UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2022] UKUT 72 (LC)
UTLC Case Numbers: LC-2020-194
(Formerly LP/23/2020)

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RESTRICTIVE COVENANTS – modification – covenants restricting use of field to grazing or arable farming – planning permission for equestrian manège – whether covenants secure practical benefits of substantial value or advantage – s.84(1)(aa) and (c), Law of Property Act 1925 – application dismissed

AN APPLICATION UNDER SECTION 84(1) OF THE LAW OF PROPERTY ACT 1925

BETWEEN:

CRAIG DUNCAN COLLINS (1)
JASBIR KAUR COLLINS (2)

Applicants

-and-

RICHARD HOWELL (1)
TRUDY ELIZABETH HOWELL (2)

Respondents

Re: Land to the North of Higher Norris Farm,
North Huish,
South Brent,
Devon

Martin Rodger QC, Deputy Chamber President and Mark Higgin FRICS

20-21 January 2022

Torquay and Newton Abbot County and Family Court, The Willows, Nicholson Road, Torquay TQ2 7AZ

Andrew Francis, directly instructed, for the applicants
Kester Lees, instructed by Stephens Scown, for the respondents

No cases are referred to in this decision.

Introduction

1. Mr Craig Collins and Mrs Jasbir Collins ("the applicants") are the freehold owners of Newpark Stables ("the property"), a nine-acre field with stables for five horses which they acquired in early 2019. It is situated in an Area of Outstanding Natural Beauty (AONB) near the village of North Huish in the South Hams area of Devon. The nearest town is Totnes which is located about 5.5 miles to the north east.

2. On 16 January 2020 the applicants received planning consent from South Hams District Council ("the Council") for the construction of a manège, associated landscaping, planting and an access way from the existing stables and parking area. The manège would enable the training and exercising of horses in a safe, all weather environment.

3. Mr Richard Howell and Mrs Trudy Howell are the registered freehold owners of Higher Norris Farm which is situated immediately to the southeast of the applicants' property.

4. Higher Norris Farm benefits from a covenant, negotiated by Mr and Mrs Howell when they purchased the farm in 2003, which restricts the use of the applicants' field to the grazing of sheep and horses and to arable use of all types. It permits the construction of stables on the far boundaries only.

5. The applicants applied to the Tribunal on 30 August 2020 for the modification of the restrictions imposed by the covenant on grounds (aa) and (c) of section 84(1) of the Law of Property Act 1925. The modification sought is to permit the construction of the manège on the property in accordance with the planning consent, and to permit the parking of vehicles and use of the rest of the field for the exercising and training of horses. Shortly before the hearing of the application it was suggested by the applicants that an alternative location for the manège might be towards the lower end of the field in which they already have planning permission to construct it. This suggestion came too late to be the subject of considered evidence and as it was not seriously pursued at the hearing, we need not be concerned about it.

6. The applicants were represented at the hearing by Mr Andrew Francis who called Mr Craig Collins and his daughter Shana as witnesses of fact. He also called Mr Charles Huntington-Whiteley FRICS as an expert witness. The objectors were represented by Mr Kester Lees who called Mr Richard Howell as a witness of fact and Mr Michael Townsend FRICS FAAV MCIArb TEP as an expert witness. We are grateful to counsel and witnesses for their assistance.

7. We inspected the property on the afternoon of 19 January 2022. We saw the stables and the site of the proposed manège where the dimensions and height had been helpfully marked out with wooden stakes. We walked along the southern boundary, and then retraced our steps in order to visit Higher Norris Farm where we viewed the applicants'

land from the garden, from the downstairs rooms, and a small conservatory which adjoins the master bedroom on the first floor.

The Factual Background

8. Until September 2003 Newpark Stables and the adjoining field were part of Higher Norris Farm and were used for the grazing of sheep. The whole farm extended to about 25 acres when it was offered for sale as a unit by its previous owners. Mr and Mrs Howell wished to acquire the farmhouse and associated buildings but negotiated to take only 16 acres of land to the south and east of the house, leaving the vendors with the remaining fields including the site of what would later become Newpark Stables. The sale was concluded on the basis that a covenant benefitting the Farm and restricting the use of the field retained by the vendors was included in the transfer to Mr and Mrs Howell on 12 September 2003.

