



LP/86/2006

**LANDS TRIBUNAL ACT 1949**

*RESTRICTIVE COVENANT – modification - practical benefits of substantial value or advantage – proposal for single storey extension – effects of development on outlook from objectors’ properties and upon surroundings – planning permission granted – application refused – Law of Property Act 1925, s84(1), ground (aa)*

**IN THE MATTER of an APPLICATION  
UNDER SECTION 84 of the LAW OF PROPERTY ACT 1925**

by

**JOSEPHINE MITMAN-KEAREY**

**Re: Corner Cottage (Unit 2), 2 The Mews, High Street,  
Petworth, West Sussex GU28 0AU**

**Determination without an oral hearing under Rule 27, Lands Tribunal Rules 1996  
by P R Francis FRICS**

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## **DECISION**

### **Introduction**

1. The applicant in this case, Mrs Josephine Mitman-Kearey, seeks the modification of a covenant burdening the land at Corner Cottage, 2 The Mews, High Street, Petworth, West Sussex, GU28 0AU so as to allow the construction of a single storey extension to the front of the property, to provide a larger kitchen. The covenant, which is set out fully below, prevents any building on the land. The objectors, Rosemary Wadey (1 The Mews), Harry Southon (3 The Mews) and Emily Elizabeth Wade (Holly Cottage, 4 The Mews) say that the proposed extension will create a sense of overcrowding, will adversely affect views from some windows in their properties, and may set a precedent for future applications.

### **Application land and surroundings**

2. The Mews is a small development of 6 residential units, built around a central courtyard (the former Boxall's Yard), at the rear of buildings fronting Petworth High Street. The architect designed scheme was undertaken in 1989 in mews style and the application property, Corner Cottage (Unit 2), is the southernmost dwelling in an L shaped configuration that comprises units 2, 3, 4 and 5. Its principal rooms face east over a small yard that separates it from the side wall of Unit 1, a detached bungalow lying on the southern boundary. The remaining property, unit 6 is in the south eastern corner of the irregularly shaped development, and is not visible from the application property. The southern end wall of unit 2, an approximately 7' high wall separating it from unit 1, and the rear wall of that unit form the boundary onto a public footpath beyond. Unit 2 and the adjoining unit 3, which also faces east are single storey. Units 4 and 5 have accommodation on 2 floors, unit 4 having a kitchen and 1 bedroom that faces south towards the yard separating units 1 and 2, and unit 5, which is occupied by the applicant, has one of its bedrooms containing the same outlook.

3. Vehicular access to the development, shared with another property known as The Cottage, is between two buildings on the south side of the High Street. There are single allocated parking bays for each of the units in the development, but the principal courtyard area south of units 4 and 5, and over which units 1 and 3 also look, is vehicle free, and laid to cobbled areas, paths and borders.

### **The restriction and modification sought**

4. By a Deed of Covenant made on 24 September 2003, the applicant covenanted with the registered owners of units 1, 3, 4 and 6 to observe and perform the covenants set out in the transfer dated 19 August 1992 (which applied to all 6 units within the development). That transfer listed the units and stated:

“Each unit is to be subject by way of a building scheme to the restrictions and stipulations hereinafter mentioned...”

The covenants were imposed for the benefit of each and every part of the land, and the one that is the subject of this application, 5(a) of Schedule 4, reads:

“5 (a) No building structure or fence wall hedge or erection of any kind whatsoever other than the dwellinghouse and outbuildings (if any) now erected or in the course of erection by the Transferor shall be built or erected on the Property or any part thereof”

5. The only ground set out in this application for the modification of the restriction was that set out in section 84(1) (aa) of the Law of Property Act 1925, being:

“(aa) that (in a case falling within subsection (1A) below) the continued existence [of the covenant] would impede some reasonable user of the land for public or private purposes or, as the case may be, would unless modified impede such user;”

Subsection (1A) provides:

(1A) Subsection (1)(aa) above authorises the discharge or modification of a restriction by reference to its impeding some reasonable user of the land in any case in which the Lands 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”.

