Neutral Citation Number: [2024] UKUT 187 (LC)

Case No: LC-2022-471

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

28 June 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

***RESTRICTIVE COVENANTS – DISCHARGE – MODIFICATION* – covenant prohibiting use other than as "an old persons' warden scheme" – modification sought to permit general residential use – whether restriction obsolete – whether modification would disadvantage beneficiaries – section 84(1)(a) and (aa), Law of Property Act 1925 – application allowed**

BETWEEN:

CLARION HOUSING ASSOCIATION LIMITED

Applicant

-and-

MR V.C. CHITTY and others
(registered proprietors of land at Wrotham)

Objectors

St George's Court,
Wrotham,
Kent TN15

Mr Peter D McCrea FRICS FCIArb and
Martin Rodger KC, Deputy Chamber President

28 May 2024

Ben Maltz, instructed by Weightmans LLP, for the applicant
The objectors were unrepresented and did not attend

The following cases are referred to in this decision:

Alexander Devine Children's Cancer Trust v Housing Solutions Ltd [2020] UKSC 45

Re Truman Hanbury & Buxton & Co Ltd's Application [1956] 1 QB 261

Introduction

1. The Goring Hotel is said to be the only remaining hotel in London which is still owned and run by the family who built it. One of the mid-20th century proprietors was Mr Otto Gustave Goring, who took refuge from the stresses of hotel management at his country estate, Court Lodge, in Wrotham near Sevenoaks in Kent.

2. Court Lodge originally comprised around 14 acres in the centre of the village and extending to the west, with a long southern boundary to West Street and access from Old London Road. The main house was at the eastern end of the estate, which in the main appears to have been parkland.

3. Following Mr Goring's death in 1974 his executors, his widow Edna and Mr Michael Penn, sold just over 2 acres ("the application land") in the south-west corner of the estate to the local authority, Tonbridge and Malling District Council. The 1975 conveyance limited the use of the site to use as an old persons' warden scheme with gardens and ancillary uses.

4. Today, the application land is owned by Clarion Housing Association Limited ("Clarion"), a social housing provider. Clarion says that warden-controlled schemes for older people are no longer viable. It has secured planning permission for a general residential development and applies to the Tribunal to have the restrictions in the 1975 conveyance modified or discharged to enable that development to take place.

5. Many local residents, who are listed in the appendix, filed objections to the application with the Tribunal. However, at the hearing on 28 May 2024, none of them attended, nor were they represented. Mr Ben Maltz appeared for Clarion.

6. Where objectors do not attend a hearing, the Tribunal does not simply rubber stamp the application, but considers in light of the objections received, whether the grounds of the application have been made out. In this case one member of the panel had already conducted an unaccompanied inspection of the locality the day before the hearing.

The land and the restrictions

7. Following the transfer of the land in 1975, planning permission was granted in 1977 for a warden-controlled housing scheme. In around 1981 the council built out the scheme, comprising 18 self-contained bedsits, eight self-contained one-bedroom flats, and a warden's house. Nine two-bedroom flats were also contained in a separate building called The Mews, and the whole development was named St George's Court. It was demolished in 2023 and the application land is now a cleared site.

8. The restrictions which are the subject of the application were contained in clause 2 of the convenance by the Executors to the Council dated 8th October 1975 ("the Conveyance"). The Council covenanted for the benefit of the remainder of Court Lodge that:

> "(a) The land shall not be used other than as an old persons' warden scheme with gardens and ancillary uses
>
> (a) No building or buildings shall be erected and no alterations or additions affecting the appearance of such buildings shall be carried out without the Vendors' written consent Such consent shall be deemed to have been given if the Vendors have not

indicated otherwise within two months of an application having been made and such consent shall not be vexatiously withheld The Vendors' Surveyors Architects and legal costs together with Value Added Tax thereon incurred in connection with such consent as aforesaid shall be paid by the Purchaser or other the owner or owners for the time being of the land hereby conveyed".

