

**UPPER TRIBUNAL (LANDS CHAMBER)**



**UT Neutral citation number: [2021] UKUT 169 (LC)**

**UTLC Case Numbers: LP/21/2020**

**LC-2020-000192**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

***RESTRICTIVE COVENANTS – DISCHARGE – three houses built on part of golf course – 30- year covenants restricting residential development without consent – objector having no retained land – price for consent not a practical benefit – no loss or disadvantage to objectors – s,84(1) (aa) and (c), Law of Property Act 1925 – application granted***

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

**BETWEEN:**

**FATHER’S FIELD DEVELOPMENTS  
LIMITED**

**Applicant**

**and**

**NAMULAS PENSION TRUSTEES  
LIMITED**

**Objector**

**Re: Part of Earls Colne Golf Course,  
Station Road,  
Earls Colne,  
Colchester.**

**Judge Elizabeth Cooke and Peter McCrea FRICS FCI Arb**

**23-24 June 2021**

**Royal Courts of Justice**

Mr Philip Sissons for the applicant, instructed by Ellisons Solicitors

Mr Andrew Francis and Ms Lina Mattsson for the objector, instructed by DMH Stallard LLP

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The following cases are referred to in this decision:

*Barter and Barter's application* [2017] UKUT 451 (LC)

*Bennett's and Tamarlin Limited's Applications* (1987) 54 P & CR 378

*Cresswell v Proctor* [1968] 1 WLR 906

*Edgware Road (2015) Limited v Church Commissioners for England* [2020] UKUT 104 (LC)

*Housing Solutions Limited v Alexander Devine Children's Cancer Care Trust* [2020] UKSC 45

*Morris v Brookmans Park Roads Limited and others* [2021] UKUT 125 (LC)

*SJC Construction Co Limited v Sutton LBC* (1975) 29 P & CR 322

*Stockport v Alwiyah Developments* (1983) 52 P&CR 278

*Winter v Traditional & Contemporary Contracts Limited* [2007] EWCA Civ 1088

*One Step (Support) Ltd v Morris-Garner* [2019] AC 649

1. This is an application to modify or discharge restrictive covenants on a small part of Earls Colne Golf Course, of which the applicant Father's Field Developments Limited is the freehold owner. The covenants were imposed by agreement when the applicant bought the land from the objector in 2001.
2. We heard the application at the Royal Courts of Justice on 23 and 24 June 2021. The applicant was represented by Mr Andrew Francis and Ms Lina Mattsson, and the objector by Mr Philip Sissons, all of counsel, and we are grateful to them all. The Tribunal and the parties agreed that no site visit was necessary.
3. We heard evidence of fact from Mrs Jennifer Smith, a director of the applicant, and from Mr Michael Wright and Mr Paul Curry, who are both beneficiaries of the objector. Expert evidence was given for the applicant by Mr Andrew Entwistle FRICS FAAV and by Mr Ruairaidh Adams-Cairns FRICS for the objector.

## **The factual background**

### *The golf course and the covenant*

4. Earls Colne Golf Course is a site of about 125 acres, on which in 2001 there was a clubhouse, a greenkeeper's building, a golf course and a practice area. The objector bought it in 1997 or 1998 at the instigation of Mr Robert Curry, his son Mr Paul Curry (a professional golfer), and Mr Michael Wright (a solicitor in the firm Holmes & Hills); they funded the purchase in part using their pension funds; the balance was borrowed from the vendor, and the mortgage then serviced by the income from the course. A secured lending valuation report by Savills in 1999 put the open market value of the course at £1,250,000 "as a fully equipped operational entity"; the report said (at its page 29) "we do not consider that the property has immediate potential for development into an alternative use which would give rise to a higher open market value."
5. In 2001 it was decided to sell it. Mrs Smith was a long-standing client of Mr Wright, and he suggested to her that she and her family might buy it, which they did; the applicant is their family company. A further valuation by Savills in April 2001, for the benefit of the lender, revised the value to £1,200,000, again including equipment; the reduction was attributed to a drop in turnover caused by poor weather in the preceding autumn.
6. The golf course was bought by the applicant as a going concern; the purchase price of £1,200,000 was apportioned as to £1 million to the land and £200,000 for the equipment. The transfer, dated 30 May 2001, imposed the following covenants on the land:

