Neutral Citation Number: [2024] UKUT 384 (LC)

Case No: LC-2023-811

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

3 December 2024

Priory Courts, Bull Street,
Birmingham B4 6DS

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RESTRICTIVE COVENANTS – MODIFICATION – from private dwelling house to children's care home – business use – s.84(1)(aa) and (c), Law of Property Act 1925 – application allowed

BETWEEN:

COVEN CARE HOMES LIMITED

Applicant

-and-

JAMES HOCKNEY (1) PAULINE LUDFORD (2)
DEREK BARTON (3) BARRY AND WENDY GERRY (4)
CHAD AND LEONA WEAVER (5) CHRISTOPHER AND HILLARY KNOWLES (6)
GURMEETS AND JAGDISH NIJJAR (7) JENNIFER DE COSTA (8)
BETTY ROBINSON (9) CHESTER GUILLOT (10)
ROBERT AND LYN HODGSON (11) ANDREW AND JULIA BOOTH (12)
SUSAN VAN ZYL (13) GEORGE KINGSLEY (14) MRS P HAWKINS (15)

Objectors

2 Redwing Close,
Hammerwich,
Burntwood WS7 OLD

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

28 November 2024

Andrew McKie, instructed directly, for the applicant
The objectors did not attend the hearing

The following cases are referred to in this decision:

Alexander Devine Cancer Trust v Housing Solutions Ltd [2020] UKSC 45; [2020] 1 WLR 4783

Ridley v Taylor [1965] 1 W.L.R. 611

Introduction

1. No. 2 Redwing Close is a 4-bedroom house in a *cul de sac* of four similar houses on a small residential estate in the village of Hammerwich in Staffordshire. All of the houses on the estate are bound by covenants which restrict their use to private dwelling houses only and prohibit the carrying on of any business or trade. In this application the Tribunal is asked to exercise its power under section 84, Law of Property Act 1925 to discharge or modify those covenants so as to permit the use of the house as a small care home for two children.

2. Redwing Close is one of 20 new detached homes completed by Walton Homes Ltd at Hammerwich in 1988. No. 2 (which we will refer to as 'the House') was sold to its current owner, Mr Russell (and his former wife), on 29 April 1988. In January 2023 Mr Russell let it to the applicant, initially for a term of six months, but subsequently for a further term of two years from 30 June 2023.

3. The applicant, Coven Care Homes Ltd, was incorporated in September 2022 by Mr Daniel Chalenor, its sole director. It currently runs two small care homes for children with learning difficulties and complex needs, each of which is registered with OFSTED, the body responsible for standards in children's homes, to provide care for up to two children aged between 7 and 18 years old. The first of its homes was registered in August 2023 and the second in March 2024.

4. The 1988 Transfer of the House to Mr and Mrs Russell contained a covenant given for the benefit of the remainder of the land developed by Walton Homes, to use the House "as a private dwellinghouse and not to carry on any business or trade thereon". The covenant binds the land and any occupier of the land, not just Mr and Mrs Russell as the owners who agreed to it. It therefore binds the applicant.

5. All of the remaining houses built by Walton Homes in 1988 are admitted as having the benefit of the covenant and we will refer to them collectively as "the Estate".

6. On 4 December 2023 the applicant applied to the Tribunal to modify or discharge the covenant to enable the use of the House as a children's home to continue. The application has the support of Mr Russell.

7. The application was made following the receipt in November 2023 of a letter from solicitors acting for the owner of another house on the Estate objecting to the breach of covenant. That particular objection has not been pursued and the neighbours on whose behalf it was made have not participated in these proceedings.

8. The application is objected to by the owners of fifteen homes on the Estate who are named in the heading to this decision. Those whose homes immediately adjoin the House are Mrs Jennifer De Costa, who lives in the neighbouring house at No. 4 Redwing Close, Mr Christopher Knowles and Mrs Hillary Knowles, and Mr Gurmeets Niijar and Mrs Jagdish Niijar, who live opposite at Nos. 1 and 3 respectively. Other objectors whose gardens adjoin the rear garden of the House are Mr Robert Hodgson and Mrs Lyn Hodgson, Mr Andrew Booth and Mrs Julia Booth, and Ms Susan Van Zyl.

