an area which is low lying and overwhelmingly flat it would have been visible for miles around. It was demolished in 2012 and the site is now the home of the Richborough Energy Park and the Richborough Substation. Some of the transmission infrastructure remains in place but the turbines, generators, chimneys, and towers have all been removed.

9. Immediately to the north of the Energy Park lies the Sandwich Bay to Hacklinge Marshes Sites of Special Scientific Interest (SSSI) which extends from the A256 road westwards as

far as the Sandwich to Minster railway line. At the point where it meets the road it is about 100 metres wide and at the time of my visit comprised a mixture of woodland and open grassed areas.

10. To the north of the SSSI is land in the ownership of Mr and Mrs Pace. The use of this land is split between a solar farm and an anaerobic digester. The solar farm which has operated since 2011 covers the northern part of the land and is let to a special purpose vehicle of which Mr Pace is a minority shareholder. The anaerobic digester, which sits in the south eastern corner of the land and became operational in 2012, is owned and run by Mr Pace's farm business. In response to questions at the hearing, Mr Pace said that the planning permission for the solar farm was temporary in nature, but he did not reveal the expiry date.

11. Heading in a northerly direction the next tranche of land is owned by Southern Water and comprises two trapezoidal shaped sites, one houses an extensive sewage treatment works, the other is open marshland.

12. The final notable area of land is a former farmyard. The farmhouse is now used by a special needs school and a storage barn and some other small farm buildings are used by local businesses.

13. The benefitted land previously formed part of a larger title (title number K716058) owned by Chardon Developments Ltd who were one of the parties to the transfer that gave rise to the covenant. Title number K716058 has been closed by HM Land Registry and continued under title number K838442. However, the true extent of the retained land is not entirely clear. Mr Fuller submitted that title number K716058 included other land bordering the land now belonging to the objectors, and at least some of this other land was retained by Chardon Developments Ltd at the date of the transfer. He concluded that from the available conveyancing history that the land comprised in title number K716058 which was retained after the transfer appeared to include land now under title number K838948 which is located to the south of the benefitted land. He considered that title number K981546 which directly adjoins title number K838948 and was the subject of a transfer with the land in that title in 2002, might also be part of the original benefitted land. Furthermore, it is possible that two additional parcels of land (title numbers K868267 and K986894) may also originally have been included in K716058 and retained by Chardon Developments Ltd at the date of the transfer as they were part of land owned by the company as at 3 February 1994 and May 1993 respectively. There is no consensus between the parties, that the land on which the solar farm and the anaerobic digester are situated (title number 716057) is part of the retained land, Mr Fox submitted that it was, Mr Fuller disagreed.

Planning context and s.106 agreement

14. At this juncture it is worth examining the planning circumstances of the various parcels of land that constitute the application, benefitted, and retained land.

15. In 1993 five parties, Thanet District Council, Bowsprit Holdings Limited, Southern Water Services Limited, Chardon Investments Limited and Chardon Developments Limited entered into an agreement under section 106 of the Town and Country Planning Act 1990. Under the section 106 agreement the Council resolved to grant planning permission for the construction of a wastewater treatment works subject to the other parties complying with a

series of conditions. In 1998 planning permission appears to have been granted for the construction of a tannery, on what is now the site of the solar farm, but the tannery was never built.

16. Both the application land and the benefitted land have been identified by the Thanet District Council Local Plan 2020 (adopted in July 2020) as falling within the Stour Marshes Landscape Character Area and the Wantsum North Slopes Landscape Character Area (Thanet Integrated Landscape Character Assessment and Sensitivity Evaluation). The Thanet District Council Landscape Character Assessment 2017 describes the application land as "an open rural landscape without significant development", with "large arable fields" and being an "intensively farmed arable landscape with few detracting features" (Landscape Character Assessment paragraph 4.102).

17. The Wantsum North slopes are described in the Character Assessment as:

> 'a managed agricultural landscape, where villages have a strong historic character and are generally well integrated by tree cover, creating a relatively harmonious pattern of elements, although many field boundaries are denuded. The A299 and the A256 form visual and aural detractors on the boundaries of the area. The long distance views across the marshes and towards the sea contribute to the high scenic quality. It is still perceived as a North shore and has a strong sense of place" (Landscape Character Assessment paragraph 4.32)'

18. The Richborough Energy Park, the solar farm, the anaerobic digester, part of the A256 dual carriageway, and presumably the SSSI, all lie within the Landscape Character Areas.

