

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RESTRICTIVE COVENANT – Law of Property Act 1925 section 84 -- whether persons appearing entitled to benefit of restrictive covenant so as to be admitted to oppose application to discharge it – section 84(3A)

IN THE MATTER OF AN APPLICATION UNDER SECTION 84
OF THE LAW OF PROPERTY ACT 1925 AND IN THE MATTER OF ACLET HOTEL,
BROOKLANDS, BISHOP AUCKLAND

BETWEEN:

JAMES HALL AND COMPANY (PROPERTY) LIMITED

Applicant

and

- (1) PAMELA MAUGHAN**
- (2) SOPHIE LOUISE COOK AND KEVIN HAMILTON**
- (3) SUSAN MAUGHAN**
- (4) J G TINKLER**

Intended Objectors

**Re: Aclet Hotel,
Brooklands,
Bishop Auckland,
DL14 6PW**

**Before His Honour Judge Huskinson
Direction under Section 84(3A) the Law of Property Act 1925**

Determination upon Written Representations

No cases are referred to in this Decision

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DECISION

Introduction

1. This is a decision, upon the basis of written representations, under section 84(3A) of the Law of Property Act 1925 whereby the Upper Tribunal gives the necessary directions as to the persons who are to be admitted (as appearing to be entitled to the benefit of the restriction) to oppose the applicant's application for the discharge of a restrictive covenant.

2. By an application dated 9 July 2015 the applicant applied under section 84 to the Upper Tribunal for an order discharging a restrictive covenant in relation to Aclet Hotel, Brooklands, Bishop Auckland (hereafter "the application land") which land is comprised within title no. DU165750 at HM Land Registry.

3. The nature of the restriction, the discharge of which the applicant sought, was a covenant (hereafter "the relevant covenant"):

"Except with the consent of the Council not to use or permit to be used the property or any part thereof or any building thereon for the purpose of any shop trade business or profession or manufactory nor to use any building for the time being erected on the property for any purpose other than for the carrying on of the business of Hotelier and licensed victualler."

The intention of the applicant, who has contracted to purchase the application land, is to change the use of the application land to use for a convenience store. Certain covenants (including the restrictive covenant set out above) are registered in the charges register in relation to the title to the application land.

4. The Upper Tribunal ordered that appropriate advertisement and notification should be given regarding the application for the discharge of this restrictive covenant. The applicant complied with this direction and lodged a certificate of compliance with the Upper Tribunal dated 7 December 2015.

5. As a result of this advertisement and notification a large number of objections (over 200) were made. However most of those are no longer relevant because by an order dated 8 June 2016 the Registrar of the Upper Tribunal made the following order:

"UPON READING the Tribunal's letter to the objectors dated 17 March 2016 and upon none of the objectors having filed evidence of their entitlement to object to the application subsequent to that letter, save for the evidence filed by the four objectors listed in the schedule to this order. IT IS ORDERED that all of the objections to the application are struck out save for the four objectors listed in the said schedule.

SCHEDULE

Pamela Maughan

Sophie Louise Cook and Kevin Hamilton

Susan Maughan

J G Tinkler

6. As regards these persons listed in the schedule to the order of 8 June 2016 mentioned above, the Upper Tribunal made a further order in the following terms:

“IT IS ORDERED that the question of whether or not the objectors listed in the schedule to this order are entitled to object to the application be determined without a hearing. Each objector must within 14 days of the date of this order file with the tribunal and serve on the applicant’s solicitors a statement explaining why they believe they are entitled to the benefit of the covenant. The applicant must file and serve a reply within 14 days of receipt of the objector’s statement. The Tribunal will determine the question of entitlement when the parties have complied with this order.”

