



LP/58/2006

LANDS TRIBUNAL ACT 1949

RESTRICTIVE COVENANT – modification – dwellinghouse – restrictions imposed by four conveyances preventing development on rear garden – application to modify to permit construction of detached dwellinghouse – whether restrictions obsolete – whether those entitled to benefit of restrictions agreed to their discharge or modification – whether injury to objectors – application granted in respect of three conveyances and refused in respect of the fourth – Law of Property Act 1925 s84(1)(a),(aa), (b) and (c)

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

BY

**ANTHONY FOLEY
and
KAREN PATRICIA SINCLAIR-FOLEY**

**Re: Land at The rear of Montana House,
6 Orchehill Avenue,
Gerrards Cross,
Buckinghamshire
SL9 9PX**

Before: N J Rose FRICS

**Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 21 and 22 January 2008**

Mark Studer, instructed by Davis and Co, solicitors of Amersham, for the applicants
Michael Barnes QC, instructed by David Cooper & Co, solicitors of London for the objectors

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No cases are referred to in this decision.

The following cases were cited by the parties:

Re Davis' Application (1950) 7 P & CR 1
Re Truman, Hanbury, Buxton & Co Ltd's Application [1956] 1 QB 261
Re J. Frost & Tendring Hundred Waterworks Co's Application (1971) 23 P & CR 113
Re Wards Construction (Medway) Ltd's Application (1973) 25 P & CR 223
Re Gaffney's Application (1974) 35 P & CR 440
Re SJC Construction Company Limited's Application (1974) P & CR 200
SJC Construction Ltd v Sutton London Borough Council, CA (1975) 29 P & CR 322
Stockport Metropolitan Borough Council v Alwiyah Developments (1983) 52 P & CR 278
Re Carter's Application (1973) 25 P & CR 542
Stannard v Issa [1987] AC 175
Re Marcello Developments Limited's Application LP/18/1999, LP/31/2000, unreported
Re Skupinski's Application LP/34/2003, unreported
Re Chojecki's Application LP/32/2003, unreported
Shephard v Turner [2006] EWCA Civ 8, [2006] 2 EGLR 73
Re Traditional and Contemporary Contracts Limited's Application LP/49/2005, unreported
Re Truman, Hanbury, Buxton & Co Ltd's Application [1955] 7 P & CR 348
Re Martins' Application [1989] 1 EGLR 193
Re Mawdit Harris's Application [1967] 18 P & CR 138
Ridley v Taylor [1965] 1 WLR 611
Re Barry's Application [1981] 41 P & CR 383
Snook v Somerset County Council [2004] RVR 254
Robinson v Harman [1848] 1 Exch 850
Wrotham Park Estate Co Ltd v Parkside Homes Ltd [1974] 1 WLR 798
Jaggard v Sawyer [1995] 1 WLR 269
Attorney General v Blake [2001] 1 AC 268
Stokes v Cambridge Corporation [1961] 13 P & CR 77
Norfolk v The Masters, Fellows and Scholars of Trinity College, Cambridge [1976] 32 P & CR 147
Holy Monasteries v Greece [1994] 20 EHRR 1
Federated Homes Ltd v Mill Lodge Properties Ltd [1980] 1 WLR 594
Surrey County Council v Brodero Homes Ltd [1993] 1 WLR 1361
Winter v Traditional and Contemporary Contracts Ltd [2007] RVR 353
Bracewell v Appleby [1975] Ch 408
S v United Kingdom App. No.10741/84

DECISION

Introduction

1. This is an application by Mr Anthony Foley and Mrs Karen Patricia Sinclair-Foley under section 84(1) of the Law of Property Act 1925, seeking the modification of restrictive covenants affecting freehold land containing a dwelling house and garden known as Montana House, 6 Orchehill Avenue, Gerrards Cross, Buckinghamshire, SL9 9PX so as to permit the erection of a detached two-storey house with a single storey garage on part of the rear garden (the application site).