"The Transferee covenants with the Transferor that the Transferee will not for a period of 30 years from the date hereof:

(a) carry out any residential development of any description on the Property or any part of the Property without first obtaining the written consent of the Transferor nor dispose of the Property or any part of the Property without first obtaining from the disponent and delivering to the Transferor a Deed of Covenant by the disponent in identical terms to this covenant provided always that no consent from the

Transferor shall be required in respect of any residential development on the Property whilst that development is occupied by the Transferee and/or members of their families and/or a person or persons employed at the Property and members of their family.

(b) permit any residential occupation of any part of the Property save by the proprietors and/or members of their families and/or person employed at the Property and members of their family.”

7. Thereafter the family ran the golf course. In 2006 Keeper’s Cottage was built, and Mrs Smith’s son Tom lives there. Because he is an employee of the applicant no consent was required under the covenants for that development.
8. When planning permission was obtained for the construction of Keeper’s Cottage the applicant entered into an agreement with the local planning authority under section 106 of the Town and Country Planning Act 1990 which prevented the occupation of the house other than by the golf club manager.
9. Over the years that followed there were occasions when the applicant transferred small parcels of land to neighbouring landowners, and each time it obtained a covenant from the purchaser in the objector’s favour, in compliance with the covenants. This proved troublesome and in September 2017 Mrs Smith wrote to the objector to ask if the covenants might be released entirely and, if so, in what terms. No reply was received.

*The present application*

10. The applicant now seeks the discharge of the covenant, or its modification to permit occupation by persons other than its employees and their families, in respect of a small area on which stand Keeper’s Cottage and two new houses currently under construction following the grant of planning permission in 2019. The new houses are called Putters and Smudgers. Counsel and the Tribunal were unable to find a golfing connection for the latter name, and were relieved by Mrs Smith’s explanation at the hearing that the house is named after her grand-daughter’s cat.
11. Mrs Smith’s evidence was that she sold her own home in order to finance the construction of the new houses, because of course a lender will not accept the land they are built on as security while the covenants make it unmarketable (unless the whole golf course is sold as a going concern). She intends to live in one of the houses and the plan is that her grand-daughter Francesca, Tom’s daughter, will live in the other. Mrs Smith is currently living in the chef’s flat at the Clubhouse; Francesca is at university.
12. In October 2020 the section 106 agreement relating to Keeper’s Cottage was released by agreement with the local authority; Mr Wright acted for the applicant in connection with that release. Mrs Smith’s evidence was that she has no plans to sell the cottage but would like to be able to do so in the future; similarly she would like the applicant to be able to sell the new houses, or to use them to raise finance for the golf course business. Alternatively she would

like to give one of them to her grand-daughter, without the burden of the covenants preventing a sale.

13. In 2018 the applicant sought the objector's consent to the construction of 50 houses on the practice area, which is not part of the land to which this application relates. Consent was not given. An application for planning permission for that development was refused, but on 3 June 2021 a section 106 agreement has been entered into in connection with the development, which is being promoted by a developer holding an option over the land. Mr Francis therefore suggests that the grant of planning permission "appears to be just a question of time."

*The objection*

14. The objector retains no land that can benefit from the covenants; it makes no bones about the fact that its interest is purely financial. It is content for the covenants to be discharged provided that it receives compensation in the form of a share of the development value of the land. Failing that and in light of the applicant's position that no compensation is payable it resists the discharge, arguing first that there is no jurisdiction to discharge or modify the covenants under section 84 of the Law of Property Act 1925, second that if there is jurisdiction the Tribunal in its discretion should refuse the application, and finally that if the covenants are discharged or modified it should receive compensation in the form of a share of the development value, such as it could have negotiated in the absence of jurisdiction under section 84.

15. Section 84 of the Law of Property Act 1925 reads, so far as relevant, as follows:

(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— ...

(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 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.