9. At the hearing of the application the applicant was represented by Mr Andrew McKie. None of the objectors attended but as we were satisfied that they had been given notice of the hearing and that it was in the interests of justice to do so, we proceeded in their absence and heard evidence from Mr Chalenor. After the hearing we visited Redwing Close and the surrounding streets. We did not go into the House or into the homes of any of the objectors as, having regard to the nature of the objections, we did not consider it necessary to do so.

The Tribunal's power to discharge or modify restrictive covenants

10. Most property owners are familiar with the effect of restrictive covenants entered into on the sale or transfer of land. Fewer are aware that Parliament has provided that restrictive covenants can be modified so that they have a different effect, or discharged altogether so that they no longer have any effect. The power to modify or discharge covenants is conferred on this Tribunal by section 84, Law of Property Act 1925 and is exercisable if certain grounds in section 84(1) are made out.

11. It is for an applicant to demonstrate that at least one of the statutory grounds is made out and that the Tribunal therefore has power to modify or discharge the restriction. If that burden is discharged, the Tribunal then has a discretion whether to exercise that power by making an order or not. The Tribunal may impose conditions on a discharge or modification which may include adding a different restriction if that appears to us to be reasonable having regard to the relaxation of the original covenant.

12. The application in this case is made under two of the grounds in section 84(1): ground (aa) and ground (c).

13. In summary, ground (aa) is satisfied where the restriction which is sought to be modified or discharged impedes some reasonable use of the land for public or private purposes, and the Tribunal is satisfied that, in so doing, it secures "no practical benefits of substantial value or advantage" to the person with the benefit of the restriction, or that 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.

14. In determining whether a restriction ought to be discharged or modified on 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 the context in which the restriction was imposed and any other material circumstances. 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.

15. To succeed in its alternative case on ground (c), the applicant must demonstrate that the proposed modification of the restriction would not cause injury to those entitled to the benefit of it. In *Ridley v Taylor* [1965] 1 W.L.R. 611 Russell LJ referred to this ground as

a ‘‘long stop against vexatious objections … designed to cover the case of the proprietarily speaking, frivolous objection.”

16. Although the applicant has only a relatively short term tenancy (which it hopes to renew if the application succeeds) it has sufficient standing to make this application in its own name. Section 84(1) authorises the Tribunal to modify a covenant “on the application of any person interested in any freehold land” which is affected by a restriction arising under a covenant. It is not necessary for an applicant to be the freeholder and it is sufficient that they have some interest in the land. That condition is satisfied in this case by the applicant’s two year tenancy which has more than six months still to run.

The House and the Estate

17. The House is a modern family house with four bedrooms (one with *en suite* facilities), and a bathroom on the upper floor, and a lounge, kitchen, dining room, utility room and conservatory on the ground floor. It has an integral garage with space for one vehicle and a front drive capable of accommodating two more. In common with the neighbouring properties and in accordance with covenants prohibiting fences, walls or hedges at the front of the House, the area of lawn at the front of the House is open to the road. The rear garden is enclosed by a 2 metres close boarded fence and is separated from the adjoining gardens by a high hedge.

18. Overton Lane runs along the northwest edge of the village of Hammerton and the Estate is on the southeastern side of the Lane. It is a rural minor road with a pavement on the village side and open fields bordered by a thick hedge opposite. It is straight, level and wide enough for two vehicles to pass with some care. There are speed bumps at both ends of the Lane and in the middle.

19. As we observed on our inspection, a vehicle parked fully on the Lane and not encroaching on the adjacent pavement will not prevent the passage of another vehicle. There is therefore sufficient space for some parking on the Lane, although, as we also observed, some drivers might choose to park with two wheels on the pavement, causing some inconvenience to pedestrians.

20. Nine of the houses on the Estate are on Overton Lane and the rear gardens of two of these, Nos 144 and 146, adjoin the side or rear garden of the House from which they are separated by mature planting.

21. The remaining houses on the Estate are in three evenly spaced *cul de sacs* entered from Overton Lane. Redwing Close is the middle of the three. The Close is a little wider than the Lane and widens where a turning area has been provided opposite the House. As we saw in one of the neighbouring *cul de sacs*, this turning area could be used for parking although we were told that that was not the practice of the applicant’s staff or other residents of the Close.

22. The House shares Redwing Close with three other homes of similar though not identical size and design. There is space for at least three vehicles to park on the drives of each of the neighbouring properties, but room only for two on the drive of the House.

