

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2019] UKUT 156 (LC)
Case No: LP/15/2018**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

***RESTRICTIVE COVENANTS - DISCHARGE – MODIFICATION – ENTITLEMENT TO
BENEFIT – PRELIMINARY ISSUE***

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

Between:

MORTON DEVELOPMENTS LIMITED

Applicant

and

**(1) EDWARD BAILEY
(2) KRYSTYNA JOLANTA BROWN**

Objectors

**Re: 6 Links Way,
Flackwell Heath,
High Wycombe,
HP10 9LZ**

Judge Elizabeth Cooke, sitting as a Deputy Judge of the Upper Tribunal

Preliminary determination on written representations

Introduction

1. The applicant, Morton Developments Ltd, is the registered proprietor of 6 Links Way, Flackwell Heath, High Wycombe (“the property”). It has planning permission to build two detached four-bedroomed houses there in place of the existing single detached house.
2. The registered title to the property refers to restrictive covenants imposed by conveyances dated 29 September 1921, 26 April 1937 and 27 June 1961, whose terms would prevent the development. The Applicant applied to the Tribunal on 28 August 2018 for the discharge or modification of those covenants so that the development can take place.
3. The Applicant has given notice to all the neighbouring properties as required by the Tribunal and two objections have been made, one by Mrs Krystyna Brown of 4 Links Way (next door to the property), and one by Mr Edward Bailey of 17 Links Way. They are the only objectors, and their entitlement to object has been in dispute, and it has been agreed that the Tribunal shall make a decision without a hearing as to their entitlement.

Mrs Brown’s objection

4. I can deal with Mrs Brown’s position swiftly. I said above that her entitlement “has been in dispute” because there has been some uncertainty as to the extent of her claim to be entitled to object. However, the latest correspondence from the parties resolves that. In their further submissions dated 10 April 2019 the Applicant accepts that Mrs Brown is entitled to the benefit of the 1961 covenants, but not to the benefit of the 1921 or 1937 covenants. In her response dated 17th April 2019 Mrs Brown says that she is unable to advance any basis on which she is entitled to the benefit of the 1921 covenants, and does not seek to argue that she is entitled to the benefit of the 1937 covenants. She says that she relies solely on her entitlement to the benefit of the 1961 covenants.
5. Accordingly there is no dispute that Mrs Brown is to be admitted as an objector on the basis of her entitlement to the benefit of the 1961 covenants, and I so order. I observe that my examination of the available documents of title indicates that that is the correct position. 4 Links Way is itself subject to the 1921 covenants and therefore was not part of the Vendor’s benefiting land; the position so far as the 1937 conveyance is concerned is undiscoverable, because no copy of the conveyance is available; but 4 Links Way was clearly part of the Vendor’s benefiting land in the 1961 conveyance.

Mr Bailey's objection

6. Mr Bailey's position is rather different, and to explain it I have to consider the title to number 6 and other properties in Links Way. The parties have helpfully provided copies of the registered titles to numbers 2, 4, 6, 9 and 17 Links Way, and a couple of the pre-registration deeds, and from them it is possible to piece together the story of the relevant titles.

7. The conveyance of 29 September 1921 was a sale of land on what is now Links Way to GE Wallis 7 Sons Ltd. It appears from the plan that the land sold included the land that became numbers 2, 4, 6, 9 and 17, along with several others, although the land is not marked out in lots. Consistent with that, the registered titles to numbers 2, 4, 6 and 9 indicate that they are subject to the restrictive covenants imposed by that conveyance.

8. Number 17 is on the other side of Links Way from numbers 2, 4, and 6 and a few houses down the road from them and from number 9. The register of title to number 17 makes no reference to the 1921 conveyance. However, if my reading of the plan is correct number 17 was originally subject to those covenants. Accordingly Mr Bailey may be or may have been subject to the 1921 covenants but did not have the benefit of them.

9. The register of title to number 17 then indicates that it is subject to covenants imposed on the purchaser "of land in this title and other land" dated 20 January 1930. At that date therefore GE Wallis & Sons Ltd parted with number 17. The title to number 17 diverges at this point from that of numbers 2, 4, 6 and 9, because there is no mention of that 1930 conveyance on the title to any of those properties.

10. The conveyance dated 26 April 1937 was a sale by GE Wallis & Sons Ltd to Doris Jackson. No copy of the 1937 conveyance exists. But, as I say, seven years earlier GE Wallis & Sons Ltd had sold what is now number 17. Therefore number 17 cannot have formed part of the vendor's land that benefited from covenants imposed in the 1937 conveyance.

11. The 1961 conveyance was from Drewglen Developments Ltd to a Mr and Mrs Birch, and relates only to number 6. The plan to that conveyance (of which we have a copy) shows that while number 6 was sold. Number 4 was retained (which is why it is clear that number 4 has the benefit of the 1961 covenants). It is not known how title passed from GE Wallis & Sons Ltd to Drewglen Developments Ltd. But that is immaterial for the present purposes, because it is clear that number 17 was not part of the land retained by the vendor in the 1961 conveyance and therefore did not take the benefit of the covenants imposed on number 6.

12. Mr Bailey therefore does not hold the benefit of any of the covenants which the Applicant seeks to have discharged or modified and cannot be admitted as an objector.

Judge Elizabeth Cooke
10 May 2019