16. The applicant relies upon section 84(1)(aa) and (c). If the conditions set out in either of those two grounds are made out then the Tribunal has jurisdiction to discharge or modify the covenant, and it has a discretion whether or not to do so.

### **Is there jurisdiction under section 84?**

#### *Jurisdiction under ground (aa)*

17. So far as ground (aa) is concerned, it is well-established that in determining whether there is jurisdiction to discharge the covenants the Tribunal has to consider:

1) Whether the proposed use of the application land is reasonable;

2) Whether the covenants impede that use;

3) Whether the impeding of the proposed use secures practical benefits to the objector;

4) Whether, if so, those benefits are of substantial value or advantage;

5) If they are not, whether money would be an adequate compensation.

18. Points 1) and 2) are conceded, as is point 5) if the objector is unsuccessful in establishing that the proposed use of the land secures to it practical benefits of substantial value or advantage.

19. It is well-established that the right to demand a price for consent is not such a benefit. The Court of Appeal has so held on three occasions: in *SJC Construction Co Limited v Sutton LBC* (1975) 29 P & CR 322, in *Stockport v Alwiyah Developments* (1983) 52 P&CR 278, and in *Winter v Traditional & Contemporary Contracts Limited* [2007] EWCA Civ 1088. A “practical benefit” is an amenity; something practically useful or pleasant.

20. Mr Francis argued that the present application can be distinguished from those authorities on the basis that this is a qualified covenant; the contract explicitly contemplates that the covenantee would have the opportunity to give consent to a breach of covenant, and that therefore the objector has the benefit of control of development and of occupation of the land. However, that “control” is still a purely financial interest; the objector has no interest at all in the style or structure of development, nor any wish for example to approve plans. Accordingly we fail to see that that is any different from the situations in the authorities (and indeed *SJC Construction* was about a qualified covenant). Even where there is an absolute covenant with no mention of consent it is open to the covenantee to exercise the same control by demanding a price for release, and is in a stronger position than would be conferred by a qualified covenant since there is no question of an implied obligation not to withhold consent unreasonably. The consequence of Mr Francis’ argument, as Mr Sissons pointed out, would be that an absolute covenant would give the covenantee less protection than a qualified one, since the latter would be protected from section 84 while the former is not.
21. We mean no disrespect to Mr Francis’ extensive argument in saying no more about the point.

*Jurisdiction under ground (c)*

22. Since the applicant has established jurisdiction under ground (aa) there is no need to linger over ground (c), but it is worth noting that in *Re Bennett’s and Tamarlin Limited’s Applications* (1987) 54 P & CR 378 the Tribunal held that the loss of the opportunity to demand a price for consent is not an injury for the purpose of section 84(1)(c). Accordingly the Tribunal has jurisdiction under ground (c) in this case.

**The Tribunal’s discretion**

23. The Tribunal is not obliged to discharge or modify the covenants; it has a discretion. A number of matters are relied upon by the objector in support of its argument that our discretion should not be exercised in the applicant’s favour.
24. The first is the conduct of the applicant; in its Grounds of Objection the objector asserted that Smudgers and Putters had been built in breach of covenant. However, Mrs Smith’s evidence was that it is her intention to live in one of the new houses and for her granddaughter to live in the other. No suggestion to the contrary was made to her in cross-examination. Accordingly there can be no question of there being any breach of covenant at present and no question of the “cynical development” identified by the Supreme Court in *Housing Solutions Limited v Alexander Devine Children’s Cancer Care Trust* [2020] UKSC 45. Mr Francis wisely conceded that there is no present breach of covenant, and we regard as without substance the argument that the applicant should have made a protective application for consent for the building of the houses; in light of Mrs Smith’s intention none was necessary, any more than consent had been necessary for the building of the Keeper’s Cottage for Tom to live in.
25. It was put to Mrs Smith that she intends to sell Keeper’s Cottage as soon as the covenants are released; she said that that is not her intention and we accept that evidence. Of course, if the covenants are discharged they will no longer stand in the way of the applicant selling any of the properties as soon as it chooses to do so.