23. A car parked on the road in the Close would not present a serious obstacle to any but the largest passing vehicle, and on our visit we observed no sign that any vehicle had recently been forced on to the verges when entering or leaving the Close. We were told of one occasion when a number of ambulances were called to the Close and it was not suggested that they had difficulty entering or leaving.

24. Our general impression of the Close was one of relative spaciousness, with broad grass verges on both sides at the entrance from the Lane which then merge into the front gardens of the houses and sufficient drive and road space for considerate parking without inconvenience to residents.

25. The homes on other two *cul de sacs* which complete the Estate, Siskin Close and Fieldfare, are arranged in a similar layout. The rear garden of the House is therefore bounded by the rear gardens of Nos.1 Fieldfare, 144 and 146 Overton Lane, and 4 Redwing Close.

The intended use of the House

26. Mr Chalenor, the applicant's director, gave evidence in which he explained the current use of the House, which will continue if the application is successful. He explained that he had lived in the House during the initial short tenancy from Mr Russell and had carried out redecoration and refurbishment works to make it suitable for the new residents.

27. The House obtained OFSTED registration in August 2023 for the provision of care for up to two children aged between 7 and 18 years old and has been operating in that way since shortly after becoming registered. It was the first home opened by the applicant, which at the time was a newly founded care provider run by Mr Chalenor and Mrs Irene Merriman, who between them have 35 years' experience in the management of children's care services.

28. The House is intended to provide a home for up to two young people with learning difficulties. Each child has their own bedroom (the two larger bedrooms) and uses the ground floor living space and garden as they would be used in any family home, eating together and sharing activities. While they are at home the children are looked after by two teams each of two trained carers. The carers live in, sleeping over on 48 hour shifts with shift changes taking place at around 8 o'clock every other morning. Care is provided in a communal environment and the children and carers share the House as a family would.

29. The children's carers do not reside permanently in the House and are there only during their 48 hour shifts, which overlap by about 15 minutes to allow incoming staff to be updated on the events of the previous two days. Mr Chalenor said that this pattern means that the occasions when carers are arriving and leaving by car are confined to a regular morning window, although they come and go at other times as the activities of the day dictate.

30. During the day the staff team accompany the children to school and to any medical or other appointments that may be arranged. Visits to the House by the children's friends or families are infrequent, but the children do return to their own family homes from time to

time for visits, and also visit their friends. Mr Chalenor visits the House regularly and Mrs Merriman, who is responsible for administration and staff supervision, visits one or other of the applicant's care homes on most weekdays. The only other people who visit the House regularly are the children's social workers, who see each child not less frequently than once every six weeks, and local authority officials with functions under the Care Act 2014 whom Mr Chalenor referred to as "regulation officers", who inspect the home once a month.

31. There is no office or other segregated business space in the House. The applicant's business is run from elsewhere and within the House record keeping and planning of activities by carers is done using laptops.

32. Mr Chalenor has a parking arrangement with a local cricket club a few minutes' walk from the Close and explained that when he visits the House he parks there and encourages other visitors to do the same. He was aware of one occasion when one of the children became upset following the death of a pet, when five vehicles (including his own and Mrs Merriman's) were parked for a short time in the Close. These did not obstruct neighbouring driveways but when one neighbour contacted Mr Russell to complain, he alerted Mr Chalenor who quickly arranged for the vehicles not parked on the drive to be relocated. He had not personally received complaints from neighbours, all of whom had his phone number, nor had any been reported to him.

33. The use of the House which we have described is lawful in planning terms. In March 2023, several months before the use commenced, Mr Chalenor obtained a certificate from Lichfield District Council under sections 191 and 192, Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) Order 2015, confirming that the use of the House as a care home for up to two children was a lawful use within use class C2 (which covers the provision of residential accommodation and care to people in need of care). No planning permission was required for the change from use as a dwellinghouse within class C3 to use as a care home within class C2.

The concerns of objectors

34. The owners of ten homes on the Estate cooperated by submitting their reasons for objecting to the application in a common form. Similar objections were expressed by the remaining six objectors who provided their own individual statements. One objector withdrew their objection before the hearing and, as we have already noted, none took the opportunity to attend the hearing to explain their views in person or ask questions of Mr Chalenor. No rule of evidence prevents the Tribunal from taking objections expressed only in writing fully into account, and we have done so in this case, but where an objector chooses not to express their views in person, concerns which they might usefully have explained in greater detail had they been present may make less of an impression and be given less weight by the Tribunal.