9. Following the 1975 sale, other parts of Court Lodge were subsequently sold. Each of those parcels of land retains the benefit of the restrictions in the Conveyance. Today, they comprise residential development on Childs Way, Court Meadow, Courtyard Gardens and Goring Place. As will be seen from the plan below (in which the proposed development on the application land is in the south-west corner) the houses on the south of Childs Way and those to the west of Courtyard Gardens immediately adjoin the application land, while those on Court Meadow and Goring Place are a little more remote from it. The application land is generally flat, with a slight gradient towards the north so that the homes of the objectors stand a little higher. The application land is surrounded by an estate wall on its southern boundary to West Street and is currently separated from adjoining land on its other sides by trees and shrubs.

The proposed development

10. The proposed development will comprise 38 residential units, with associated parking, refuse and cycle storage. The two-storey development has been designed to largely replicate the St George's Court development in terms of layout and ridge height.

11. There was considerable local opposition to the development of the application land at the planning stage. An initial planning application for 60 units was refused, but in recommending the grant of planning permission for the smaller 38-unit scheme, the local planning officer's committee report noted that:

> "6.23 The reduction in the overall number of units proposed in this revised scheme has consequently reduced the scale and massing of the built form in a way that allows

it to be far more reflective of that of the surrounding development. Equally, the scale and massing and detailed design of the buildings would collectively ensure that the development would respect the site and its surroundings, providing a cohesive and high quality new development.

…

6.27 The layout as proposed, combined with the relative scale and height of the buildings, and the manner in which the buildings have been designed all contribute collectively to ensuring there would be no harmful overlooking arising or any adverse loss of daylight or sunlight, particularly when considering the scale, form and relationships between the existing buildings on the site and the closest neighbours.

6.28 In particular, I note that the layout has been designed so as to ensure appropriate separation distances remain where direct relationships between existing and proposed buildings are to arise. The buildings with the closest relationships are to the northern end of the site but land levels reduce the impact arising and no first floor habitable rooms are proposed in these circumstances to ensure no overlooking occurs."

The application and statutory provisions

12. The application has two elements. First, Clarion applies for the modification of clause 2(a) to remove the reference to an 'old persons' warden scheme', and to widen the restriction to provide that the application land will not be used other than for 'residential and ancillary purposes'.

13. Secondly, Clarion applies for the discharge of clause 2(b), to remove the requirement to obtain the Vendors' written consent for the erection or alteration of buildings.

14. Clarion argues that both restrictions are obsolete. It relies on ground (a) of s.84(1) of the Law of Property Act 1925 ("the Act") which is satisfied where changes in the character of the property, or the neighbourhood, or other circumstances which the Tribunal deems material, have caused the restriction to become obsolete.

15. In addition, as regards the modification of clause 2(a), Clarion relies on ground (aa) which is satisfied where the restriction impedes some reasonable use of the land for public or private purposes. For such an application to succeed the Tribunal must also be satisfied that, in impeding that reasonable use, either the restriction secures no practical benefits of substantial value or advantage to those with the benefit of the restriction, or it is contrary to the public interest. The Tribunal must also be satisfied that money will provide adequate compensation for any loss or disadvantage which that beneficiary of the restriction will suffer from the proposed discharge or modification.

16. In determining whether a restriction ought to be discharged or modified under ground (aa), the Tribunal is required to take into account the statutory development plan and any declared or ascertainable pattern for the grant or refusal of planning permissions in the area. It must also have regard to the period at which and context in which the restriction was imposed and any other material circumstances.

17. Section 84(1) provides that the Tribunal, upon being satisfied that either of the grounds is made out, 'shall… have power' to, by order, wholly or partially to discharge or modify the

restriction. As the Supreme Court explained in *Alexander Devine Children's Cancer Trust v Housing Solutions Ltd* [2020] UKSC 45 this involves a two-stage process. First, in what the Supreme Court called the 'jurisdictional stage', the Tribunal must be satisfied that one of the prescribed grounds is made out. If so, in the 'discretionary stage', the Tribunal must then decide whether and to what extent to exercise its power to discharge or modify.