2. The restrictions in question were imposed by four conveyances, dated respectively 21 March 1906, 20 June 1908, 21 April 1915 and 27 September 1960, to which I shall refer as the 1906, 1908, 1915 and 1960 conveyances. The 1906 conveyance was made between (1) Howard Montague Mackusick, (2) Henrietta Healey William Gurney and James Gurney and (3) Aubrey Wright. It related to the major part of Montana House (including approximately two-thirds of the application site) and to other land and contained, among others, the following restriction:

“3. Only three houses (detached or semi-detached) with their necessary outbuildings to be erected on the land hereby conveyed. Two of such houses shall front the High Road and shall not be erected nearer to such road than the Building Line shown on the said plan.”

3. The 1908 conveyance was made between (1) The Union of London and Smith’s Bank, (2) Aubrey Wright and (3) Francis Thomas Husband. It related to approximately two-thirds of Montana House (including about one-third of the application site) and to other land and contained, among others, the following restriction:

“3. Only one dwellinghouse shall at any time be erected on the land hereby conveyed.”

4. The 1915 conveyance was made between (1) Aubrey Wright, (2) Elizabeth Howes and others and (3) Alfred Warner. It related to about one-third of Montana House (including a similar portion of the application site) and to other land and included the following restriction:

“3. Only one house with its necessary outbuildings shall at any time be erected upon the said land and such house shall front the Packhorse Road and shall not be erected nearer to such road than 20 feet.”

5. The terms of the 1906, 1908 and 1915 restrictions are set out in the Charges Register of the applicants’ registered title, but otherwise no copies of the 1906, 1908 and 1915 conveyances are available to the parties.

6. The 1960 conveyance was made between (1) Eric Richard Keeble (Vendor), (2) Friends Provident and Century Life Office and (3) Edward John Marx (Purchaser). It related to approximately one-third of the application site and to other land and included the following restriction:

“3. Not at any time to erect or permit to be erected on the land hereby conveyed any buildings whatsoever nor to permit any temporary or sectional structure or rubbish to stand on such land or any part thereof.”

7. The 1960 restriction was imposed by the 1960 conveyance in the following terms:

“... to benefit and protect the adjoining property of the Vendor known as ‘Eaglehurst’ aforesaid and so that this covenant shall be enforceable by the Vendor and his successors in title owner or owners for the time being of the said adjoining property of the Vendor or any part thereof.”

8. The property known as Eaglehurst subsequently became known as Mulberry House. This was later sub-divided to form two houses, Cedar Lodge and Mulberry House. In turn these houses, together with Tanglewood, another detached residence, were recently demolished to make way for a development of two blocks of flats known as Mackintosh Court, situated at the junction of Orchehill Avenue and Packhorse Road and containing 14 units.

9. The applicants’ registered title refers to a deed dated 22 January 1993 made between (1) John Robert Needham Ogle (Covenantee), (2) Governor and Company of the Bank of Scotland and (3) Martin William Heath (Covenantor) (“the 1993 deed”) by which the covenants in the 1960 conveyance were expressed to be released in the following terms:

“The Covenantee HEREBY RELEASES the Covenantor and his successors in title and the Premises and every part thereof from the covenants so far as the same are subsisting and capable of being enforced by the owners of the Covenantee’s land.”

10. No copy of the 1993 deed is otherwise available to the parties. It is not contended by the applicants that the objectors to the present application are affected or bound by the terms of the 1993 deed.

11. The only objectors to the current application are Mr Richard and Mrs Gillian Edgecliffe-Johnson, the owners and occupiers of The Lantern House, 4 Orchehill Avenue, which immediately abuts the eastern boundary of Montana House. The applicants accept that the objectors are entitled to the benefit of the 1960 restriction. Whilst the area of land which has the benefit of the 1960 restriction is not agreed, it is common ground that it includes the whole of the rear garden of The Lantern House. It is also agreed that the land comprised in the title of the objectors is itself subject in its entirety to the 1906 restriction and in part also to the 1908 and 1915 restrictions; that the construction of The Lantern House in the 1970s was itself a

breach of both the 1906 and the 1915 restrictions and that the recent development of Mackintosh Court was in breach of both the 1906 and 1915 restrictions.