35. The objectors acknowledged the need for provision to be made to accommodate children with complex care needs and none based their opposition to the application on the use itself. Nor did any of the objectors suggest that the value of their houses would be diminished if the application is successful. They focussed instead on what they feared might be the consequences for the Estate if the covenant was relaxed.

36. As an introductory point the objectors explained that Mr Russell himself, and the owners of six of the remaining 19 houses (including all three in the Close) are the original purchasers who personally entered into and took the benefit of the covenants. Three themes then emerged from their statements of objection.

37. The first concern of the objectors centred on what the coordinated group described in their common statement as a noticeable increase in traffic and parking issues in the Close due to the number of staff coming to and from the property. They said that the Estate was not designed for multiple on-road parking and if it occurred it might block access for emergency vehicles, refuse collection, or delivery vehicles.

38. The second commonly voiced concern was that the discharge of the covenant against business use might result in a development of the House or a change in the activities conducted from it. It was suggested that in time the House might come to be used to accommodate a greater number of children than the two for whom it is currently registered, or that it might be used for adults, or as what one objector referred to as a secure unit.

39. A third concern was that allowing a business to operate from the House might set a precedent for other properties on the Estate to do the same which might significantly change the character of the neighbourhood.

40. Other more general complaints were against the principle of the House being used for business, for which it was said not to have been designed, and against the applicant making a profit from that use. One objector asked what the point would be of having covenants at all if they could be removed.

Section 84(1)(c) – would the discharge or modification of the covenant cause injury to anyone?

41. In response to our suggestion at the start of the hearing that a complete discharge of the covenant might have much wider consequences than a modification to permit continuation of the current use, Mr McKie, who represented the applicant, withdrew the application for discharge. We can therefore restrict our consideration to the request for modification.

42. We begin by considering whether the modification of the covenant would injure any person entitled to the benefit of it; in accordance with the applicant's admission we assume that cohort comprises all of the homeowners on the Estate. "Injury" in this context means any adverse impact on the property of an objector or on their enjoyment of their property, and it is not restricted to something which causes a diminution in the value of the property in financial terms.

43. The most frequently expressed objection to the application was based on concern about the consequences of the current use of the House for on-street parking.

44. The larger group of objectors referred to occasions when there have been up to five vehicles parked at or in the vicinity of the House. One objector whose home is not in the Redwing Close referred to parking in adjacent roads. The frequency of these occasions was not stated by any of the objectors, nor did any individual objector say that they

personally had observed or been inconvenienced by inconsiderate or excessive parking or made a complaint about it.

45. Because the objectors gave very few examples of occasions when the parking to which they objected had taken place, and none said how often it had happened, there was no necessary inconsistency between their evidence and Mr Chalenor's account of how the House operates. The objectors said that they had contacted Mr Russell about parking on more than the one occasion of which Mr Chalenor was aware, but none of them suggested that they had contacted Mr Chalenor himself and we infer from the absence of any such suggestion that his evidence is accurate on that point. We accept Mr Chalenor's evidence that all of the neighbours have his personal phone number, but none has contacted him to complain about parking. If they have contacted Mr Russell on more than one occasion, he chose not to pass their observations on to Mr Chalenor or his staff.

46. The covenant prohibits business use or use other than as a private house. It says nothing about parking. It is a perfectly normal feature of residential estates that cars may be parked on the street and no homeowner has an entitlement to expect that such parking will not occur. As our visit to the Estate confirmed, it is no different in that regard. Mid-morning on a weekday we saw two cars parked on the road in Overton Lane and two in Siskin Close. We assume none of these was associated with the House as one of the spaces on its drive was vacant. None of the parking we saw on the Estate was inconsiderate and we can see no reason why anyone would be inconvenienced by it (except a wheelchair user or pedestrian pushing a pushchair who would have found the pavement on Overton Lane narrowed significantly by one of the cars parked there).

47. On the evidence we have been provided with we have no hesitation in concluding that the suggested problems of parking generated by the use of the House as a children's home are illusory – they do not exist. There is ample space on the drive for the carers who work in the House and who come and go less frequently than householders who drives to work every day. Without causing an obstruction there is space in the Close for the relatively infrequent visitors, should they choose to park there. Mr Chalenor himself sets an example of consideration for others and good neighbourly conduct by parking at the cricket club, but there is no obligation on him to do so.

