



LP/84/2005

LANDS TRIBUNAL ACT 1949

RESTRICTIVE COVENANTS – modification – unopposed application – restriction limiting one dwellinghouse per plot modified so as to permit additional bungalow on part each of two plots – grounds (aa) and (c)

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

BY

BRAY ENTERPRISES LIMITED

**Re: Land at rear of 111 & 113 Gates Green Road,
West Wickham, BR4 9DF**

Before: The President

**Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 3 January 2008**

Marie-Claire Bleasdale for the applicant, instructed by Ormerods, solicitors of Croydon

© CROWN COPYRIGHT 2008

DECISION

1. This is an unopposed application to discharge or alternatively to modify a restrictive covenant relating to land at the rear of 111 and 113 Gates Green Road, West Wickham BR4 9DF. It lies within what is known as the Hayes Park Estate, which was developed in the 1930s. The restriction, in a transfer of 24 August 1934 of the application land together with land now known as 115-123 Gates Green Road, restricted the use of what were then building plots as follows:

“That the said plots shall be used only for the purpose of the erection of one dwellinghouse on each plot and which shall not be used for the purpose other than private dwellinghouse each house to front Gate Green Road.”

2. The plots were subsequently developed, so that there is at present a dwelling-house on each of what were plots 111 and 113 Gates Green Road. Planning permission was granted on 28 October 2003 for the erection of a detached bungalow on the application land, and that permission was subsequently modified in terms of its conditions on appeal. The applicant now seeks the discharge or modification of the restriction to enable this dwelling to be built. The application was made on grounds (aa), (b) and (c).

3. Objections were lodged by the owners of 19 nearby properties. Of these 7 were withdrawn and the applicant did not accept the entitlement of the other 12 to object. These 12 objectors were directed to serve copies of their title deeds so that the question of their entitlement could be determined, but they failed to do so, and on 18 September 2007 I ordered that they should not be admitted to object to the application. The application is accordingly, as I have said, unopposed.

4. Having heard Ms Marie-Claire Bleasdale on behalf of the applicant and having read the expert report of James Alexander Turnbull FRICS of White & Sons of Dorking, Surrey, I am satisfied that the application should succeed on grounds (aa) and (c). The planning permission granted is for a bungalow that would, I accept, be in character with those on either side of it, nos 16 and 16a Lawrence Road and with the area in general. The site is less deep than the sites of adjacent houses, but its size is comparable with those of other plots. I am satisfied that the development as proposed would be a reasonable user of the land. Mr Turnbull in his report expresses the view, which I accept, that those potentially affected by the development would be the owners of nos 16 and 16a. But the owners of number 16 no longer have the benefit of the restriction, having released it by deed, and the owner of no 16a does not have the benefit as that site formed part of the burdened land in the transfer of 24 August 1934.

5. Ms Bleasdale submits, and this appears to me to be the case, that there is no building scheme here. In these circumstances, and in the light of there being no outstanding objections, I accept the applicant's case that, if the restriction were modified so as to enable the permitted bungalow to be built, this would not injure any of those who might be entitled to the benefit of

the restriction. Ground (c), and therefore ground (aa), are made out. It is unnecessary for me to determine ground (b).

6. The restriction will be modified so as to permit the erection on the application land of one bungalow in accordance with the planning permission of 28 October 2003 granted by Bromley London Borough Council under reference DC/03/02902/FULL1 as modified on appeal on 4 April 2005 under reference: APP/G51AO/A/04/1164947.

Dated 3 January 2008

George Bartlett QC, President