9. The restrictive covenant ('the Covenant') provided that:

> "the retained land shall only be used for the grazing of sheep and horses and for arable use of all types and the production of grass cutting and the Transferors shall not erect any buildings other than stables on the far boundaries only".

10. Mr Howell explained that the purpose of the Covenant was to preserve the rural and entirely agricultural identity and character of the Farm and its surroundings. Until that point, both in the Field and neighbouring fields, grazing of sheep has been the main activity, in-keeping with the natural agricultural setting.

11. The plan below shows the relationship between Newpark Stables and its adjoining field (shaded green), the proposed site of the manège (edged red), and Higher Norris Farm.

12. The applicants' field is approximately rectangular in shape and about 275 metres long and 165 metres wide at its extremities. The land slopes downwards from the stables to the site of the proposed manège and also from the west to the east, from the proposed manège towards the Farm. The current difference in ground level between the boundary of the Farm and what would be the nearest corner of the proposed manège is quite pronounced, the latter being about 6 metres higher than the Farm. As intended to be constructed, the surface of the manège itself would be a further 3 metres higher. The linear distance between the manège and the boundary of the Farm is approximately 85 metres.

13. The stables were erected after the sale of the Farm to Mr and Mrs Howell and are built of timber with pitched, corrugated metal roofs. There are five boxes and two stores arranged in an 'L' shape. There is a concrete apron approximately 3 metres deep in front of the boxes. A gravelled area for parking and unloading has been laid out in front of the stables, adjacent to the entrance from the road. The western and southern boundaries of the field are traditional 'Devon banks', about which we say more later. The other boundaries are marked with post and rail fencing. There are two field shelters where horses can seek refuge from the worst of the Devon weather.

14. Higher Norris Farm is centred around a stone built, two storey farmhouse with a single storey addition which contains the kitchen and utility room. Taken together these elements form two sides of a courtyard, the third side of which is a converted barn. This latter building, known as 'Little Norris', is also constructed of stone and is used for holiday lettings. The grounds of the farmhouse contain a modern, single storey studio/office and an open span agricultural barn, suitable for parking or storage. The orientation of the buildings is generally towards the east (away from Newpark Stables) with views over fields and the nearby village of Diptford. However, there are some windows in the western elevations and the master bedroom on the first floor looks out over the applicants' field, as do the windows in the ground floor kitchen, dining and utility rooms. The gardens wrap around the farmhouse but the ground level on the west side is higher than the ground floor of the farmhouse that it abuts.

15. This difference in levels has enabled the construction of a small stone and timber conservatory adjoining the master bedroom at first floor level with seven steps down from its external doors to the lawn. Although modest in size (2.44 x 2.13 metres) there is enough room in this conservatory for two full sized chairs.

16. The boundary between the Farm and the applicants' field is delineated by a Devon bank. This is a raised hedgerow, the sides of which have been reinforced with dry stone walling;

this example is about a metre in height and a little wider at its base, with hedge plants on top. Depending on the preference of the owner the whole bank could be left to grow up to a height of 3 metres or more. We will say more about this boundary later in the decision.

17. Mr and Mrs Collins purchased Newpark Stables and the adjoining field in 2019. Their planning application for the manège was submitted on 28 October 2019 and was objected to by Mr and Mrs Howell. Planning permission was granted on 16 January 2020.

18. The topography of the property is such that the highest point of the field is about halfway along the western boundary where it adjoins the road. The proposed site for the manège is at the higher end of the field, as it slopes towards the southern boundary. To create a level surface for the manège the land will need to be excavated at the western and northern ends and built up significantly at the southern and eastern ends. The surface of the manège on the eastern side is intended to be about 3 metres above the existing surface of the field and it will be supported by an earthwork embankment. The manège will be 40 metres long by 30 metres wide giving it a surface area of 0.12 hectares or 0.3 acres.

19. The local planning authority were mindful of the possible impact of the manège on the surrounding Area of Outstanding Natural Beauty. In granting consent, they imposed a number of conditions to mitigate the effect of the proposed development on the setting. A hard and soft Landscape Scheme was to be approved by the Authority before development could commence. The Scheme was to include a concept statement explaining how the proposed landscape treatment would conserve and enhance the special qualities of the AONB and respond to the landscape character of the area.

