

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2019] UKUT 70 (LC)
Case No: LP/1/2018**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RESTRICTIVE COVENANTS – modification – covenants restricting development, use and density to three detached private dwellings – modification sought to permit 83-bed care home – application dismissed - grounds (aa) and (c), s.84(1), Law of Property Act 1925

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

Between:

**SIGNATURE OF ST ALBANS (PROPERTY)
GUERNSEY LIMITED**

Applicant

and

**STEPHEN PETER WRAGG and others
(owners and occupiers of land at London Road,
Mile House Lane and New House Park, St Albans)**

Objectors

**Re: 270-274 London Road,
St Albans,
Hertfordshire AL1 1HY**

Martin Rodger QC, Deputy Chamber President and P D McCrea FRICS

**Royal Courts of Justice
15-17 January 2019**

*Martin Hutchings QC, instructed by Hill Dickinson, solicitors, for the applicant
Patrick Rolfe, instructed by Child & Child, solicitors, for the objectors*

© CROWN COPYRIGHT 2019

The following case is referred to in this decision:

Signature of St Albans (Property) Guernsey Ltd v Wragg [2017] EWHC 2352

Introduction

1. The Applicant ('Signature') is an established provider of high-quality private care homes for the elderly. It wishes to build and operate a new care home at a site at 270 – 274 London Road, St Albans which it acquired between November 2016 and April 2017 following the grant of planning permission on appeal on 24 May 2016. The planning permission allows the construction of the care home and associated landscaped gardens and 36 on-site parking spaces for visitors and staff.
2. It is intended the care home will be of about 62,000 sq ft and that the building footprint will occupy approximately 36% of the 1.5 acre site. It will accommodate about 80 residents in 83 suites and studios and will employ about 70 full-time equivalent staff. The building itself will be part two storey and part three storey and will include a specialist wing providing care for residents affected by dementia. The average age of the residents of Signature's other care homes is about 85 and their average stay is less than 2.5 years.
3. Signature is prevented from implementing the planning permission and building its new care home by covenants imposed in a number of conveyances of parts of the site in 1910 which restrict the use and density of development of the site and which benefit the objectors who are listed in the appendix to this decision. The objectors are the owners of 13 of the 18 detached houses adjoining or close to Signature's site comprising Nos. 266 and 268 London Road, Nos. 5, 7, 9 and 11 Mile House Lane, and Nos. 1, 3, 3A, 5, 7, 13 and 15 New House Park.
4. In September 2017 Signature failed in proceedings in the High Court in which it sought a declaration against the objectors (and others) that the restrictive covenants were unenforceable (*Signature of St Albans (Property) Guernsey Ltd v Wragg* [2017] EWHC 2352).
5. Undaunted, on 9 January 2018 Signature issued this application under section 84(1), Law of Property Act 1925, by which it seeks the modification of the covenants sufficiently to enable it to implement the planning permission and undertake its proposed business from the site. Reliance is placed on grounds (aa) and (c), to which we will refer shortly.
6. At the hearing of the application Signature was represented by Mr Martin Hutchings QC, and the objectors by Mr Patrick Rolfe. Evidence was given on behalf of Signature by Mr Wayne Pryce, its Development and Construction Director, Mr Stephen Hynds, of PRP, its architects, and Mr Adrian Judd, also of PRP, its landscape architect. Evidence was also given by a number of the objectors (whose addresses are listed in the appendix) namely: Mrs Emma Antcliffe, Mrs Esther Wragg, Mrs Elaine Deyes, Mrs Stephanie Rowledge, Mr Mark Behan, Mrs Anne Blackburn, Mr Andrew Lovett, Mr Delwhar Hussain, Mrs Geraldine Barnett, and Mr Phillip Burrows, the tenant of objector Mr Stuart Chappell. The objectors' properties are shown on the plan on page 5.
7. Expert evidence was given by Mr Robert May (on amenity issues) and Mr Ruaraidh Adams-Cairns (on valuation) on behalf of Signature, and by Dr Christopher Miele (amenity) and Mr Mark Whitfield (valuation) on behalf of the objectors. We are grateful to all those who participated in the hearing for their assistance.

8. After the hearing, on 18 January 2019, we undertook an accompanied inspection of the site and of the properties belonging to most of the objectors. We also familiarised ourselves with the immediate neighbourhood.