### **Case for the applicant**

6. Mrs Mitman-Kearey, who lives at number 5 The Mews, said that she had bought the application property for her mother, who had occupied it until her recent death. The property was thus, at the time of my inspection on 6 August 2007, vacant, and the applicant said that she intended to retain it as an investment. She explained that planning permission had been obtained from Chichester District Council on 14 June 2006, and that that consent, PW/06/01124/DOM, being for a “single storey extension forming kitchen, Velux window to loft area and wheelchair access”, was not subject to any onerous conditions. She referred to Condition 6, which was an Informative that stated:

“Summary of Reasons for Grant of Permission/Approval

Having considered the relevant policies of the Development Plan which are set out below, the District Planning Authority has concluded that the proposed development will not cause demonstrable harm to residential amenity, Petworth Conservation Area, the Sussex Area of Outstanding Natural Beauty or any other interest of planning importance including the human rights of the interested parties.”

7. She said that the fact that the local planning authority, having carefully considered the proposal, had concluded that the development would have no detrimental affect on the neighbouring properties or the general environment, supported her argument that, unless modified, the restriction would impede the reasonable development of the land. In her submission, in impeding such development, the restriction did not secure practical benefits of substantial value or advantage to the objectors, and money would be adequate compensation. Mrs Mitman-Kearey said that the proposed extension, which was principally to provide an enlarged kitchen and safer domestic working area, would provide greater security for the residents by partially enclosing an area which, in the past, had suffered from vandalism to the end wall of that yard area from the adjacent footpath. It would not damage or detract from the “courtyard development” concept and its design was such, with a hipped roof, that it would not be visually intrusive. It was intended that the north wall, facing into the courtyard, would have a planter to soften the impact.

### **Case for the objectors**

8. Miss Wade said that the original developer had applied the restrictive covenant for good reason – to prevent changes to the well thought out and open atmosphere of the mews. At present, she said, she enjoyed a pleasant view from her kitchen window over the flowers and shrubs in the borders of number 2, and over the end wall to the open sky beyond. The proposed extension to number 2 would destroy that aspect by obscuring the view, and by creating an enclosed atmosphere. Mrs Wadey and Mr Southon repeated the points about the original intent, and the detrimental affects that the proposed extension would have. Mr Southon also said that the modification, if accepted, would create a precedent and if the development were to go ahead, he may well consider making similar alterations to his own property.

### **Conclusions**

9. The restrictions that are the subject matter of this application were, clearly in my view, imposed for the specific purpose of preventing the very type of development that the applicant now wishes to undertake. Whilst I have noted the comments in the planning officer’s recommendation that the application receive consent, and those of the various consultees, I am not persuaded that impeding the proposed development would not secure to the objectors practical benefits of substantial value or advantage.

10. I accept the concerns of the objectors that the outlook from their properties would be adversely affected, and that the extension would serve to enclose an otherwise semi-open area, and create a feeling of overcrowding. The present layout and scale of the mews provides, in my judgment, an attractive environment that would be damaged by the proposal to the extent that, whilst the monetary value of their properties may not be materially affected, the protection afforded by the restriction does secure to them practical benefits of substantial advantage.

11. To summarise therefore, having carefully considered the plans and the photographic mock-up showing the proposed extension as built, and having inspected the application land from the courtyard, from number 2 The Mews and from the relevant vantage points within numbers 4 and 5, I am satisfied that by preventing the erection of the proposed extension the covenant impedes reasonable user of that land; that by so doing the covenant secures to the objectors practical benefits of substantial advantage to them and that money would not be adequate compensation for the disadvantage that they would suffer. Ground (aa) is not, therefore, made out and the application is dismissed.

12. I would add that, even if I had found that ground (aa) was made out, I should in the exercise of my discretion have refused the application, since the covenant was entered into only 4 years ago specifically for the purpose of preventing development of the sort now proposed.

DATED 17 September 2007

Signed

P R Francis FRICS