18. The Tribunal may direct the payment of compensation to make up for any loss or disadvantage suffered by the person entitled to the benefit of the restriction, or to make up for any effect which the restriction had, when it was imposed, in reducing the consideration then received for the land affected by it.

The objectors

19. At the date of the hearing there were 32 objectors to the application, three having withdrawn their original objections. Those remaining comprise members of the Courtyard Gardens Residents' Association, and individuals living in the houses surrounding the application land. They are listed in the appendix. Some of the residents had initially been represented by Mr Jason Butler. However, Mr Butler had been unwell, and, in the event, he did not submit evidence or appear at the hearing. Nor did any objector take the opportunity to attend the hearing to explain their objections in person.

20. Many of the objections submitted were based on the need to maintain housing for elderly people, focussed on the lack of amenities in the village, or stated that the original purpose of the covenants remained valid. Several complained about St George's Court being badly maintained or simply left vacant. Others though it 'crazy' that the buildings in St Georges Court could 'sit empty' (the objections were submitted prior to Clarion's demolition). Evidently, feelings in the community are running high.

Does the Tribunal have jurisdiction?

21. It is convenient at this point to deal with a submission on the Tribunal's jurisdiction from Mr Brian Bell in his capacity as chairman of the Courtyard Gardens Residents' Association ('CGRA'). Mr Bell correctly observed that the Tribunal only has jurisdiction to discharge or modify negative covenants. He submitted that, while the restriction that the land "shall not be used other than as an old persons' warden scheme" is couched in the negative, the stipulation was in substance a positive attempt to ensure the land was used for the provision of much-needed housing for older people. The wording was described by Mr Bell as "expedient", by which he explained that he meant it was used simply because it is easier to use the negative wording to signify a positive intention. The Council purchased the land with the express intention of residential development for older people. Mr Bell submitted that since the covenant is in effect a positive one, the Tribunal does not have jurisdiction to discharge or modify it.

22. We do not accept Mr Bell's submission. If it was correct, it would be true that the Tribunal would be unable to discharge or modify the covenants, but it would also be the case that the covenants would not restrict what Clarion could do with the application land. A positive obligation does not generally bind a successor in title. For that reason the language used to impose covenants on a sale of land is important and is chosen carefully. As a matter of language it would not have been difficult for the Executors and the Council to have included in the Conveyance a positive obligation that the Council must use the application land for the provision of housing for older people. But a positive obligation to use land in a particular

way is an unusual one in a freehold sale, and it is clear that the Council would not have been in breach of these restrictions if it had made no use of the application land at all. No doubt it was expected and intended that the land would be used for housing older people, as duly happened, but an expectation or intention is different from an obligation and there is no doubt that these provisions are restrictive only.

Ground (a) – obsolescence

23. Clarion's case on ground (a) is that the character of the Court Lodge land has changed since the date of the Conveyance from open estate parkland to a medium-density private-sector residential neighbourhood. This has been accompanied by a marked change in another material respect, namely in the demand for and character of retirement accommodation. These changes have rendered restriction 2(a) obsolete. While Clarion accepted that clause 2(a) would not prevent the redevelopment of St George's Court to provide a more modern warden assisted retirement scheme, due to its location and facilities such a would not be viable.

24. Evidence in support of Clarion's case was provided by Sarah Sedgwick, its Director of Special Projects. She gave written evidence outlining the history of the application land and the reasons behind the application. Clarion has owned the application land since January 2018, following its acquisition of Russet Homes Limited, to which the Council had sold St George's Court in 1991. The buildings remained unchanged until demolition.