26. Second was the potential precedent effect; it is said that the discharge or modification of the covenants in relation to the application land will make it more likely that an application under section 84 in relation to the development of 53 houses on the practice ground will be successful. Mr Francis refers to *Edgware Road (2015) Limited v Church Commissioners for England* [2020] UKUT 0104 (LC) and to *Morris v Brookmans Park Roads Limited and others* [2021] UKUT 125 (LC).
27. The precedent or “thin end of the wedge” argument has to be approached with care. Each application is considered afresh on its own facts and the Tribunal would not be bound by a prior decision relating to nearby land. Nevertheless in the *Brookmans Park* decision the Tribunal found that there would indeed be a precedent effect if it were to grant the application. The covenants in question prevented the conversion of a house into five flats to be let on long leases, and while the Tribunal did not decide that there was a building scheme it was common ground that most of the houses in the village were bound by the same or similar covenants and that they preserved the character and amenity of the area. As the Tribunal (Judge Cooke and Mr Mark Higgin FRICS) put it at paragraph 103:
- “if the covenants on number 11 are modified so that the flats can remain, then the next application for modification ... will be made in the context of a road that already has two flatted developments. The construction of, say, four flats in place of one of the houses will not double the number of flats on the road; it will increase their number only by 50%. And so on. Each time it looks a little easier and a little more marginal. But at some point the cumulation of the marginal effects of each development will make a substantial change in the road and in the estate. There will come a time when ... this is no longer a spacious road dominated by large and exclusive single houses.”
28. The facts in the present case are very different; this is not a situation where there is a prospect of single developments being permitted across a wide area, where each small incremental change will make the next change easier so that the damage is done in stages. 53 houses would not be something that looked “a little easier and a little more marginal”. If there were any amenity loss to the objector as a result of the 53-house development then that loss would not be made proportionally smaller by an existing development of two new houses. So as a matter of practicality there is no thin end of the wedge effect in the present case. And note the proviso: “If there were any amenity loss to the objector”. If, as in the present case, the covenants conferred no practical benefit on the objector, then the Tribunal would have jurisdiction to discharge the covenants in any event. Whether it would do so would be a matter of discretion arising from the facts, which cannot be predicted.
29. The other reasons put forward by the objector as to why the Tribunal should not discharge or modify the covenants are the age of the covenants, and the fact that these are the original contracting parties.
30. The covenants are twenty years old. Much has changed in the intervening years, including the commercial needs of the applicant and the local planning context, and this a far cry from the three-year-old covenant seen in *Cresswell v Proctor* [1968] 1 WLR 906 and from the four-



year old covenant in *Barter and Barter's application* [2017] UKUT 451 (LC). We do not regard the age of the covenants as a relevant factor in this case.

31. But the applicant was the original covenantee and, says Mr Francis, should stand by its bargain. Section 84 makes no distinction between the original parties and their successors. We can infer that if the fact that the parties are the original covenantor and covenantee was always a reason not to exercise the jurisdiction then Parliament would have said so. Mr Francis points to the recent decision of the Tribunal (Mr Peter McCrea FRICS FCI Arb) in *Hulse v Thompson* [2021] UKUT 111 (PC) where it was said that the fact that the applicant was an original covenantor would have weighed against the exercise of discretion in its favour. But in that case the restriction did confer a practical benefit of substantial advantage on the objector, and there was in any event therefore no jurisdiction to discharge the covenant. An original covenantee who has agreed to confer such a benefit might be expected to stand by their bargain. In this case the objector's only interest is one that section 84 does not protect and to which section 84 attaches no weight, and the fact that the applicant was the original covenantee does not therefore weight the scales of discretion in the objector's favour.
32. We have considered whether the fact that these are short-term covenants should make them less vulnerable to discharge. Section 84 applies to covenants in long leases, and so expressly contemplates the discharge of covenants of a finite duration – although the leasehold covenants that the Tribunal has considered in the context of section 84 have all, we think, been contained in leases of a much longer term than 30 years.
33. One might say that the applicant has only ten years to wait, so might as well be obliged to sit it out. But Mr Sissons argues that that argument cannot succeed where, again, the covenants do not confer upon the objector any benefit that section 84 protects. We agree.
34. We can conclude that the Tribunal has jurisdiction to discharge or modify the covenants, and there is no reason not to exercise our discretion to do so. Nor is there any reason to modify rather than discharge the covenants insofar as they relate to the land that is the subject of the application, which has been identified by a plan provided by the applicant.