The relevant statutory provisions

9. The application is made under grounds (aa) and (c) of section 84(1) of the 1925 Act.

10. Ground (aa) requires that, in the circumstances described in subsection (1A), the continued existence of the restriction must impede some reasonable use of the land for public or private purposes. Satisfaction of subsection (1A) is also essential to a successful application based on ground (aa); it provides as follows:

- (1A) Subsection (1)(aa) above authorises the discharge or modification of a restriction by reference to its impeding some reasonable user of land in any case in which the Upper Tribunal is satisfied that the restriction, in impeding that user, either —
- (a) does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them; or
 - (b) is contrary to the public interest,
- and that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the discharge or modification.

11. When considering whether sub-section (1A) is satisfied and a restriction ought to be discharged or modified, the Tribunal is required to take into account the development plan and any declared or ascertainable pattern for the grant or refusal of planning permission in the area (section 84(1B)).

12. Ground (c) permits the Tribunal to make an order modifying or discharging a restriction where it is satisfied that the proposed modification will not injure the person entitled to the benefit of the restriction.

Background

13. The Signature site, together with land to the west, south and east originally formed part of a larger estate belonging to Mr Henry Jenkin Gotto, who died on 20 January 1892. Mr Gotto's family firm, Parkins & Gotto, were high class Victorian stationers and manufacturers of an assortment of fashionable items including travelling cases, writing desks and gaming tokens which they retailed to polite London society from premises in Oxford Street. His estate in St Albans included a rectangular piece of land fronting London Road to the north-east side, Mile House Lane to the north-west, and New House Park to the south-west.

14. The trustees of Mr Gotto's will eventually sold his land in 1910. They conveyed five rectangular parcels one after another, each intended for the building of a small number of substantial detached residences. These parcels were referred to in the various conveyances, and in these proceedings, as the Blue, Pink, Green, Yellow and Violet Land. They are shown by their respective

initials on a plan based on the 1:2500 Ordnance Survey map which is reproduced below (orientated to face north):



15. Nos. 270 and 272 London Road, which form part of the Signature site, comprise the Pink Land, together with part of the Violet Land which was acquired to extend the rear gardens of these properties. No. 274 is the narrowest of the three plots, lying to the eastern end of the site, and was originally part of the Blue Land. To the south-east of No. 274 lies the remainder of the Blue Land which is now the site of a block of flats known as Pine Ridge built in the late 1980s or early 1990s.

16. The detached house at 270 London Road is now a ruin, not having been lived in for 10 years. No. 272 is also vacant and derelict. The house at No. 274 is the only one of the three dwellings on the site which is currently occupied. All three houses are now owned by Signature.

17. The objectors are the freehold owners of some of the detached houses constructed at various times on the Green, Yellow and Violet Land, as shown on the plan.

The covenants

18. The covenants restricting the use of the Signature site were imposed by two conveyances. The Blue Land, including the site of what is now 274 London Road, is the subject of a restriction contained in a conveyance of 27 May 1910 made between Christopher Lamb Gotto and others as

vendors and Henry Cecil Allen Randall as purchaser ('the May 1910 Conveyance'). The terms of the May 1910 Conveyance are referred to in recitals to a second conveyance, of 2 July 1910, by which the Pink Land was sold by the same vendors to Fredrick John Preece ('the July 1910 Conveyance') subject to restrictions in materially identical terms.

19. The Yellow and Green Land were the subject of a single conveyance of 16 November 1910 between the same vendors and Francis Alfred Giffen which again contained restrictions to the same effect.

20. There is no dispute that the benefit of the restrictions in the May 1910 Conveyance and the July 1910 Conveyance is enjoyed by the objectors. We can therefore restrict our reference to the covenants to their operative terms. In each case these were contained in the First Schedule to the relevant conveyance and comprised a covenant by the Purchaser for himself and his heirs and assigns to the following effect:

- (a) that no building (other than bay windows or other architectural features) would be set up in front of a building line shown on the conveyance plan;
- (b) that no building would be erected on any part of the land conveyed "except as and for a private dwelling-house and the stabling offices and outbuildings thereof";
- (c) that no building erected on the land would at any time be used except as a private dwelling-house etc and that no part of the land not built upon would be used except as a garden or pleasure grounds appurtenant to a residence erected on some part of the land;
- (d) that at any time not more than two detached dwelling-houses would be erected on the each of the Blue and Pink Land, and that such houses would have a value of at least £500.