The application

19. The application was made under grounds (a) and (c) of section 84(1) of the Law of Property Act 1925. Mr Robertson said in his witness statement that he had no plans to seek any sort of planning permission on the land but simply wished to keep his options open. He accepted, when questioned at the hearing, that depending on what he decided to do with the application land its value could be enhanced and there might be an impact on the benefitted land. Mr Robertson also said that he had been contacted by UK Power in connection with the Sea Link project, a proposal to enhance the National Grid by linking Suffolk and Kent with an undersea cable which would terminate at Richborough. Mr Robertson envisaged that were the scheme to go ahead he could be faced with the compulsory acquisition of all or part of the application land. He considered that the scheme would take 5 or 6 years to come to fruition.

20. Mr and Mrs Pace submit that with regard to ground (a) Mr Robertson had failed to identify the purpose of the covenant or to show that it does not have any continuing usefulness. In relation to ground (c) they object on the basis that Mr Robertson has mis-stated the extent of the benefitted land and has also failed to show that the benefitted land would not be injured by any type of use or development to which the application land could conceivably be put if the covenant were to be discharged.

The statutory background

21. Section 84(1) of the Law of Property Act 1925 gives the Tribunal power to discharge or modify any restriction on the use of freehold land on being satisfied of certain conditions.

The applicant in this case relied on grounds (a) and (c); unless one of these grounds is made out the Tribunal has no jurisdiction to modify or discharge the covenant.

22. Ground (a) of section 84(1) is satisfied where it is shown that by reason of changes in the character of the property or neighbourhood or other circumstances of the case that the Tribunal may deem material, the restriction ought to be deemed obsolete.

23. The condition in ground (c) is met where it can be shown that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction.

24. If the applicants are able establish that the Tribunal has jurisdiction to modify the covenant, they will have only cleared the first hurdle; the Tribunal then has to decide whether or not to do so.

25. If it does so, the Tribunal may also direct the payment of compensation to any person entitled to the benefit of the restriction. If the applicant agrees, the Tribunal may also impose an additional restriction on the land at the same time as modifying the original restriction.

The covenant

26. By a Transfer dated 14 September 1995 and made between (1) Chardon Developments Limited, and (2) Ian Peter Allen Smith and Jillian Rosemary Smith ("the Transfer") the application land is subject to the following restrictive covenant ("the Covenant"):

> 'The Transferees hereby covenants with the Transferors so as to benefit the remainder of the land now comprised in title number K716058 and so far as to bind the land hereby transferred into whosesoever hands the same may come not to use the land hereby transferred or permit or suffer the land hereby transferred to be used for an purpose other than agriculture'.

27. It is agreed between the parties that in relation to ground (a) the Tribunal's decision in *Re Fermyn Wood* [2018] UKUT 0411 (LC) identifies (at paragraph 35) a series of issues to be determined when considering the application:

> ' ...it is therefore necessary to consider a number of connected matters. It is first necessary to identify the purpose or object of the covenant, which may be stated in the instrument imposing the restriction or may be inferred from the nature of the restriction or from the known circumstances. Next it is necessary to ask whether the character of the property or the neighbourhood has changed since the covenant was imposed. Thirdly, whether the restriction has become obsolete by reason of those changes, in the sense that the object for which the restriction was imposed can no longer be achieved. Fourthly, and finally, whether some material circumstance other than a change in the character of the property or the neighbourhood has had that effect."

I will deal with each of these issues in turn.

The issues

Ground (a)

i)What was the original purpose of the covenant?

28. Mr Fox for the applicant submitted that the covenant ensured that planning permission would be obtained for the sewage treatment works and the tannery. The agricultural use of the application land would prevent other uses that might conflict with the uses planned for the retained land and potentially hinder the development for those purposes. At the hearing Mr Robertson confirmed this to be his understanding on the basis that his solicitor had advised that it was the case. Mr Robertson had no involvement in the application land prior to purchasing it.

29. Mr Fox drew attention to a requirement of the planning permission that the developer carry out an 'odour audit' and to identify the best way to prevent the release of emissions that might affect nearby development. Ensuring that the neighbouring land remained agricultural in nature was, he said, a way of reducing the risk that odour from the sewage treatment works and tannery would be problematic.