20. Details of earthworks, materials, heights and details of fencing and other boundary treatments were to be supplied, together with details of the proposed tree, hedge and shrub planting and management to ensure adequate screening of the ménage. All elements of the Landscape Scheme were to be implemented within the first planting season and replaced, if necessary, within a period of five years from the date of the planting. The stated reason for these landscaping conditions was the interest of public amenity and the conservation and enhancement of the local landscape character and the natural beauty of the AONB, taking account of the particular landscape characteristics of the site and its setting, in accordance with Development Plan Policies.

21. The Landscape Plan provided by the applicants with their application for planning permission described the existing setting and provided a summary of the proposed planting to mitigate the impact of the manège. Its objective was said to be to enhance the local landscape whilst maintaining the distinctive characteristics of irregular field patterns and small wooded features. The plan noted that the site of the manège is on a sparsely wooded plateau with limited visibility from local lanes. It suggested that limited groundwork would be required and that minor impacts would be mitigated through new tree and hedgerow planting with infill copse planting to the south east between the manège

and the existing boundary hedgerows. Tree planting will be informal to reflect the local setting. Specifically, an 'L' shaped hedgerow of hazel, hawthorn, blackthorn, spindle and holly will be grown at the base of the embankment around the eastern side of the manège. The plants will be 1.2 to 1.5 metres tall at planting and the intention is that they should provide full screening in three to four years. The hedgerow is to be interspersed with groups of oaks with girths of 20-25 centimetres which will be three to four metres high when planted. Two new areas of copse planting will be situated between the manège and the southern boundary and will comprise oak, hazel and hawthorn. These plants will initially be 1.2 to 1.5 metres tall.

22. In giving planning consent the Council stated that the manège should only be used by the owners of the Stables for their personal use, and not for any commercial purpose. It also imposed a condition that there should be no external lighting.

The statutory provisions

23. Section 84(1) of the Law of Property Act 1925 gives the Upper Tribunal power to discharge or modify any restriction on the use of freehold land on being satisfied of certain conditions. In their application the applicants in this case relied on grounds (aa) and (c), but Mr Francis abandoned ground (c) in opening.

24. Condition (aa) of section 84(1) is satisfied where it is shown that the continued existence of the restriction would impede some reasonable use of the land for public or private purposes or that it would do so unless modified. By section 84(1A), in a case where condition (aa) is relied on, the Tribunal may discharge or modify the restriction if it is satisfied that, in impeding the suggested use, the restriction either 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 the loss or disadvantage (if any) which that person will suffer from the discharge or modification.

25. In determining whether the requirements of sub-section (1A) are satisfied, and whether a restriction ought to be discharged or modified, the Tribunal is required by sub-section (1B) to take into account the development plan and any declared or ascertainable pattern for the grant or refusal of planning permissions in the area, as well as "the period at which and context in which the restriction was created or imposed and any other material circumstances."

26. The Tribunal may also direct the payment of compensation to any person entitled to the benefit of the restriction to make up for any loss or disadvantage suffered by that person as a result of the discharge or modification, 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. If the applicant agrees, the Tribunal may also impose some additional restriction on the land at the same time as discharging the original restriction.

The Application

27. The application was made primarily under ground (aa) but also under ground (c). The applicants' stated objective was that the planning permission could be put into effect. It is now common ground between the parties that not only would the construction of the manège and its use be a breach of the Covenant, but the current use of the field for exercising and training horses already breaches the Covenant.

28. It is agreed by the applicants that the Covenant secures practical benefits for Mr and Mrs Howell by preventing the construction and use of the manège. For their part, Mr and Mrs Howell agree that the proposed use of the field is reasonable. It is also common ground that the proposed use would be impeded by the Covenant unless it is modified.

29. The issues in the reference are therefore whether in impeding the proposed use of the field for the construction of the manège and its use, the Covenant secures for Mr and Mrs Howell some "practical benefit of substantial value or advantage".

The Objections

30. Mr and Mrs Howell's objections were manifold and included the spoiling of westerly views from their house and garden, damage to the overall amenity and character of the Farm, intrusion from noise and an adverse impact on privacy. We will examine each of these aspects when we consider the factual and expert evidence.