48. Of course, the absence of evidence of any regular issue with parking does not mean that there might not be occasions when an unusual number of vehicles might be parked in the Close. Mr Chalenor was aware of one such occasion when there were five cars belonging to the applicant's staff outside the House and the objectors mentioned another occasion when three ambulances attended when one of the neighbours was taken seriously ill. It was not suggested that on either of these occasions access was obstructed, but if it had been that would simply have been one of the normal exigencies of everyday life on a residential estate. We are satisfied that such occasions are no more likely to occur while the House is used as a children's care home than if it were occupied by a family, who might easily have more then two cars or frequent visitors or large social events.

49. As for the fear of intensification of the use of the House, or its development either by physical expansion or by a change in the activities conducted there, the starting point is that these are fears of what the House might become, rather than concerns about what it currently is and which the applicant wishes it to continue to be. When it is exercising its power to modify a restriction, the Tribunal carefully considers the consequences of the

proposed modification and any realistic evolution of the use which it is intended to facilitate, but it gives no weight to unsupported fears or speculation. In this regard it is significant that the Tribunal has power, when modifying a covenant, to impose further restrictions; that power may be used to reduce the risk that a modification could give rise to wider changes than those currently proposed.

50. As for any physical development of the building, the applicant has a short term tenancy of the House and no opportunity to undertake significant works of any kind, nor is there any suggestion that Mr Russell wishes to. In any event, the covenant does not restrict physical alterations and any which were ever contemplated would require planning permission in the usual way.

51. Mr Chalenor confirmed that he has no intention of changing the nature of the applicant's business, which specialises in the needs of vulnerable children and young people under the age of 18. He explained that it is a condition of OFSTED registration that children be provided with their own rooms and on that basis the House cannot accommodate more than two. Any change in the number or age of those who are accommodated at the House can also be controlled by the Tribunal imposing a restriction limiting the use to providing care for not more than two children under the age of 18. There is therefore no prospect that the relaxation of the covenant might lead to a change in the number of children, or the use of the House to accommodate adults with support needs.

52. A modification of the covenant by the Tribunal to permit the current use would not have any consequence for the planning status of the House. Anyone who wished in future to use it as secure accommodation for children or young people, in the sense of a place of detention such as a secure training centre or custody centre, would require planning permission as such a use is not within class C2 (residential institutions) but is a class C2A use (secure residential institutions). A change from class C2 to class C2A would be a material change of use for which planning permission would be required (as well as a further modification of the covenant).

53. Concern was also expressed by objectors about the use of the House for a business, and whether permitting that to continue might lead to other business uses on the Estate. The applicant has sensibly acknowledged that, although the House is used as a home, that use is a business use because the home is provided by the applicant as part of its business. On the other hand, not all business uses are the same. If what is sought is a modification of the covenant to permit the existing business use to continue the question for the Tribunal when it considers ground (c) is whether that modification would cause injury to any person entitled to the benefit of the covenant.

54. There are two separate aspects to be considered here.

55. First, there is any impact which the proposed modification might have on neighbours by reason of the continuation of the current use. But as is reflected in the very narrow grounds of objection based mainly on parking, this particular business use does not have any greater impact on the enjoyment of neighbouring properties than the use of the House as a family home which the covenant is intended to secure.

56. Secondly, there is any effect which the relaxation of the covenant might have on the enforceability of the covenants which bind other properties on the Estate either by creating the impression that the restrictions need not be observed, or by encouraging others to seek the modification of their own covenants. As to this second aspect, it is relevant that the use of the House as a children's home is not a use which is obvious. A visitor to the Estate who was asked to pick out the one house in which a business was being conducted would be unable to do so. Authorisation of the current use through a modification of the covenant would not change the baseline against which any future proposal for a modification would be measured. Any application to the Tribunal by another homeowner who wished to relax their own covenant would be determined on its merits and would be neither more nor less likely to be granted if this application has been successful. Nor do we think there is any real risk that other residents of the Estate might decide that they can now ignore the covenants which apply to their own properties. The scale of opposition to the application, at least initially, demonstrates that the residents are well aware of the enforceability of the covenants and quick to take action if they are breached. Subject to the modification requested, the covenants will be no less enforceable and no less potent.