7. The applicant indicated its agreement to the matter being dealt with on paper (rather than an oral hearing). The persons mentioned in the schedule (hereafter together called “the objectors”) raised no objection to the matter being dealt with on paper and (subsequent to the order of 8 June 2016) wrote requesting that the Upper Tribunal take their previous correspondence into account because the contents of their letters gave their beliefs of entitlement to the benefit of the covenant. It is accordingly appropriate for the present matter to be determined upon the papers without a hearing.

8. The relevant covenant was imposed upon the application land in a conveyance which is not available (anyhow at present) but the relevant contents of which are noted in the charges register to the title to the application land. The conveyance whereby the relevant covenant was imposed is stated to be a conveyance dated 19 April 1966 made between (1) Urban District Council of Bishop Auckland (the Council) and (2) J W Cameron & Co Limited (Purchaser). The conveyance is stated to contain various covenants, one of which is the relevant covenant. The charges register gives an apparently verbatim quotation from the conveyance of the words which were used to impose the covenants in the second schedule to the conveyance (paragraph 3 of the second schedule containing the relevant covenant). These words are as follows:

“FOR the benefit and protection of other land of the Council on the said Woodhouse Close Estate Bishop Auckland or any part or parts thereof and so as to bind so far as may be the property hereby conveyed into whosoever hands the same way come the Purchaser hereby covenants with the Council that the Purchaser and the persons deriving title under it will at all times hereafter observe and perform the restrictions and stipulations set out in the second schedule hereto but so that the Purchaser shall not be liable for a breach of this covenant occurring on or in respect of the property hereby conveyed or any part thereof after the Purchaser shall have parted with all interest therein.”

9. The relevant covenant is a restrictive covenant limiting the use of the application land. It is a covenant of a type which is capable of benefiting neighbouring land in that the covenant touches and concerns neighbouring land. The benefit of the relevant covenant is therefore capable of being enjoyed by successors in title to the original covenantee if such successor in title owns land to which that benefit has been annexed and which is capable of being benefited by the covenant.

10. The 1966 conveyance states that the benefit of the covenant is for the benefit and protection of other land of the Council on the said “Woodhouse Close Estate, Bishop Auckland or any part or parts thereof.” There is no direct evidence as to what was the extent of the ownership of the Urban

District Council of Bishop Auckland (hereafter "the UDC") on the Woodhouse Close Estate as at 19 April 1966.

11. A person is entitled to be admitted to oppose the applicant's application to discharge the relevant covenant if that person appears to be entitled to the benefit of the restriction – see section 84(3A). In my judgment a person is someone who appears to be entitled to the benefit of the restriction if, on the balance of probabilities, that person owns a piece of land which (a) was part of the other land on the Woodhouse Close Estate which was owned by the UDC on 19 April 1966 and (b) that land is capable of being benefited by the covenant.

12. I have already noted the fact that the conveyance of 19 April 1966 is not available and the fact that there is no direct evidence as to the ownership of the UDC at the Woodhouse Close Estate as at that date. The evidence is limited.

13. In paragraph 5 of the applicant's statement of case in support of its application to the Upper Tribunal the applicant states as follows:

“5. The Applicant is not certain for which land the benefit of the Covenant is taken (because the conveyance containing the Covenant is not publicly available). It believes it may be the Woodhouse Close Estate (registered title number DU220618 (the “Estate”). Freehold title to the Estate is vested in the County Council. Another freehold title DU349748, whose registered proprietor is Durham Housing Group Limited, contains land which is near or historically part of the Estate. However, that title is not stated to have the benefit of the covenant. Consequently, the Applicant does not believe that land contained in the title DU349744 has the benefit of the covenant.”

However the fact that a person may own land which does not in its title state that it has the benefit of the relevant covenant does not mean that such land is unable to benefit from the relevant covenant. Provided a person owns land which satisfies the conditions in paragraph 11 above that person is entitled to the benefit of the relevant covenant.