21. Schedule 2 of both the May and July 1910 Conveyances imposed a reciprocal covenant on the Vendors, their heirs and assigns for the benefit of the Purchaser and his successors that they would comply with substantially the same stipulations and restrictions in respect of their remaining land but with slightly more generous density restrictions. Not more than three detached dwelling houses were to be erected on the Green or Yellow Land and not more than four on the Violet Land. Subsequent conveyances of the remaining parcels adopted the same pattern of restrictions.

22. It is not suggested that these arrangements constituted a building scheme, but they had much the same effect. They restricted the use of each of the parcels to dwelling houses only, prohibited the construction of any building other than a dwelling house or ancillary structure, and provided for a total of not more than 14 houses in total in an area of 1.5 acres.

23. Since 1910 there has been substantial disregard of the density restrictions on each parcel other than the Signature site. The full extent of the infringements was considered in the 2017 High Court proceedings. The net effect has been that 19 detached houses and the block of 16 flats at Pine Ridge now stand on land subject to an aggregate covenanted limit of only 14 houses. Nos. 9, 11, 13 and 15 New House Park were built in breach of the vendor's density covenants. Nos. 1A and 3 New House Park and Nos. 266 and 268 London Road were also built contrary to the restrictions but non-registration of the burden of the covenants meant they were unenforceable. Whether Nos. 3A,

5 and 7 New House Park breach the density restriction is unclear and depends on whether the houses were built before the land on which they stand was first registered in 1981. The flats at Pine Ridge, adjoining No. 274 London Road, also breached the restriction to private dwelling-houses only when they were built in the late 1980s.

24. The only land where the restrictions have been fully observed is the Pink Land on which only Nos. 270 and 272 London Road have ever been constructed. The construction of No. 274 London Road was not a breach of the restrictions on the Blue Land, but the subsequent erection of Pine Ridge in 1981 was a breach of the same covenant (although presumably not by the owner of No. 274). It is also fair to say that, with the exception of Pine Ridge, the restriction on use (private dwelling houses only) has been complied with. The imposition of a building line has been respected on Mile House Lane and, rather loosely, on New House Park.

Planning

25. Planning permission for Signature's care home was obtained in May 2016 after a public inquiry at which the objectors and other local residents were professionally represented.

26. An earlier permission granted in 2013 allows the demolition of the three existing houses on the Signature site and the erection of five substantial detached houses with garages (three at the back of the site and two on the London Road frontage). This permission was partially implemented by the construction of the base of a garage and the local planning authority has accepted that it remains extant. It does not include any completion condition (i.e. it would be lawful for only some of the five houses to be built in their consented positions). In principle, therefore, it would be possible to implement the planning permission and to remain compliant with the density covenant on the Pink Land. If that were done by building the three rear houses of the five permitted it would bring development on Nos. 270, 272 and 274 London Road much closer to the boundaries with the objectors' properties in New House Park than it is currently.

27. At the public inquiry into Signature's proposal it was common ground between the local planning authority and Signature that the proposed development would not have an adverse impact on the amenity of the neighbouring properties, specifically with regard to issues raised by the objectors including privacy, outlook, noise, cooking odours and overshadowing. As the amenity experts agreed, that consensus and the planning inspector's consideration of the appeal applied the relevant principles of planning law and policy. Thus, for example, concerns about proximity were resolved by reference to the provisions of the local plan policy, which required separation distances between the development and neighbouring residential properties of at least 27 metres (a requirement comfortably exceeded). The contribution which Signature's investment would make to the local economy and the social benefits of satisfying a critical need for new accommodation for older people were also relevant planning considerations.

28. In forming a judgment on Signature's proposal, the planning inspector also had regard to the extant 2013 planning permission for five houses on the site. It was material that the proposed building would be contained roughly within the extremities of the existing and authorised buildings, and that the rear wing closest to the houses in New House Park would not be significantly more prominent than the three large detached houses that could be built as part of the 2013 planning permission. As far as the properties on Mile House Lane were concerned the inspector was satisfied that the care home would be visible from them but, given their extensive rear gardens, the separation

distances involved, and the intervening vegetation, the proposed development would have “minimal impact on the living conditions of these residents”.