25. Ms Sedgwick explained the difficulties that Russet Homes had experienced in filling vacant flats and bedsits at St George's Court owing to the decreasing demand from older people for such accommodation, a problem experienced by many housing associations over the last decade. This was especially the case in developments built between the mid-1960's and mid-1980's designed with bed-sitting rooms with shared facilities, particularly in locations with limited facilities, GP surgeries, shops and public transport. Such dated schemes no longer met the expectations of older people.

26. Despite having a nomination agreement with the local authority, Russet had found it increasingly difficult to let units within St George's Court, experiencing voids across the development. Older people do not feel the need for sheltered or warden-controlled accommodation until much later in life and Wrotham itself was no longer an attractive location, with few amenities and poor public transport links. Owing to these increasing difficulties, and with the local authority's agreement, Russet Homes had stopped advertising vacant flats at St George's Court in January 2014. Having consulted with residents and other stakeholders, in July 2014 it decided to demolish St George's Court and redevelop the site for general needs affordable housing.

27. Ms Sedgwick gave examples of other social housing providers which had chosen to redevelop properties like St George's Court. Amicus Horizon Housing Group initially attempted to remodel and refurbish its schemes, but these proved costly and unpopular with residents, and it subsequently chose to demolish and redevelop. Town and Country Housing Group demolished a 27-bedsit development at Paddock Wood, 11 miles from Wrotham, and instead built 35 one and two-bedroomed flats. Circle Housing Group, Russet's parent company, reviewed a scheme known as Marvillion Court in East Peckham, a similar scheme to St George's Court, deciding on advice to demolish and build 16 new homes for affordable rent and shared ownership.

28. In letter dated 15 June 2016 from Christy Holden, the Head of Strategic Commissioning at Kent County Council she confirmed that the County Council had in the past worked with district and borough councils on remodelling schemes in locations with good access to transport and local amenities. The experience of the County Council was that bedsit accommodation with shared bathrooms is unpopular, and that residents want adequate space and design standards, good access to safe transport, shops and amenities as well as community activities. In this regard, Ms Holden said, St George's Court did not easily lend itself to such provision.

29. Russet's November 2015 planning application for 60 units comprised 26 affordable rent and 34 shared ownership units, but following a government-imposed reduction in rents, that scheme ceased to be financially viable without the introduction of some private-sale units, of which 39 were then proposed, cross-subsidising the remaining 35% affordable housing units. That scheme was found to be overbearing in bulk and scale and the application was refused.

30. Clarion submitted a revised application for its current scheme of 38 units in two-storey buildings, comprising a block of 12 two-bed flats, 15 two-bed houses, and 11 three-bed houses. On 27 February 2019 the local planning authority resolved to grant planning permission subject to conditions including that 15 affordable housing units are to be provided of which 10 are to be for affordable rent, and 5 for shared ownership.

31. Ms Sedgwick said that Clarion intends to let the affordable housing units on general needs or at intermediate rents, depending on the level of grant it receives.

32. Mr Andrew Highwood FRICS is a director of Savills and provided written expert evidence for the applicant. He agreed with Ms Sedgwick's assessment of the poor level of public transport serving Wrotham, citing the no.222 bus service which leaves Wrotham each day at 7.16 am, not returning until 16.39. In his experience, Clarion's decision to redevelop followed a general trend moving away from bespoke shared facilities to other options which give older residents more independence.

33. The most detailed objection to the application were supplied by Mr Bell of the CGRA. He explained that he represented the views of CGRA whose members are all 39 residents of the 28 cottages and apartments in Courtyard Gardens (the development adjoining the eastern boundary of the application land, as shown on the plan above).

34. Mr Bell said that Courtyard Gardens was developed at the same time as St George's Court and is subject to the same restrictions. He said that Wrotham has an aging population with over 14% of retirement age. In his view, the village offers a vibrant community providing substantial services for the elderly – the church, shops which deliver groceries, bowls and croquet clubs, bus services, pubs and a small hotel.