12. Mr Mark Studer of counsel appeared on behalf of the applicants. He called one expert witness, Mr E S McEwen, FRICS, a partner in Messrs McEwen and Timberlake, chartered surveyors of Great Missenden. Counsel for the objectors, Mr Michael Barnes QC also called one expert witness, Mr M W J Carr, BSc, FRICS, FCI Arb, MEWI, a partner in Messrs Kempton Carr of Maidenhead.

13. On the morning of 23 January 2008, the day following completion of the hearing, I inspected the subject site, the houses of the applicants and the objectors and the surrounding area, including external inspections of various properties which had been referred to and the interior of part of the southern block of Mackintosh Court. I was accompanied by both experts.

Facts

14. From an agreed statement of facts and the evidence I find the following facts. Montana House fronts the northern side of Orchehill Avenue. It is a substantial three storey dwelling standing in its own grounds and constructed in the early 1900s. It has a gross area of approximately 440m² and comprises cloakroom, three reception rooms, kitchen/breakfast room and family area, six bedrooms, five bathrooms and integral garage. The application site is at the rear (northern) end of the site and is laid out as a tennis court.

15. The objectors' property, The Lantern House, is a two-storey detached dwelling constructed in the mid 1970s. It was first occupied by the objectors in 1992, when they purchased it from the original owners. The house has a gross area of approximately 240 m² and comprises cloakroom, three reception rooms, kitchen, utility room, four bedrooms, en-suite dressing room and bathroom/wc and a separate bathroom/wc. There is an attached garage with lobby and store. The rear garden of The Lantern House abuts the rear of the proposed development site.

16. Montana House and The Lantern House form part of an established and virtually fully-developed residential location within walking distance of the centre of Gerrards Cross, where there are local shopping facilities and a mainline railway station. The area is highly regarded, due in part to the proximity of the town centre and also to the make-up of the housing in the area, which consists mainly of individual detached dwellings. There are in addition low-rise high quality flats, many of which form part of new developments along Packhorse Road. That road runs in a north-south direction and meets Orchehill Road approximately 120 ft to the east of The Lantern House.

17. Mackintosh Court lies immediately to the east of The Lantern House. It comprises two three-storey buildings, with basement parking. Its principal orientation is towards the north-east and south-west, the latter being directly towards the house and gardens of both The Lantern House and Montana House. Vehicular access is gained via a roadway running in a northerly direction from Orchehill Avenue, parallel to the eastern boundary of The Lantern House. This roadway lies some 7.5m from that boundary, from which it is separated by a landscaped strip.

18. The top floor of each block in Mackintosh Court is within the pitched roof slope, with a flat roof apex. The southern building (block A), lying closest to Orchehill Avenue, is situated approximately 14m from the boundary with The Lantern House and approximately 21m from the Lantern House dwelling. The northern block (B) is situated approximately 12m from the boundary and overlooks the rear section of the garden of The Lantern House.

19. The buildings at Mackintosh Court extend to a height of approximately 9.5m and incorporate windows in the elevations facing in a south-westerly direction towards The Lantern House. Block A incorporates windows to all elevations, including the second floor. Block B incorporates first and second floor windows, but the submitted drawings showed the second floor windows as having frosted glass. The existing boundary between Mackintosh Court and The Lantern House comprises a thick hedge screen some 4m high.

20. On 9 February 2005 planning permission was granted for the erection of a three storey detached house on the application site. The permission authorised the erection of a building with cloakroom, three reception rooms, kitchen/breakfast room and utility room on the ground floor, four bedrooms on the first floor, each with an en-suite bathroom, a further bedroom and bathroom and a gym-leisure room on the second floor, and a double integral garage. The area of the plot to be developed is 0.178 acre and the gross external area of the new house would be 3,573 sq ft. Access to the house would be from Norgrove Park, a cul-de-sac running north from Orchehill Avenue immediately to the west of Montana House and serving an estate of thirteen detached houses, with a fourteenth currently in course of construction.