30. Mr Fox also submitted that several rights are expressed to be reserved by the Transfer including, at clause 2(c),:

> 'the right to build on or ... develop the Transferor's retained land without payment of any compensation notwithstanding that the light or air to the property hereby transferred is in any such case thereby diminished or any other liberty easement right or advantage belonging to the Transferee or its successors in title is thereby diminished or prejudicially affected.'

31. It was, he said, clearly in the mind of the transferor that they wished to be able to develop the benefitted land without finding themselves being pursued by the person they had transferred the application land to for losses resulting from such development (a sewage works or, at the time, a tannery). A restriction to agricultural use helped to ensure the transferors' intentions were unaffected. Mr Fuller considered that the reservation of such rights was commonplace and should not necessarily be construed in the way Mr Fox had done.

32. Mr Fox's final point was that there was no condition in either the planning permission or the section 106 agreement that prescribed the covenant. The local authority did not insist on the restriction for the benefit of the character of the area. Its purpose was not to protect views as there were no residential or commercial premises on the benefitted land.

33. In Mr Fuller's view the purposes of the covenant were multifarious. The first was to protect the amenity and character of the benefitted land and in particular the 'woodland poised above the unspoilt agricultural marshland' as well as the surrounding area. The second purpose was said to be to protect the unspoilt views from the benefitted land over the application land and the third was to control the use of the application land for the benefit of the benefitted land. The final two purposes are related, namely, to protect the value of the benefitted land, and to protect the owners' commercial interest (that is the benefitted land and other land the covenantee owned in that area at the time of the transfer).

34. Mr Fuller submitted that there is nothing in the covenant to suggest that its purpose was to protect a specific development, if that had been the intention the covenant would have been drafted in such a way that it only existed until the scheme had come to fruition.

35. Neither party has adduced any evidence to support their respective positions. Notwithstanding that section 84 (1B) requires the Tribunal, in determining whether a restriction should be discharged, to take in to account the development plan and any pattern of grant or refusal of planning permissions in the area, other than identifying the local authority classification of the area, no detailed planning submissions were made. The purpose of the restriction must therefore be inferred from the nature and uses of the land and from the terms of the Transfer.

36. One of the parties to the 1995 Transfer was Chardon Developments Limited. They were said by Mr Pace to be owned by the company seeking to operate the proposed tannery. It seems to me that given that they had interests in the immediate locality, it is plausible, if not likely, that their purpose in including the covenant in the transfer of the application land was the protection of the scheme for which planning permission had already been secured. In other words, the covenant was a means to prevent potential objections to the development and operation of a malodorous facility.

37. In my judgment it is unlikely that protection of the amenity and character of the benefitted land was the motivation for the covenant. At the time of the transfer the benefitted land was newly planted, and its character would not have emerged until twenty or thirty years later. It is also largely surrounded by a relatively small area of land on which there is no covenant preventing other uses. The remaining parts of its boundary comprise a dual carriageway, a farmyard and an area of land containing a polytunnel. The same observations apply to the second of Mr Fuller's purposes, the preservation of views. His third purpose is generic, and he did not provide an example of how the control of use of the application land might benefit the benefitted land. Similarly, no valuation evidence was adduced in support of his fourth and fifth functions.

38. It would appear therefore that Mr Fox's submission on the purpose of the covenant is more likely to be correct than Mr Fuller's i.e. that the covenant was imposed by the Transfer of 14 September 1995 to ensure that planning permission would be obtained for the sewage treatment works and the tannery (for which permission was granted in 1998). With this conclusion in mind, I now turn to the question of whether the character of the property or the neighbourhood has changed since the covenant was imposed.

ii) Have there been changes in the character of the application land, the benefitted land and the neighbourhood since 1995?

39. The application land was used, in 1995, for crop farming and that remains the case today. The character of the land is unchanged since 1995 but for the opening of the A256 which forms part of the eastern boundary. The road was built in 2012 and links Sandwich to the A299 which serves Cliffsend and Ramsgate. It was partly constructed on the route of Ebbsfleet Lane which previously provided a means of travelling north from Sandwich to the hamlet of Sevenscore. In his evidence Mr Robertson remarked that land which had previously been part of the application land had been compulsorily acquired for the construction of the A256. The road is slightly raised above the level of its predecessor and the surrounding land but is screened by planting which goes some way to limiting the

visual intrusion the road presents. No evidence was adduced about traffic movements on the new road in comparison to the former Ebbsfleet Lane but given that a minor road has been replaced by a dual carriageway, it would not be unreasonable to conclude that aurally the new road is much more noticeable. Notwithstanding the presence of the A256, the character of the application land has in my view not altered to any material extent.