Evidence of the Applicants

31. Mr and Mrs Collins purchased Newpark Stables in March 2019. They were not aware of the full implications of the Covenant at the time of the purchase. The field and stables had the benefit of what Mr Collins described as "full planning permission for equestrian use", which had been granted in 2011 and he assumed that would be enough to enable the proposed development once planning permission had been obtained (closer inspection would have revealed that the 2011 planning permission restricted the equestrian use of the field and stables to personal use by the owner). The stables were built and the field had been used for equestrian purposes since 2011 and Mr and Mrs Collins continued that use after their acquisition of the property. Mr Collins pointed out that no action had been taken by Mr and Mrs Howell against the previous owners whom he said had parked vehicles and horse boxes on the field, installed fenced paddocks and used them for the training and exercising of horses.

32. Mr and Mrs Collins' adult daughter, Shana, competes in equestrian events involving jumping and dressage and their motivation for the construction of the manège was to provide a safe environment for her to train and exercise her own horses. Mr Collins explained that during wet weather the sloping Field becomes muddy, and it can be

dangerous for horses to be exercised in such conditions. In addition, horses exposed to muddy conditions can suffer debilitating conditions such as hoof rot.

33. At the hearing Mr Collins admitted that after acquiring the property, he and his wife had assisted their daughter briefly to run a livery business from the Stables in breach of both the 2011 Planning Permission and the Covenant. Once they had been made aware of the breach the livery horses were rehoused elsewhere and the activity ceased.

34. Ms Shana Collins explained that three of her own horses were currently kept at Newpark Stables and that had been the position for the last twelve months. During the winter months the horses needed to be 'turned out' into the fields during the day and were stabled at night. The 'turning out' occurred first thing in the morning. Ms Collins explained that regardless of the season, the manège would be used three or four times a week for about an hour and that training would only occur during daylight hours. In cross-examination she admitted that the usage could be more extensive than simply for her personal use and that, in theory, there was sufficient space for seven or eight horses to be kept on site at any given time (we did not understand her to accept that she might have any such intention, or that any responsible person would, merely that the theoretical capacity of the stables and field shelters would have permitted more intensive use than she contemplated). She did not think her use of the manège would be particularly noisy. It was not her intention to train horses in dressage to music and she would use plastic poles for jumps which produced less noise when they were dislodged. Without creating her own manège at the Stables, the nearest alternative arena for training was a 45-minute hack away down very narrow lanes which meant it could not be reached with a horse box.

Evidence of the Objectors

35. Mr and Mrs Howell purchased Higher Norris Farm from the Dawes family in 2003. The vendors retained the field as we have described, and it was subsequently sold a number of times before one owner obtained planning permission for the stables in 2011. Mr and Mrs Howell became aware of the latest planning application in the middle of November 2019 at about the same time it came to their attention that a commercial livery operation was being run from the stables. Promotional material on Facebook showed that Shana Collins was promoting the planned manège as a facility that would be available to livery customers. Mr and Mrs Howell also noticed a horse box and a horse transporter lorry parked in the field for lengthy periods. All of these activities were, in the view of Mr and Mrs Howell, in breach of the Covenant.

36. Mr Howell described the many benefits which the Covenant secured. On sunny evenings from autumn through to the spring the couple liked to relax in the conservatory and enjoy the view to the west. The imposition of the manège on a largely natural and empty landscape would detrimentally and dramatically alter the view, severely impacting their enjoyment. In addition, the conservatory is used by Mrs Howell for her hobbies and the adjoining garden is private space used when there are paying guests in the Little Norris

holiday accommodation. Mr and Mrs Howell regarded these benefits as irreplaceable and simply wanted to live in peace and privacy, surrounded by countryside in a tranquil setting interrupted only by occasional rural noise. The surrounding fields, they said, were all used for the grazing of sheep or cattle and for growing winter fodder.