35. Mr Bell referred to a note he had received in August 2016 from Mrs Miskin, the daughter of Mrs Goring. She explained that her family had imposed the restrictions to provide premises where the elderly of the village could retire among their own people, freeing up family housing; they had also wished to prevent high-density development in the heart of the village. In Mr Bell's view, the restrictions ensured the use of the land for accommodation for the elderly and offered the village of Wrotham a vital amenity that remains as important today as it did in 1975.

36. Mr Bell submitted that the character of the neighbourhood had not altered since the restrictions were entered into; very few alterations had been made to the properties fronting the West Street boundary, and none to the north, east and west boundaries. As for the application land, by their negligence, Mr Bell said, Clarion had allowed the buildings to fall into disrepair. Courtyard Gardens showed that it was not true that there was no call for 'old persons warden schemes'. At Courtyard Gardens, occupation is restricted to the over-55's yet there is demand for units with only one vacant property currently for sale. A well-maintained estate for older persons is possible within the terms of the covenant, and such a development at St George's Court would continue to provide a much-needed facility within the area.

37. Mr Bell suggested that the role and accepted definition of a 'warden' had changed over time. In the past a warden would have been understood a provider of emergency assistance and monitoring of the wellbeing of residents, but now a warden was concerned with the administration and management of the estate. Courtyard Gardens has a part-time visiting manager, which Mr Bell considered was consistent with the restriction, and shows that it remains perfectly possible to provide accommodation for older people within the modern interpretation of a warden scheme.

38. Guidance on what is meant by "obsolete" in ground (a) was provided by the Court of Appeal in *Re Truman Hanbury & Buxton & Co Ltd's Application* [1956] 1 QB 261 which concerned a residential estate sold subject to covenants prohibiting the use of any of the land as licensed premises. The applicant wished to open a pub on the estate. A number of the houses had been converted into shops and the applicant argued that the loss of the wholly residential character of the estate had rendered the covenant obsolete. The Lands Tribunal found that, although there had been a change in the character of the estate as a result of the opening of the shops, the change had not rendered the covenant against licensed premises obsolete. In the Court of Appeal Romer LJ explained the sense in which the word "obsolete" was used in ground (a), at pages 272-3; having said that the covenants had been imposed "for the purpose of preserving the character of the estate as a residential area for the mutual benefit of all those who build houses on the estate or subsequently buy them", he went on:

> "It seems to me that if, as sometimes happens, the character of an estate as a whole or of a particular part of it gradually changes, a time may come when the purpose to which I have referred can no longer be achieved, for what was intended at first to be a residential area has become, either through express or tacit waiver of the covenants, substantially a commercial area. When that time does come, it may be said that the covenants have become obsolete, because their original purpose can no longer be served and, in my opinion, it is in that sense that the word "obsolete" is used in section 84 (1) (a)."

39. A restriction will therefore be deemed "obsolete", in the sense intended by ground (a), if because of relevant changes the objectives for which it was imposed can no longer be achieved.

40. In this case both Clarion and the objectors make the mistake of assuming that the purpose of the restriction is to ensure that the application land is used to accommodate older people. That was no doubt part of the motivation for imposing the restriction but, as we have already explained when rejecting Mr Bell's submission that the covenant is positive, the purpose of the restriction is not to guarantee that the land will be used for supported housing, but to prevent it from being used for any other purpose. Although we place no weight on Mrs

Miskin's understanding of the Executors subjective intention in imposing the covenant, viewed objectively, as it must be, the purpose and effect of the restriction was to ensure that land in the centre of the village was not used for any purpose which might have been thought objectionable. It could not, for example, have been turned into a car park, or a supermarket, or a school.

41. While we accept that the evidence advanced by Clarion demonstrates that it is unable to design a development which would be financially viable while remaining within the restriction of use to an old persons' warden scheme, that is not the issue. The restriction still has the effect of limiting the use which may be made of the application land by prohibiting any use other than for housing for older people and remains fully enforceable. If an attempt was made to build a doctor's surgery on the land, for example, an injunction could be obtained by the residents of Courtyard Gardens to prevent it. In that way, the purpose of the restriction can still be achieved, and it is not obsolete.