29. Signature’s planning permission contains a number of conditions most of which have already been satisfied. In particular a requirement to obtain approval of an arboricultural plan was satisfied in October 2018. Conditions concerning external lighting, hard and soft landscaping, roof top plant (including acoustics), noise mitigation and construction management have also been discharged.

Signature’s proposed development

30. The proposed care home development will involve the demolition of the three houses at Nos. 270, 272 and 274 London Road and their replacement with a single new building with a footprint covering 36% of the site; a further 20% of the site will be taken up by car parking. On plan the building is shaped like an H with one leg removed, having a rectangular central section with wings projecting from three of its corners. The central section and two wings projecting to the north-west create a large courtyard, enclosed on three sides, with the fourth side open to the boundary with the gardens of the objectors’ properties on Mile House Lane. Overlooking the courtyard, at first floor level above the central section of the building and looking towards the same boundary, there will be a wide terrace with seating.

31. The longest frontage is to London Road where the front section of the building is predominantly of three storeys with a single storey link section in the centre. The southern elevation is of two storeys, spanning the whole width of the site adjoining the rear gardens of Nos.1a, 3, 3a, 5 and 7 New House Park, with residents’ rooms on ground and first floors.

32. The intention is for the care home to have attractive external spaces, including the courtyard and first floor terrace on the western side and another open area with seating in the south-eastern corner. All parking will be at the front, although this will be limited and it is likely that some staff will park in the surrounding roads. The space at the rear of the building, adjoining the boundaries of the houses in New House Park, will be landscaped with limited areas of lawn on either side of a footpath which will run around the building. On our inspection the location of the rear elevation of the building and the intended route of the footpath were pegged on the ground. The boundaries themselves will be planted with additional trees and shrubs and the site will be surrounded by a 2.1 metre close boarded fence.

33. The site slopes gently from the London Road side down towards New House Park. It will be necessary to adjust the levels of the site in order to ensure that the ground floor will be entirely on one level, with the result that the rear elevation will be built on raised ground. For the same reason the footpath running around the building will be raised above the current ground level and above the levels of the adjoining gardens on the west and southern sides of the site.

The objections

34. The objectors’ properties are all substantial detached houses with large rear gardens. In all but five cases these rear gardens share a boundary with the Signature site and have views into the site from ground and upper windows unobstructed except by (mostly sporadic) boundary

vegetation. The exceptions to this rule are No.266 London Road, which is separated from the site by No.268, and Nos.11 Mile House Lane and 1, 13 and 15 New House Park none of whose gardens directly adjoin the site and whose windows have more oblique views of it. In all cases the objectors make use of their rear gardens in good weather for sitting out, recreation and dining. In many cases the houses have conservatories or extensive rear glazing to take advantage of the views over the neighbouring gardens.

35. It is not necessary for us to refer to each individual objectors' detailed concerns expressed in their witness statements. Common threads were identified in the notices of objection which they filed with the Tribunal and these were put to the expert witnesses in cross examination. We had them well in mind when we carried out our inspection. The adverse consequences which were of particular concern to the objectors were overlooking, loss of privacy and seclusion, loss of amenity, increased pressure on roads and parking, overshadowing and/or loss of light, noise, smells, light pollution and loss of outlook.

Ground (aa)

36. We will consider first the applicant's case for modification under ground (aa).

37. It was common ground that in the context of s.84(1) of the Act, the implementation of the planning permission would constitute a reasonable use of Signature's land, and that that use would be impeded unless the restrictions were modified. By the end of the hearing, it was also agreed that the restrictions secured to the objectors' practical benefits in terms of preserving the outlook from their properties, in preventing overlooking, and in maintaining privacy.

38. The critical issue was whether those acknowledged practical benefits are of substantial value or advantage to the objectors. That question was addressed in detail in the expert evidence and was the main focus of our inspection.