21. The planning consent was subject to various conditions, designed to safeguard and enhance the visual amenities of the area and to prevent overlooking and loss of privacy. During the course of the hearing the applicants put forward certain additional proposals, relating to landscaping, type of windows and hours of construction, which they would be prepared to accept as a condition of the proposed modification.

Grounds for the application and conclusions

22. The application is made under paragraphs (a), (aa), (b) and (c) of section 84(1) of the Act. It will be convenient to deal firstly with ground (b), namely whether the persons entitled

to the benefit of the restrictions have agreed, either expressly or by implication, by their acts or omissions, to the restrictions being discharged or modified.

23. Mr Studer did not rely on ground (b) in relation to the objectors. He submitted, however, that the persons (if any) entitled to the benefit of the 1906, 1908 and 1915 restrictions must be taken by implication to have agreed to their discharge or modification by reason of their omission to claim the benefit of, or to enforce such restrictions in relation to the construction and/or development of Cedar Lodge as a separate dwelling house, the construction of The Lantern House and the construction of Mackintosh Court. He further submitted that the modification or discharge of the 1960 restriction had been expressly agreed by Mr Ogle (referred to in the 1993 Deed as “the Covenantee”) and all persons claiming through or under him (not including the objectors) by reason of the execution of the 1993 Deed. It had also been impliedly agreed by the former proprietor of Mulberry House and all persons claiming through or under him (not including the objectors) by reason of his and/or their omission to pursue a claim to the benefit of, or to seek to enforce the 1960 restriction against the applicants.

24. Since ground (b) was not relied upon in relation to the objections of his clients, Mr Barnes did not address this issue. I am satisfied that Mr Studer’s submissions on the 1906, 1908 and 1915 restrictions are well founded. The applicants’ case on ground (b) therefore succeeds in respect of those restrictions and so it is unnecessary for me to consider them in relation to the other grounds of section 84(1). So far as the 1960 restriction is concerned, the applicants’ case is bound to fail, because it is common ground that the objectors have not agreed to discharge or modify that restriction. Accordingly, the remarks which follow are directed solely to the 1960 restriction.

25. Under ground (a) the issue is whether, by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Lands Tribunal may deem material, the restriction ought to be deemed obsolete. Mr Studer did not suggest that there had been any material changes in the character of the application site or other circumstances of the case (apart from the character of the neighbourhood) which might be material to the question of obsolescence. On the question of the neighbourhood Mr Studer submitted that this comprised both the western and eastern sides of Norgrove Park and the respective premises fronting Packhorse Road to the east of Norgrove Park. He said that the 1960 restriction was imposed in order to benefit and protect the property formerly known as Eaglehurst. This was a substantial detached house in large garden grounds and the purpose of the restriction was to preserve the open aspect from the rear of the house and from its large garden grounds.

26. The house had now been demolished. It had been replaced by the Mackintosh Court development of flats and the garden grounds had been divided up. The garden aspect and the skyline had been materially altered by the development of Mackintosh Court and by the actual and prospective developments by way of infilling in Norgrove Park. In particular, the introduction of the two purpose-built blocks of flats at Mackintosh Court was a category change in the character of the immediate neighbourhood which had introduced development of

a quite different sort. This was not a development which the objectors could have prevented, but it had had a profound effect upon the immediate neighbourhood. The outlook from the garden of The Lantern House and its visible skyline was now of the blocks of flats at Mackintosh House to the east and north-east and of the developments in Norgrove Park to the north and north-west. The latter had increased the density of housing in the immediate vicinity of the application site and the ordinary pressures of town dwellers upon the infrastructure of the neighbourhood. Inevitably all these changes had altered the outlook and aspect of land having the benefit of the 1960 restriction. In those circumstances the original purpose of preserving the open aspect from the rear of Eaglehurst and from its large garden grounds could no longer be served in relation to the objectors' garden.