42. Additionally, there is also obvious force in Mr Bell's point that there is a demand for housing for older people in this location, as the example of Courtyard Gardens shows. The fact that the housing in Courtyard Gardens is occupied by freehold or long leasehold owners, rather than by short term tenants of a social housing provider, is not a relevant distinction when considering this restriction, which says nothing about tenure. Clarion, or more realistically another developer, might well be able to undertake a development of the application land for freehold or leasehold sale without any modification of the restriction being required, with a view to replicating the model of Courtyard Gardens. It certainly has not been shown that such a development would not be financially viable.

43. We are therefore not satisfied that the case on ground (a) has been made out in relation to paragraph 2(a).

44. Clarion's case on ground (a) did not focus in particular on the restriction in clause 2(b), which requires the Vendors' written consent to any development of the land. We are satisfied that that restriction is obsolete. The original Vendors are dead and cannot give their consent. The purpose of the restriction is incapable of achievement, and it has become obsolete.

Ground (aa)

45. Clarion's case on ground (aa) is much more straightforward. It is that the clause 2(a) prevents a reasonable use of the application land for general needs social or affordable housing and that no injury will be caused to the objectors or to anybody else with the benefit of the covenant if that use is allowed to be implemented.

46. It does not appear to be in issue that the proposed development is a reasonable use of the application land; Mr Highwood thought it was, Mr Bell for CGRA agreed, and of the other objectors' varied complaints, none made any substantive point on this question. If Clarion's proposals are implemented, land which was previously used for residential purposes will resume that use; the only difference will be that those who are accommodated at St George's Court will no longer be exclusively older people. We are satisfied that the proposed use is a reasonable one for the purposes of the s.84(1) of the Act.

47. The restriction also clearly impedes the intended use. While it does not affect the physical building of the new scheme, it will not be restricted to older people, nor will there be a

warden, so we are satisfied that Clarion would be unable to let or sell the new units as it wishes to.

48. Do the restrictions secure a practical benefit of substantial value or advantage to the objectors? The restriction does not prevent the development of the application land for housing, and it is not appropriate to assess any suggested benefit by comparing the proposed scheme to the land in its current undeveloped condition. The relevant comparison is between the application land developed subject to the restriction, and therefore used only as warden supported accommodation for older people, and the application land, developed, but free of the restriction and occupied by people of any age, including families who may be expected to occupy the proposed two and three bedroomed houses.

49. A number of objections referred to the need to retain housing in the village for older people, but that is not a benefit secured by the restrictions. But the restrictions do not guarantee that warden supported housing will be available on the application land, and despite there having been no breach of the restriction it has been many years since older people lived at St George's Court.

50. Some of the objectors identified specific benefits which they considered accrued to them from the restriction while others explained their objection in more general terms.

51. Mr and Mrs Hipgrave at 3 Childs Way thought that 'high rise new buildings' would block light over their house. We think that extremely unlikely, because their property is to the north of Childs Way, and like St George's Court, the new development is limited to two storeys. We note also that the planning officer, from whose report we have quoted above, considered that no harmful overlooking would arise from the new development or any adverse loss of daylight or sunlight.

52. Mr Barry Boxall of 11 Childs Way thought that families living in the new development would create noise, and there would be an effect on his property's value. We can see no reason why the sort of noise which is likely to arise from the occupation of modest family homes should have any impact on the value of Mr Boxall's property, which is separated from the application land by another house on Childs Way. To the extent that, in general, older people may be expected to lead quieter lives than small families, there is a case that the restriction provides some protection from the noise of ordinary domestic living to those objectors whose homes more immediately adjoin the new development. But in what is already a relatively dense residential area we are not satisfied that any such protection is significant. There is no evidence to suggest that houses neighbouring a particularly quiet housing estate are more valuable than houses neighbouring an estate where noise levels are at normal residential levels. Nor does the restriction provide protection against occasional rowdiness; even older people may sometimes be noisy neighbours or may entertain or be visited by members of their own extended families.