40. The benefitted land was also largely agricultural in nature. In 1995 the larger part had been recently planted as woodland and the 580 metre long strip was part of a field used for crop farming and still is.

41. The woodland is now semi-mature. It has changed over the last thirty years because the trees are taller and have canopies but its essential characteristics are the same. It remains a rural area with no public access. Mr Pace said that he used the woodland for shooting pigeons and that his wife made occasion use for educational purposes relating to the neighbouring school. Nothing appears to be harvested from it. I conclude that the benefitted land has not altered in purpose or character since the inception of the covenant.

42. The land to the north and west of the application land is, with the exception of the village of Minster, overwhelming agricultural in nature and will have changed little since 1995. To the east is the A256 dual carriageway and beyond it is a further area of agricultural land, the Stonelees Golf Centre and Pegwell Bay Country Park. All of these uses appear to be long established and it is unlikely that they will have altered much since 1995.

43. It is to the south of the application and benefitted land where change is most apparent. The Richborough Power Station was demolished in 2012 and the view of the site from either the application or the benefitted land is now substantially different and presents a less overtly industrial vista.

44. Land between what is now the Energy Park and the A256 is occupied by an Esso Petrol Filling Station and a KFC restaurant. The former appears long established while the latter is obviously recently built.

45. The Sandwich Bay to Hacklinge Marshes Sites of Special Scientific Interest (SSSI) comprises a mixture of woodland and open grassed areas. It is therefore rural in character and by its very nature will be unchanged.

46. To the north of the SSSI is land in the ownership of Mr and Mrs Pace. The use of the land is split between a solar farm and an anaerobic digester. Both have been constructed since the covenant was imposed on the application land.

47. The land owned by Southern Water consists of the extensive sewage treatment works, and open marshland. The sewage treatment works was constructed after the inception of the covenant.

48. The final part of the neighbourhood is the former farmyard just to the south of the benefitted land. The farmhouse is now a special needs school and the other former farm buildings including a storage barn and some other smaller farm structures are now used by local businesses. These uses have arisen since 1995.

49. Aside from the construction of the A256 road, the only part of the neighbourhood that has changed is the area to the south of the benefitted land. The removal of a significant

portion of the former power station is to an extent balanced by the construction of the sewage treatment works. Both occupy sizeable sites but the latter is all but invisible from the application land and for that matter the A256. The solar farm is a use often found in a rural context, as is plant for anaerobic digestion. Neither are especially prominent but represent an intensification in the use of what was previously open farmland.

50. The former farmyard, farmhouse and associated buildings have changed in use but not in extent. To a casual visitor I doubt that much change would be apparent. I conclude that while additional land has been developed over the last twenty nine years, the character of the neighbouring land is essentially the same; it is a mixture of transport and power generation infrastructure, countryside, leisure uses and agriculture.

iii) Has the restriction become obsolete by reason of those changes, in the sense that the object for which the restriction was imposed can no longer be achieved?

51. I have concluded that the purpose of the covenant was to prevent development of the application land which might, by generating objections, pose a risk to the viability of development on the retained land, for uses that might generate odour or in other ways be incompatible. Mr Fox submitted that if the Tribunal accepted that the purpose of the covenant was to protect the retained land during the planning process then it followed, the sewage works having been built, that the original purpose could no longer be fulfilled. That is to take too narrow a view of the purpose of the restriction, which was permanent in its effect (subject to any application under section 84); there is no reason to infer that it was intended only to meet a short term objective connected with the achievement of planning permission. In the event, the tannery was not built and the land to which the proposed development related has only been partially built on. The prospect of building something else, perhaps with the possibility of unpleasant emissions, remains.

52. In *Re Truman, Hanbury, Buxton & Co. Ltd's Application* [1956] 1 QBD 261, which is the leading authority on what is meant by 'obsolete' in the context of ground (a), Romer LJ concluded that:

> "I cannot see how, on any view, the covenant can be described as obsolete, because the object of the covenant is still capable of fulfilment, and the covenant still affords a real protection to those who are entitled to enforce it."

Nothing in connection with the application land, the benefitted land or the neighbouring land has changed to the extent that the original purpose of this covenant can no longer be fulfilled. The covenant therefore retains its original utility, and its purpose remains capable of fulfilment.

iv) Has some material circumstance other than a change in the character of the property or the neighbourhood had the same effect.