### **Is any compensation payable?**

35. Section 84 enables the Tribunal to award either, but not both, of:

“(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.”

36. The expert witnesses engaged with both measures, on the basis that under head (i) the Tribunal might award to the objector the “negotiated share” of the development value that it might have demanded from the applicant as the price for the release of the covenants over the application land. However, Mr Entwistle did so without prejudice to his client's legal argument that the

“loss or disadvantage” suffered by the objector as a result of the discharge cannot refer to the negotiated share that the objector seeks.

37. That argument is undoubtedly correct. Mr Francis argues that “at the heart of the case is the value of R’s contractual right”. If the objector were at the negotiating table that value would be substantial, and would probably be a share of the development value. But the objector is not at that table. It is in the Tribunal, where section 84 has stripped value out of its contractual right. As Eveleigh LJ put it in *Stockport MBC v Alwiyah Developments* (1983) 52 P&CR 278

“The bargaining power has been rendered valueless by the provisions of section 84”.

38. Just as the “practical benefit” that section 84 protects is not the right to extract a negotiated share as the price for release, so the “loss or disadvantage” that can be compensated under limb (i) above does not include such a negotiated share.

39. Carnwath LJ (as he then was) summed up the position in *Winter v Traditional & Contemporary Contracts Limited* [2007] EWCA Civ 1088 at paragraph 28,

“... authorities binding on us establish that compensation under section 84 is based on the impact of the development on the objectors, not on the loss of the opportunity to extract a share of the development value. Short of intervention by the House of Lords, or the legislature, it is too late to turn the clock back. The cases which establish that position are *Re SJC Construction Company Limited’s Application* [1876] RVR 219; and *Stockport M.B.C. v Alwiyah Developments* (1983) 52 P& CR 278. The only issue is the extent to which those cases leave open the possibility that the developer’s profit mat in some way be relevant to the assessment of that impact ...

33: “... the basis of compensation under section 84 is the loss caused by diminution in the value or enjoyment of the objector's property, not the loss of his financial bargaining position. There is no “hard and fast rule” as to how that loss is to be assessed, but the negotiated share approach is a permissible tool for the tribunal. Where that approach is taken, the percentage must bear a reasonable relationship to the actual loss suffered by the objector.”

40. A negotiated share may therefore only be awarded under this limb only if it is the best or only way to value a loss of amenity, and there is no such loss here. Accordingly that measure of compensation is not available. Mr Francis’ appeal to fairness is of no avail in the face of the authorities. Nor is his reference to the views expressed by Lord Carnwath in *One Step (Support) Limited v Morris-Garner* [2018] UKSC 20 at paragraph of any assistance. True, Lord Carnwath said at paragraph 152:

“... a case can be made for a more generous basis of award, at least in some circumstances.”

But he went on to say, in the same paragraph:

“... if change is to be made it is for Parliament rather than the courts to determine the appropriate balance.”