53. Several of the residents of Courtyard Gardens said that they bought their property in the knowledge of the covenants, on both their development and on St George's Court; they understood that their neighbours would be of a similar age and lifestyle to themselves. They thought that modification of the restriction would detract from the saleability and value of their houses.

54. Seven objectors from five houses claimed compensation if the restrictions were modified, in amounts varying from £750 to £75,000. Other objectors indicated that they did not wish

to claim compensation, while some did not say whether they wished to or not. None of the claims for compensation were supported by evidence of a difference in value, for example between property adjoining Courtyard Gardens, which is subject to the restriction, and property adjoining housing which is not subject to the restriction.

55. On behalf of Clarion Mr Highwood said that he found it difficult to see any difference between the impact on neighbours of St George's Court and the proposed development. An acoustic specialist had concluded that the noise levels would be similar other than during the construction period (and construction noise would be experienced whether or not the restriction was modified). In Mr Highwood's view, the previous use would have been likely to give rise to more frequent visits from noisier vehicles such as minibuses than the proposed use. The new scheme was designed to mirror St George's Court in terms of footprint and ridge height, which the planning officer was satisfied would avoid any change compared to the previous arrangements. He therefore thought that modification of the restrictions would have no effect on the neighbour's amenity.

56. On the evidence before us, we agree with Mr Highwood's assessment. In our judgment only the properties that directly adjoin the application land, or are very close to it, might be affected in any way by the new development. But given that the development has been designed to mirror the scale and massing of the previous buildings, there is unlikely to be any discernible effect upon them whether in terms of amenity or value, and there is no expert evidence from the objectors to suggest otherwise. We are therefore satisfied that, in impeding the proposed development, the restrictions secure no practical benefits of substantial value or advantage to the objectors.

57. That conclusion makes it unnecessary for us to consider he alternative way in which the claim under ground (aa) was advanced, that in restricting the proposed development the restrictions are contrary to the public interest. It is well known that there is a pressing need for additional housing in Kent, as in many other parts of the country. Mr Highwood referred to the local authority's Housing Strategy 2022-2027 as specific evidence of that need. Clarion and its predecessor, both social housing providers, have concluded that they are unable to help relieve that urgent need by development on the application land while it remains subject to the restrictions. In our judgment a compelling case could be made out in favour of the view that the modification of the restriction would be in the public interest. But as we are already satisfied that the application in respect of clause 2(a) should succeed on the first limb of ground (aa) it is not necessary for us to reach any concluded view on the alternative limb.

Conclusion

58. For the reasons we have given the application succeeds in relation to clause 2(a) of the Conveyance under ground (aa), and in relations to clause 2(b) under ground (a). We will make an order discharging clause 2(b) and modifying clause 2(a) to provide that the application land will not be used other than for 'residential and ancillary purposes'. We do not consider that any award of compensation is appropriate in this case.

Peter D McCrea FRICS FCIArb

Martin Rodger KC,
Deputy Chamber President

28 June 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.

OBJECTORS

2. V L & E J Chitty
3. Roger and Joan Hipgrave
4. Michael Whitcombe
5. Barry John Boxall
6. Elizabeth Bowen
7. Peter Nuttall
8. Peter and Barbara Madderson
10 Janet and Kevin Cooney
11. Mrs M Kenneally
12. Mrs V A Pratt
14. Mr K D Pratt
15. Jillian M Thompson
17. Katie Hopson
18. Courtyard Garden's Resident's Association
19. Francis Peter Thompson
20. Rachel Duncum
21. Ms L Lawrence
22. Mr Jon Lloyd
23. Mrs Sonia McCombe
25. David & Christine Savill
26. Robert W Blockley
27. Jonathan Cross
28. Elizabeth Nuttall
29. Phil Black and Veronica Lochery
30. Helen McCready