27. Mr Carr considered that the neighbourhood was relatively large compared to Mr Studer's suggestion, extending from Oval Way (to the west of Norgrove Place) and the streets off it to the west, as far as South Park and North Park (to the east of Packhorse Road) to the east. In his opinion the predominant land use in this area remained that of large houses with large rear gardens.

28. Mr Barnes submitted that the purpose of the covenant was to protect the amenities of the land retained by the owner of Eaglehurst, when he sold a small area at the end of his garden in 1960. For the purposes of ground (a) the question was whether the covenant was today capable of performing any useful purpose in preserving the amenities of the relevant part of the land to which the benefit of the covenant was originally annexed, having regard to the development on that part of the land today.

29. The answer to that question, said Mr Barnes, was obvious. The objectors had the amenities of a garden and a view to that garden and the benefit of that garden as an adjunct to a substantial part of their house. Consequently, a covenant against building alongside the rear part of the garden was a covenant which fulfilled the purpose for which it was originally created, namely the preservation of the amenities of the property. If the proposed development proceeded those amenities would be interfered with in the following respects. Persons enjoying the garden of The Lantern House would be aware of the presence of the new house nearby, risked being overlooked from some of the windows of that house and would suffer disturbance from activities in the new house and/or its garden. The view from the rear upper windows of The Lantern House would be substantially changed by the intrusion of the new house. There would be disturbance caused during the construction of the new house which, on Mr McEwen's evidence, could take up to 12 months. There was a risk that the present proposal for a new house in the garden of Montana House would be replaced by a proposal to build flats, which would be difficult to resist if the covenant were modified as now proposed.

30. It is common ground that a covenant becomes obsolete when its original purpose can no longer be achieved. In my judgment the purpose of the 1960 restriction was to protect the amenities of Eaglehurst and its grounds, including the area which is now used as the objectors' rear garden. I consider that, in the context of ground (a), the neighbourhood is the immediate area suggested by Mr Studer. It is clear that there has been a substantial change in the

character of this neighbourhood since 1960, and that it now contains developments of flats and houses at a significantly higher density than before. The question is whether, because of that change, the restriction is now incapable of protecting the amenities of the rear garden of The Lantern House. In the light of the evidence and my site inspection, I find that the effects on those amenities of the proposed modification of the restriction would be as follows. People sitting in the garden would be conscious of the presence of a new house on what was formerly an area of amenity land. There would be a slight risk of overlooking from windows of the new house and a limited amount of additional disturbance from activities in that house and its garden. The construction of the house over a lengthy period would be a cause of some disturbance. In my judgment the restriction, in preventing these effects, albeit modest, on the amenities of the objectors' rear garden, is still capable of fulfilling its purpose. It therefore ought not to be deemed obsolete and the application to modify the 1960 covenant on ground (a) fails.

31. In order to succeed on ground (c) the applicants must demonstrate that the proposed modification will not injure the persons entitled to the benefit of the restriction. In the course of cross-examination, Mr McEwen fairly accepted that modification of the restriction would cause some injury to the occupiers of The Lantern House. In view of that evidence, which I accept, ground (c) has not been established.

32. The final ground upon which the objectors rely is (aa). The objectors accept that the building of a house on the application site would be a reasonable user of the land for a private purpose. The applicants do not suggest that the covenant, in impeding that user, is contrary to the public interest. The issues under ground (aa), therefore, are whether the restriction secures to the objectors any practical benefit of substantial value or advantage to them and, if it does not, whether money would be an adequate compensation for the loss or disadvantage which the objectors would suffer from the proposed modification.