41. The correct way to secure a negotiated share of development value would have been for the objector in 2001 to impose an overage covenant. Such covenants, being positive covenants, are not vulnerable to section 84; and they have the advantage that the share payable is stated expressly at the outset, rather than having to be negotiated at the point when the covenantee is in a position demand a ransom.
42. Accordingly the only possibility of compensation for this objector is under limb (ii), and we have to consider what effect is any the covenants had on the price of the application land, which is a very small part of the golf course, in 2001.
43. It is common ground that there was little prospect of obtaining planning permission for the development of any part of the golf club land in 2001, in light of the planning policies then in place. It will be clear from what we said about the Savills valuations at paragraphs 4 and 5 above that the applicant bought the land and equipment, consistent with a valuation as an operational entity, at the price at which it was valued by Savills at that date, and that Savills' view then was that the development potential of the golf course was not such as to make any difference to its value.
44. Neither Mr Paul Curry nor Mr Wright was involved in the negotiations in 2001, Mr Paul Curry because he was in the USA at the time and Mr Wright because he was the purchaser's solicitor and therefore had a conflict of interest. Mr Robert Curry is now suffering from cognitive impairment and was therefore unable to give evidence. As we understand it, Mr Robert Curry negotiated on behalf of the objector; Mr Wright explained that he and the two Messrs Curry are the beneficiaries of the pension fund held by the objector; that he does not seek to take part in discussions about how the fund should be invested but defers to the other two; but he was unable to explain whether the objector itself is bound by their decisions. Accordingly there is no evidence as to exactly how or through whom the objector agreed the price in 2001, nor as to what was in the mind of those responsible for the decision, whoever they were.
45. Mr Paul Curry said in his witness statement:

“As I remember the Purchase price was lower than what may have been achieved but the Restrictive Covenant was agreed with the Applicant in case of any increase in the value of the Golf Course due to future development.”

We note that that is not a statement in terms that the price was reduced because of the covenant. Mr Wright said in his statement:

“If the Restrictive Covenant had not been agreed, then the pension members and the Respondent would not have agreed the sale of the Golf Course to the Applicant, at the Purchase Price.”

But neither was involved and their views on this point, while honestly held, can only be speculation. Neither suggested that his view was based on information given to him by Mr Robert Curry. On the other hand Mrs Smith’s evidence was that the first of the Savills reports was disclosed to them before the price was agreed, and that there was no reduction in the price to take account of the covenants. The price the applicant paid was what was agreed before the covenants were mentioned.

46. Mr Adams-Cairns’ opinion was that while Savills ascribed no value to the hope of developing the golf course, the objector might have taken a different view, that the objector might have charged a further £200,000 for the golf course without the covenants, and that if asked for the covenants not to be imposed on the application land the objector might have asked for £11,500. He explained in cross-examination that his figure of £200,000 is not based on any firm evidence, but is his assessment of how someone might have concluded there was hope value, which he said is separate from market value and very personal to the individual involved.
47. Mr Entwistle said in his report that in 2001 “the prospect of obtaining 3 new residential buildings unencumbered or otherwise by s 106 restrictive occupancy would be contrary to the majority of pertinent [planning] policies”. He pointed out that when Keeper’s Cottage was built in 2006 there was an occupancy restriction. He conceded that there would have been some hope value, which he calculated at £11,500 in respect of all three dwelling sites, at then current values. However, he expressed the view that if the vendor had been asked to exempt the application land from the covenants it would not have departed from the round figure price of £1.2 million, and in cross-examination Mr Entwistle confirmed his view that the vendor would have made no extra charge for selling the application land free of the covenants.
48. Market value can include hope value, but there is evidence (in the form of the Savills report) that in this case it did not. Mr Adams-Cairns evidence on this point is as much speculation as that of Mr Paul Curry and Mr Wright and, on his own admission, is not based on evidence. We accept Mrs Smith’s evidence that there was no discussion of the possibility of the applicant acquiring the land or any part of it without the covenants. Section 84 does not require the Tribunal to guess what effect a request not to impose the covenants might have had on the price, but to decide, on the basis of evidence, what effect the imposition of the covenants in fact had on the price of land. Mr Adams-Cairns accepted in cross examination that in fact the covenants had no effect upon the price paid in 2001, and we so find.
49. Accordingly no compensation is payable to the objector.

## **Conclusion**

50. Given our findings above, we are satisfied that the application under both ground (aa) and ground (c) has been made out, and that there are no reasons to decline to exercise our discretion in favour of the applicant.

51. The covenants are discharged insofar as they relate to the application land, and the Tribunal makes no award of compensation to the objector.
52. This decision is final on all aspects other than costs, and a letter accompanies this decision in which the parties are invited to make written submissions on costs.

Judge Elizabeth Cooke

P D McCrea FRICS FCI Arb

12 July 2021