37. Mr and Mrs Howell also have concerns about noise from riders, instructors, and spectators at the manège. They dispute the degree to which effective screening is provided by the hedges on their own boundary. Mr Howell said that he has regularly cut back the hedge on the Devon bank separating the western part of the garden from the applicants' field. Mr Francis suggested that this practice appeared to be at odds with the couple's suggested desire for privacy and had been done with the sole intention of opening up the view of the manège with the Tribunal's visit in mind. Mr Howell disputed that allegation and explained that every year since he and his wife had purchased the farm he had limited the growth of the hedge adjoining the western side of the garden to enhance the view across the open field towards the hedgerow on the horizon. That was the view which the couple enjoyed from the conservatory and to a lesser extent from other rooms in the house and there was nothing sinister. Mr Howell was a straightforward witness who has a particular interest in the conservation of the countryside and we accept his evidence concerning his own management of the boundary over a number of years and his reasons for doing so.

Expert Evidence

38. Mr Huntington-Whiteley is a director of Strutt and Parker based in its Exeter office. Mr Townsend is a director at Savills Exeter office. Both experts have extensive experience in providing valuation advice in connection with restrictive covenants. They approached the application under ground (aa) by considering the discrete questions on which they disagreed. We have already recorded the consensus that the proposed construction and use of the manège is a reasonable use of the property, and that it is impeded by the Covenant. We need say nothing more on those two matters. The third question is whether by impeding that use the Covenant secures practical benefits to the respondent?

39. On behalf of the applicants, Mr Huntington-Whiteley identified the views across the applicants' field from the Farm as being the primary practical benefit of the Covenant. He noted that the ownership of the Devon bank which was overlooked by the conservatory was unclear and suggested that if it belonged to Mr and Mrs Collins, they could allow it to grow to an extent that the visibility across the Field would be substantially diminished. In cross examination he acknowledged that it might take ten years for the Devon bank to reach 3 metres in height. He also thought that if the landscaping scheme required by the planning permission is implemented, the manège and those using it would be invisible from the Farm. At the hearing Mr Huntington-Whiteley said he thought that the orientation of the house was to the south east and away from the field. He considered that the westerly view was very subsidiary to the enjoyment of the house, although he agreed with Mr Lees' contention that the view from the Farm would change and that the landscape view would be shortened were the manège to be built. He also agreed with Mr Lees that the Covenant secured a sense of privacy and a peaceful setting. He had

considered other uses to which the field could be put without breaching the Covenant, including the growing of a tall arable crop such as maize or miscanthus. Whilst acknowledging that such a crop would be harvested annually, he thought that if either crop were to be grow up to the boundary of the field it would form a permanent barrier obscuring any westerly view. The farm machinery used in such agricultural processes would, in his view, be more intrusive than the use of the manège. He conceded in cross examination that miscanthus is not grown in this part of Devon. Taking all aspects into account he concluded that impeding the proposed modification does secure minor practical benefits to Mr and Mrs Howell.

40. For the objectors, Mr Townsend also focussed on the views from the Farm. He thought the proposed manège would very seriously affect the views from the kitchen and the conservatory because the post and rail fence on top of the earthwork embankment at the eastern end of the manège would be approximately 5 metres above the existing ground level and thereby alter the skyline. He thought it important to differentiate open countryside and countryside, the former being descriptive of the current circumstances and the latter related to what was proposed and constituting a fundamental change. He identified privacy and tranquillity as attributes that the Covenant protected and thought that Mr and Mrs Howell's privacy would be compromised by riders being able to look directly into their property from the elevated position of the manège. He also believed that intrusion from noise was an additional problem that the Covenant secured against. In particular he thought that horses, riders, instructors, spectators and children would cause disturbance.

41. The next matter to be considered by the experts was whether the benefits which the Covenant secured were of substantial value or advantage.

42. Mr Huntington-Whiteley dealt with this point summarily; he thought that the only benefit was the view from the Farm to the stables, but it was not of substantial value or advantage and could be compensated for financially.

43. Mr Townsend's conclusion was that the proposed modifications involved development and intensification of use of the burdened land which in real terms would severely diminish the practical benefits he had identified. This divergence in opinion was reflected in the experts' consideration of the final question, namely, assuming the benefits secured by the Covenant were not of substantial value or advantage, would money be an adequate compensation for their loss?

44. Before we deal with this aspect it should be noted that the two experts were almost in agreement about the current value of the Farm with the benefit of the Covenant. Mr Huntington-Whiteley had arrived at a figure of £1,200,000 and Mr Townsend's opinion of value was £1,250,000. Neither thought that the other's valuation was outside a realistic valuation range.