53. Both parties agreed that there are no other material circumstances that have had the effect of rendering the covenant obsolete.

54. I conclude that the case under ground (a) has not been made out.

Ground (c)

i)Can it be shown that the proposed discharge of the covenant will not injure any of those entitled to the benefit of the covenant?

55. Mr Fox submitted that the existing uses that surround the benefitted land to the south and east create the benchmark by which any injury could be measured. In his view it was likely that if permission were sought to develop the application land the permitted uses would be similar in nature to those on neighbouring land. Since the benefitted land was already blighted by the sewage works, affected in its use by the school and suffers noise and disturbance from the adjacent dual carriageway, the probable use of the application land would be in keeping with the existing uses and would therefore be incapable of causing additional injury to the objectors. It is not clear how Mr Fox arrived at this conclusion without the benefit of planning evidence. It seems to me that his assertion that a particular use might find favour with the planning authority relies on mere supposition.

56. I have already set out a summary of Mr Fuller's investigations into the full extent of the retained land in paragraph 13 above. He concluded that Chardon Developments Limited had retained land at the date of transfer and that there were other persons owning parcels of land benefiting from the covenant who were not party to this application.

57. He noted that section 10 of the application failed to identify any other parties that might benefit from the covenant, notwithstanding that a HM Land Registry search of the Index Map is easy to undertake. He submitted that this failure was a clear breach of the Tribunal's rules.

58. He concluded that as a corollary of this situation the Tribunal cannot be sure that all of the proprietors of land with the benefit of the covenant would not be injured by its discharge. Mr Fuller considered that the factors to be assessed by the Tribunal in coming to a decision whether the discharge would be injurious have much in common with those considered under ground (a). These comprise a comparison between the historic and present use of the land and an investigation into the potential impact on the benefitted land if the restriction were discharged in relation to all future uses of the land.

59. In relation to the former Mr Fuller concluded that there had been no substantial material change to the application land, the benefitted land or the surrounding area since the inception of the covenant in 1995.

60. Mr Fuller submitted that since the applicant has no viable planning use except agricultural and no intention to apply for planning permission the Tribunal has no benchmark against which to assess injury other than that which would result from discharging the covenant completely. He thought that this placed a higher burden on the applicant as it widened the scope of future uses. In identifying the potential impact he focussed on the effect of development on the amenity of the benefitted land including the views, ability to use the land for shooting and its arboreal character.

61. I recorded in paragraph 13 that the parties were unable to agree the extent of the retained land. The Tribunal directed service of the application on Chardon Developments Ltd but searches by the applicant's solicitors disclosed that there is no company trading under that name. The application was also advertised in the local press, and the Registrar was satisfied that enough had been done to bring it to the attention of those who may have the benefit of the restriction.

62. It is possible that Mr and Mrs Pace or a successor in title, and the owners of other retained land, will wish to explore development options for their land in the future. Given the proximity of the sewage treatment works it is not inconceivable, if not probable, that the options will include uses that generate odour, such as an extension to the sewage treatment works or additional bio-digester capacity. Mr Fuller is correct in saying that the full range of alternative uses to which the application land could be put should be considered but that does not require a complete dislocation from reality. The continued agricultural use of the application land would be compatible with an unneighbourly use on the retained land, or putting it another way, it cannot be shown with any degree of confidence that the proposed discharge of the covenant would not injure Mr and Mrs Pace, and possibly others, in the sense that their options for the retained land would not be constricted. As far as the amenity value of the woodland is concerned, this too would be affected by any development on the application land and it follows that Mr and Mrs Pace would be injured by the discharge of the covenant.

(ii) Is the objection, proprietorially speaking, frivolous or vexatious?

63. Mr Fuller's final submission was that the Tribunal should rely on the judgment in *Ridley v Taylor* [1965] 1 WLR 611 where Russell LJ posed the question: is the objection, proprietorially speaking, frivolous or vexatious? If the answer is no, Mr Fuller submitted, then the applicant should not succeed under ground (c). Mr and Mrs Pace clearly have reason to object, and I concur with Mr Fuller's submission.

Conclusion

64. I conclude that the covenant should not be deemed obsolete and that its discharge would injure Mr and Mrs Pace who are entitled to the benefit of the restriction. I do not, therefore have jurisdiction to discharge it.

Mark Higgin FRICS FIRRV

20 May 2024

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.