33. Both expert witnesses gave evidence as to the effect that the proposed modification would have on the value of The Lantern House. In his expert report Mr McEwen valued The Lantern House at £925,000, assuming planning permission for the development proposed on the application site, completion of the Mackintosh Court flats and the restrictive covenants remaining in place. His valuation on the same basis, but assuming the planning permission for the erection of Mackintosh Court had not yet been implemented, was £900,000. Finally, on the assumption that both Mackintosh Court and the proposed development had been completed, his valuation was £915,000.

34. Mr McEwen therefore considered that the effect of the proposed modification of the restrictions on the value of the objectors' property, with Mackintosh Court completed, was £10,000 (£925,000- £915,000). In the course of cross-examination he conceded that this figure might increase to "perhaps £15,000" during the period before the new house had been completed "because I think the threat of development is greater than the outcome". His written report put forward the following reasons for this limited valuation effect:

“In my opinion the visual impact upon Lantern House as a result of the proposed development at the rear of Montana House will be relatively small. I am of the view the presence of the new house would not materially affect the saleability of Lantern House in an open market transaction.

As can be seen, the general nature of the immediate area is virtually fully developed, and most houses selling in this price bracket have enclosed gardens, the majority overlooked to some extent.

I have however shown a small diminution in value, simply because I have been asked to consider a ‘before and after situation’. In this hypothetical situation, a prospective purchaser given the choice would clearly prefer the development not to take place.

I am however of the view the development known as the Mackintosh Court flats to the north east side of Lantern House will have a greater impact on Lantern House than the proposed development, by virtue of their height and proximity, coupled with the higher density nature of the development.

I am therefore of the view the impact of the impending development of the Mackintosh Court flats will be greater than the ultimate impact once completed. In my experience prospective purchasers are concerned in respect of the ‘unknown’. Most purchasers will find it hard to visualise the ultimate effect of the development once completed and would clearly be concerned regarding the noise and disruption during the development process.

Once both developments are completed, however, purchasers would be aware of the full impact. As I have already outlined, I do not consider the completed development circumstances unusual in this area. Indeed, many established houses have been similarly affected by residential developments in the area, particularly along Packhorse Road and North Park.”

35. Mr Carr, on the other hand, expressed the view in his written report that the market value of The Lantern House, if offered for sale with vacant possession and with the benefit of the restrictive covenant, was between £950,000 and £1,000,000, and that without the covenant its value would be reduced by about £100,000. This opinion reflected his view of the likely impact of the proposed development, including the prospect of 6 to 12 months disruption during construction activities; the overlooking by the new property (particularly from second floor level); and the loss of outlook in a westerly direction from the rear rooms of The Lantern House and particularly from the rear patio and garden. It also reflected his view that the property would be blighted during the intervening period, which would adversely affect saleability.

36. In summarising his conclusions Mr Carr said:

“When giving my opinions, I have assumed that if the restrictive covenant is modified the proposed modification will, in practice, allow subsequent changes to the

development now proposed. It would not be easy to prevent further alterations and amendments if planning consent were not needed or was granted for such works.”

37. In the course of cross-examination, Mr McEwen gave the following additional evidence. If the proposed modification were granted, it would be open to the applicants to submit a revised planning application for development on their land. He had recently learned that the developers of Mackintosh House, Argyll Developments, had expressed an interest in building flats on the site of the applicants’ property. In answer to a question from me, he said that it would be reasonable for the objectors to be concerned by the possibility that a future planning application might be submitted to build flats on the applicants’ site.

38. In oral evidence in chief Mr Carr said that, if planning permission were granted for the erection of flats on the entire site of Montana House, he would expect twelve units to be accommodated there. In cross-examination he said that, in his experience, it seemed to be easier to secure further modifications to a restrictive covenant once the first modification had been obtained. In re-examination he expressed the view that it would be practical to build three or four flats within the main structure of the proposed house on the application site. It would not, however, be realistic to expect that planning consent would be granted for a flat development on the application site together with further land currently forming part of the garden of Montana House, but leaving Montana House itself intact.