45. We will deal with Mr Huntington-Whiteley's view first as he considered money would be provide adequate compensation in this case. He assumed a value for the Farm at the mid-point between his own and Mr Townsend's valuations, namely £1,225,000. He thought that the ownership of the Devon bank between the two properties would determine the level of impact. His view was that if the bank was owned by applicants, then there was no loss of value. Should the objectors own the bank they could leave it to grow to form a barrier and consequently would feel 'boxed in'. In that scenario the manège would be largely obscured and its construction would constitute a very small loss of amenity. He believed that this outcome would only arise if the objector owned the Devon bank but it seems to us that it would also apply if the applicants had control. He quantified the diminution in value at 1% of market value, namely £12,250. In arriving at this figure Mr Huntington-Whitely said that in the current strong market for properties such as the Farm, buyers tended to overlook shortcomings. In a weak market, uncommitted buyers might take a different view. When questioned by the Tribunal about the valuation methodology he had deployed to arrive at his adjustment he said it was simply a question of valuer judgement and conceded that it was entirely plausible that the figure could be 2 or even 3%. The Farm, he said, was not worth more with the Covenant in place. This conclusion appeared to us to be inconsistent with his view that the modification of the covenant would result in a decline in value.

46. Mr Townsend's report contained a commentary on market conditions in the South Hams area and a list of attributes that he said attracted buyers including privacy, remoteness, tranquillity, lack of near neighbours, the ability to create a home office and good broadband connectivity. He thought that the Farm offered all these attributes and that the potential pool of purchasers would be dramatically reduced if the manège were to be built and used to train horses. A significant impact on value would result. He was unable to find any evidence of directly comparable transactions but he had regard to evidence from Part 1 claims under the Compulsory Purchase Code and to the levels of diminution in value that have resulted from the imposition of private or public rights of way in close proximity to residential properties. None of this information was included in his report. At the hearing he gave an example of the impact of the construction and use of the Wray Valley Trail where a house owner was awarded 17% of the value of the house in compensation. Unfortunately, nothing was provided to corroborate this information and it did not appear to have been shared with Mr Huntington-Whiteley prior to the hearing. Mr Townsend shed no light on the thought processes that led to his conclusion that the diminution at the Farm was in the range 7-10%, nor why he had selected a final figure at the top end of that range. His conclusion was that modification of the Covenant in the manner sought would lead to a decline in value of the Farm of £125,000, a figure he regarded as substantial.

Discussion and Determination

47. In closing, Mr Francis remarked that this was a difficult and unusual case which was without parallel in his experience, in that the development being proposed did not involve the construction of a substantial building or part of a building. We agree that the

application is unusual, but as with most cases where modification is sought the issues are readily identifiable. The practical benefits secured by the restrictions are, in no particular order of importance, preservation of the views from the Farm over the field, privacy, tranquillity and a sense of openness, light and space.

48. The views are perhaps the most contentious of these issues. The ownership of the Devon bank between the Farm and the field is a matter where clarity is lacking. Mr Howell treats it as his own and says that he has chopped back the growth on a regular basis to open up the view across the field. We have not been invited by either party to reach a conclusion about ownership of the Devon bank and can only take the facts as we find them. There is therefore no reason to assume that Mr Howell will not be able to continue managing the bank as he has done in the past. At the time of our visit the hedge on top of the bank had been cut back quite severely but only in the section which afforded views from the conservatory towards the site of the proposed manège from the farmhouse and western part of the garden. We have no information about the dates on which this activity had previously been carried out or photographs which showed decisively how the hedge had looked in recent years.