14. The objectors have produced an ordnance survey plan of the area dated 1962 which shows the application land and which also shows a substantial housing estate laid out and referred to as being part of Woodhouse Close Ward. This shows that the Woodhouse Close Estate, Bishop Auckland had been developed as a housing estate prior to 1962 and therefore prior to the conveyance of 19 April 1966. Further assistance is given as to the history of the estate in paragraph 20 of the applicant's application to the Upper Tribunal:

“The County Council's Housing Services Committee has reported on the Estate and stated:

20.1 The Estate is one mile to the south-west of Bishop Auckland town centre.

20.2 The Estate was built in the 1950s to cater for those displaced following the large-scale demolition of nearby properties. It is (as can be inferred from the statement and the County Council holding the freehold title) a 1950s council estate.

[20.3 to 20.5 ...]”

15. Against that background I turn to the material submitted by each of the objectors. None of the objectors have produced their documents of title to their houses nor any documentation or information regarding the conveyancing history in relation to their houses -- in particular there is no direct information regarding whether any of the houses were acquired directly or indirectly from the UDC or its successor council.

16. Sophie Louise Cook and Kevin Hamilton claim the benefit of the relevant covenant because they say they own a property within the boundary of the restrictive covenant namely 37 Crawford Close, Bishop Auckland. They do not say when they purchased the house. Crawford Close is further away from the application land than that of the other objectors, but in my view it is still capable of being benefited by the relevant covenant.

17. Susan Maughan has written to the Tribunal stating that she owns 27 Abbey Road, Woodhouse Close Estate. She has marked her property on a copy of the 1962 Ordnance Survey Plan. This is a house fairly close to the application land. She does not state when she purchased her house.

18. Pamela Maughan says that she owns 9 Abbey Road and she feels she has a right to the benefit of the covenant. She has marked her house on the 1962 Ordnance Survey Plan. It is notably close to the application land. She does not say when she purchased the house.

19. J G Tinkler he says that he is now a pensioner and that his family has been in his house 23 Aclet Close since 1955. He has marked it on the 1962 Ordnance Survey Plan and it is notably close to the application land. He says that he bought the house, but he does not say when.

20. I remind myself that I am required to decide this matter under section 84(3A) upon the material before me. The burden is on the objectors to show on the balance of probabilities that they are persons who, within the wording of section 84(3A) are “appearing to be entitled to the benefit of the restriction.”

21. On the balance of probabilities I make the following findings:

- (1) The Woodhouse Close Estate was built in the 1950's to cater for those displaced following the large scale demolition of nearby properties. It was developed as a 1950's council estate.
- (2) The owner of that Estate in the 1950's when it was so developed was the UDC namely the Urban District Council of Bishop Auckland. The estate included the application land.
- (3) The UDC did not sell off the freehold of any of the objectors' properties until substantially after 19 April 1966. In the absence of any specific evidence I infer that the freehold of these properties was not sold until after the coming into force

of the right to buy legislation in respect of tenants of council houses. This did not occur until long after 1966.

- (4) Accordingly as at 19 April 1966 the housing which constituted the Woodhouse Close Estate (and which included each of the four houses now owned by the objectors) was land which was owned by the UDC.
- (5) The benefit of the restriction in the relevant covenant was annexed to the other land of the UDC on the Woodhouse Close Estate or any part or parts thereof. Accordingly the benefit was annexed, *inter alia*, to each of the four houses which are now owned by the objectors.
- (6) The objectors have subsequently purchased their respective houses and are now the freehold owners of those houses.
- (7) Each of the objectors, in respect of the house that they own, enjoys as annexed to that house the benefit of the relevant covenant.

22. In the result therefore I conclude that all of the named objectors set out in the title to this decision are to be admitted to oppose the applicant's application under section 84 – I so conclude because all of these objectors are persons appearing to be entitled to the benefit of the restriction.

Dated: 14 November 2016

A handwritten signature in black ink, appearing to read 'Nicholas Huskinson', with a long horizontal flourish extending to the right.

His Honour Judge Huskinson