39. In the light of the evidence, including my inspection of The Lantern House and the comparable properties to which the experts referred, I find that the current market value of the freehold interest in The Lantern House with the benefit of the restrictive covenants is in the region of £925,000/£950,000 (nine hundred and twenty-five thousand to nine hundred and fifty thousand pounds). Whilst it is true that a proposal for a different form of development from that currently proposed would fall to be considered on its own merits by the local planning authority (and, if appropriate, by this Tribunal), I am satisfied that approval of the current application would lead to a justified concern on the part of potential purchasers of The Lantern House that they might be faced in due course with the prospect of a considerably more intrusive form of development on the adjoining site than that currently proposed. The effect of such concern and uncertainty, in my judgment, would be to reduce the demand for The Lantern House and the price realisable would be £75,000 less. That is a substantial sum, both in absolute and relative terms. Moreover Mr McEwen accepted that, money aside, the prospect of residential development on the application site would be a particular disadvantage to the objectors, accustomed as they were to the existing situation. It would appear, therefore, that the restrictive covenant confers on the objectors an advantage going beyond that which is reflected in the loss in value which would result from modification of the restriction. The restriction therefore secures to the objectors practical benefits which, taken together, are of substantial value or advantage to them. In those circumstances ground (aa) has not been made out.

40. Since the applicants have not succeeded in establishing any of the grounds relied upon in relation to the 1960 restriction, I do not have power to grant the modification proposed in that regard. Although I have found that the case on ground (b) has been made out so far as the

1906, 1908 and 1915 restrictions are concerned, I have considered whether I should nevertheless as a matter of discretion refuse to modify those restrictions in order to permit a development which cannot be implemented because of the 1960 covenant. Since I have inferred consent to the application as it affects those restrictions, however, it seems to me that there is no good reason why it should not succeed in relation to them. The application is therefore refused as it affects the 1960 covenant and it is not necessary for me to consider the other valuation evidence or the legal submissions relating to the compensation payable to the objectors. As it affects the 1906, 1908 and 1915 covenants it succeeds. These are modified so as to permit the following development:

- (a) the construction and use on the application site of a detached two storey dwelling with a single storey garage and vehicular access thereto pursuant to the full planning permission 04/01569/FUL (“the Planning Permission”) granted by South Bucks District Council on 9 February 2005 and subsequent approval of reserved matters;
- (b) as ancillary to the construction of the foregoing (and during the period of completion of all necessary building, engineering or other operations only) the construction, retention and maintenance on the application site of all such fencing or other temporary or sectional structures as shall be required to be provided to the satisfaction of the District Planning Authority pursuant to the Planning Permission or otherwise for the purposes of implementing the Planning Permission; and
- (c) as incidental to all of the foregoing (and during the period of completion of all necessary building, engineering or other operations only), the temporary placing on the application site of builders’ or other rubbish or materials as may be necessary or shall be occasioned by the implementation of the Planning Permission.

41. The development must comply with all conditions imposed by the District Planning authority and with the following additional conditions:-

(1) Landscaping

No development shall take place on the application site until there has been submitted to and approved by the District Planning Authority in writing a scheme of landscaping which shall include:

- (a) a provision for the replacement on the southern boundary of the site of the 2 respective courses of 7 metre high conifer hedge which are shown on the plans submitted for the Planning Permission as “Existing 7m high conifer hedge”; and
- (b) a provision for the planting on the southern boundary of the site of a like course of 7 metre high conifer hedge in the position which is shown on the plans submitted for the Planning Permission as “New conifer hedge”.

(2) Windows

The second floor windows in the rear elevation of the said dwelling shall be of a Velux style only and be fitted and permanently maintained with frosted glass.

(3) Hours of construction

During the period of completion of the said building, engineering and other operations no work likely to create noise shall be carried out:

- (a) on a Sunday, Bank Holiday or Public Holiday; or
- (b) otherwise than between the hours of 8am to 6pm on Monday to Friday or 8am to 1pm on Saturday.

42. A letter on costs accompanies this decision, which will take effect when the question of costs is decided.

Dated 25 February 2008

N J Rose FRICS