49. As a consequence of the hedge cutting, the conservatory and, to a lesser extent, certain parts of the garden, have views over the field as far as the western boundary, with the boundary hedge currently representing the horizon. Although we did not see it, we have no doubt that in the summer months the sun setting over the field presents a pleasing vista. That the construction of the manège will interrupt that view is beyond dispute but there is no consensus about the extent to which it will be disrupted or the degree to which the screening will mitigate the harm. We do not believe the intended planting and screening will be sufficient to hide the manège entirely and, indeed, that may not be the intention. As Mr Lees pointed out the screening will take time to mature, and might not flourish at all, or be cut back by Mr Collins or his successors. It will only be in leaf for six months of the year. The construction of the manège on top of a substantial earthwork embankment will significantly alter the landscape in the immediate vicinity of the Farm by creating a feature in plain sight that will be obviously man-made. It will represent a substantial imposition on the landscape, screening notwithstanding. There is no doubt that such a large, man-made structure and its associated landscaping will affect the view from the conservatory and from the garden (to a much lesser extent from the rooms on the ground floor, where the windows are very small and inconveniently located). The skyline viewed from the Farm would be permanently altered and not for the better.

50. We are not convinced that it would be possible to grow maize in the Field as Mr Huntington-Whiteley suggested (he discounted his other suggestion of miscanthus). We heard no evidence about whether the crop would be financially viable, if the ground conditions were suitable or about the ease or otherwise of getting machinery into the field. Mr Huntington-Whiteley was right to consider what other uses might be made of the field without the need to modify the Covenant, but any suggested alternative use would only be relevant to the issues if it was a practical possibility. We are not satisfied that the

growing of maize is a practical alternative use of the field, and we discount that line of argument.

51. Issues of privacy are more difficult to judge. The Farm is set back a considerable distance from the lane that provides access to it and is not overlooked by residential properties nearby. Mr and Mrs Howell sometimes have paying guests staying in their holiday home, but they are in full control of that situation and could discontinue it if they pleased. On the other hand, even grazing animals will always require a degree of husbandry and it is inevitable that there will be some overlooking from the field into the Farm especially given the topography. Riders in the proposed manège will be able to look down the field into the garden and conservatory but they will be 85 metres away and in time the planted screen will ensure a degree of privacy. They are likely to be present far more often than those simply tending grazing animals. In our view there will be a loss of privacy, but if that were the only impact of the proposal it would not be substantial or significant.

52. Tranquillity should not in our view be equated solely with peacefulness. It encompasses a sense of calmness and an absence of activity, especially repetitive activity. We are in no doubt that the use of the manège will involve an increase in noise, from those riding, instructing or spectating, but also from the horses themselves. There will be an inevitable increase of activity in the Field and we think that the character of the setting will change from one which is currently wholly bucolic to one which is busier, more managed and less tranquil.

53. The degree to which the sense of openness, light and space will change was a matter of dispute in the evidence we heard. We have already commented about aspects of sunlight allied to the westerly views. The quality and quantum of ambient light reaching the western facing parts of the Farm was mentioned but was not the subject of expert opinion evidence and we see no reason why it would be affected by the proposed manège. The degree to which the sense of openness would be truncated is subjective and should not be exaggerated, but our conclusion is that the manège and the works associated with it will alter the outlook and create a sense that the landscape, in one direction at least, is not in the current pastoral state characteristic of the area but features instead an atypical equestrian structure.

54. The purpose of the Covenant was to give Mr and Mrs Howell some degree of control over the activities that took place in the fields surrounding their home. The field was not to be in their ownership, unlike the land to the south and east, and it was important to them to ensure that the attributes that they sought in purchasing the Farm were preserved. As Mr Lees noted, the Covenant provides confidence that these are not at risk. We are mindful that the Covenant was imposed in 2003 and that the objectors are the original beneficiaries. It seems to us that it still achieves what it set out do at its inception, and the fact that it continues to provide the benefit which the objectors themselves bargained for is a material circumstance to which we are entitled to have regard. We agree with Mr Townsend that the practical benefits the Covenant secures are of substantial advantage and value and that its modification would diminish the rural setting which underlies the

identity of the Farm. The consequences of that diminution for the value of the Farm is not easy to assess, and its impact in strictly financial terms would depend on the strength of the market at the time of any sale. The preservation of the current rural setting, irrespective of fluctuations in market value, is of substantial advantage to the objectors. The boundary between a benefit of substantial value and a lesser benefit does not need to be defined, but we are inclined to believe that Mr Townsend's assessment is closer to the true level of impact were the manège to be built.

55. We therefore conclude that neither of the grounds of application has been made out.

Martin Rodger QC
Deputy Chamber President

Mark Higgin FRICS
Member

14 March 2022

Right of appeal

Any party to this case 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.