57. We do not think it matters that the applicant seeks to make a profit from the use of the House. The use would be contrary to the covenant whether it was undertaken by a charity or on a purely commercial basis. The suggestion of some objectors that the applicant is a very large company with numerous homes around the West Midlands is not correct; it is, as we have described, a small, recently established company running two homes with ambitions to open a third but no expectation of growing beyond that.

58. Finally, in response to the question asked by one objector, who queried the point of having covenants at all if they can be removed by the Tribunal, our answer is that all restrictive covenants exist in a legal landscape which allows any person bound by the covenant to apply to the Tribunal to have it modified or discharged. Parliament determined in 1925 that, in the interest of freeing up the use of land, restrictive covenants should be susceptible to modification on limited statutory grounds. The covenants which bind houses on the Estate appear to have been very successful in preserving it as a pleasant residential environment. They will continue to protect that environment even if they are modified to permit the continued use of the House as a children's home.

59. Having now considered all of the objections voiced by the applicant's neighbours on the Estate, we are satisfied that none of them has identified any injury which they will sustain if the proposed modification is permitted. We are therefore satisfied find that ground (c) is made out.

Section 84(1)(aa) – does the covenant prevent a reasonable use of the land without securing any real advantage for anyone?

60. Having decided that ground (c) is made out it is not necessary to consider ground (aa), which would repeat or include the same issues.

The Tribunal's discretion

61. As we have previously explained, proof of one of the grounds of application in section 84(1) does not guarantee an order modifying or discharging the relevant covenant.

Instead, the Tribunal is given a discretion to modify. In this case there are four matters to which we ought to have regard when considering whether to exercise that discretion.

62. The first is the point emphasised by the objectors who made joint representations, that the covenants which the applicant seeks to have modified were entered into by Mr Russell, whose tenant the applicant is and who supports the application, and that many of the objectors are the original beneficiaries as first purchasers from Walton Homes. This is not strictly a case of an application by an original covenantor, since that was Mr and Mrs Russell and not the applicant, but the applicant has only a short interest and derives it directly from the original covenantor, so there might be said to be some analogy. We do not consider that some of the objectors having acquired their own interests directly from the original covenantee, Walton Homes, is of much significance. They have enjoyed the benefit of the restriction for 35 years and their interest has always been susceptible to modification under the Act. The fact that the ground which has been established is the "no injury" ground, also seems to us to be material in reducing any significance which their participation as early subscribers to the covenants might otherwise conferred.

63. The second point is that the applicant has been in breach of covenant while it has been pursuing this application. In some circumstances that might be a weighty consideration against the exercise of the Tribunal's discretion, and it will always be a factor to be taken into account. But this is not a case where the applicant has sought to gain an advantage by changing the facts on the ground, stealing a march by continuing to build a new development in the face of opposition (compare *Alexander Devine Cancer Trust v Housing Solutions Ltd* [2020] UKSC 45). The applicant's breach has had no adverse impact on those of its neighbours who have objected and has been supported by others with the benefit of the covenant. If use were to be discontinued tomorrow there would be no visible evidence that the covenant had ever been broken.

64. Thirdly, and weighing on the opposite side of the balance, in favour of modification, is the fact that the applicant's proposed modification is in furtherance of the common good. The availability of supported accommodation for young people who because of their life experiences and disadvantages need to live apart from their own families is one aspect of a civilised and compassionate society. The House is suitable to provide that sort of accommodation and the public interest in its use for that purpose is a good reason for the Tribunal to modify the covenant to permit it.

65. Finally, we have regard to our own power to modify the covenant only to the degree necessary to enable the current use to continue without leaving open the possibility of different business uses in future.

66. Taking all of these matter into account we are satisfied that this is an appropriate case for the Tribunal to exercise its discretion to modify the covenant. The restriction in clause 2(a) of the Transfer of 29 April 1988 between Walton Homes Limited and Mr and Mrs Russell will be modified so that it now reads as follows:

> "To use the premises hereby transferred as a private dwellinghouse and not to carry on any business or trade thereon provided that the use of the premises for the business of a care home for up to 2 children or young persons under the age of 18 in accordance

with class C2 (not C2A) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) shall not be a breach of this restriction."

Peter D McCrea OBE, FRICS FCIArb

Martin Rodger KC,
Deputy Chamber President

3 December 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.