39. During our visit to the site we made use of two sets of visual interpretations of how the proposed development would appear from some of the objectors' properties. For the developers, these had been produced by Mr Hynds (who was clear in stressing that they could only be considered as a guide) and for the objectors by eb7 Ltd, a company specialising in such visualisations. The parties had argued at some length before the hearing whether this material should be admitted in evidence, and at the start of the hearing we indicated that we would only be prepared to consider them if both sides agreed. Objections were eventually withdrawn enabling us to make use of the studies, which we found helpful (although we were conscious of the health warning attached by Mr Hynds to those he had produced).

40. The debate between the amenity experts was conducted at a curiously semantic level. On behalf of Signature Mr May drew a distinction between outlook and views. Outlook was the general outlook from a property or site, whereas a view was a specific line of sight. For instance, a view of a church spire might be retained by a careful siting of development, but the outlook from an affected property might still be diminished as peripheral vision is impacted adversely. Degrees of impact on views can be measured objectively by calculation of the extent of visible frame before and after development, whereas impact on outlook is more subjective and relies on a judgment as to whether a proposed development would give a feeling of enclosure, be visually intrusive or have an

overbearing presence. While Mr May accepted that the objectors would be fully aware that the proposed development would be one large building, he maintained that 90-95% of one's sense of outlook is affected only by what can be seen.

41. On that basis Mr May concluded that no harm would be caused to the outlook and views from any of the objectors' properties by the proposed development. He thought that there would be almost no view of the proposed development from the ground floors or gardens of any of the objectors' properties in summer, and only very limited views in winter. He then considered the views from first floor level. In the case of 268 London Road, his opinion was that the views of the development from an oblique angle would have a limited impact on outlook. The limited views from 9 Mile House Lane would have a negligible impact on outlook. From the remaining objectors' properties he considered that there would be very limited views and a negligible impact, except for 15 New House Park, where there would be no change of view and no impact.

42. Mr May had prepared a schedule of notes and photographs taken from the objectors' gardens and houses during his site visit in July 2018. We found these to be of limited assistance; they seemed (whether intentionally or unintentionally) to minimise the existing outlook from the objectors' properties, for example by showing a view from a particular angle or interrupted by a washing line or a pergola. Mr May had revisited in winter, shortly before the hearing, but had only inspected the boundaries between the development site and the objectors' properties from the site itself, rather than from the objectors' properties. However, he was confident that there would be no material impact from the ground floor of the objectors' properties, although some might have distant views of the development.

43. As regards overlooking and loss of privacy, Mr May referred to the Local Plan, which required a distance of 27 metres between habitable first floor rooms, and 13.5 metres between a rear-facing habitable room window and a boundary. The required distances between the appropriate elevation of the proposed development and the first-floor windows of the objectors' properties were met or exceeded in every case. The boundary distance requirement was also comfortably exceeded, not least because in many cases the objectors' rear gardens are themselves longer than 13.5 metres. In cross examination he denied that he had simply applied the planning criteria distances in a mechanical fashion. He regarded them as an objective starting point, but he had formed his own view as to the likelihood of any detriment to the objectors' privacy, concluding that there would not be.

44. Mr May accepted in cross examination that in comparison with domestic dwellings, the development would be of a greater scale, with larger windows (although in keeping with the scale of the development). It would have different lighting, with brightly lit communal spaces and stairwells, from which light would spill into the communal courtyard. He agreed that there would be more rooms and more lighting but did not consider that there would be light pollution and maintained that there would be no harmful impact on the objectors. He accepted that, owing to the nature of the use, people would be more likely to be present indoors in upper floor rooms during the day or early evening than would be expected in a domestic setting. The outside areas would be used differently from a domestic garden.

45. Dr Miele's interpretation of outlook was much wider, involving not only what one can see as a matter of fact, but also including perception - what one infers or understands about one's

surroundings from what one can see. In built-up areas, our understanding of the townscape will be a product not only of the buildings we can see, but also our appreciation of their use, building footprint coverage, scale of development, space between buildings and character overall. The planning system focuses on outlook in a limited sense, almost exclusively concerned with views from publicly accessible land and not private land.

46. Dr Miele considered the impact of the proposed development on 266 and 268 London Road would be substantial, with 268 being the more affected of the two. In Mile House Lane, 5, 7 and 9 would be the most affected by changes to outlook and character, with limited opportunities for screening; the impact on these three properties would also be substantial. There would be some lesser impact on 11 Mile House Lane. On New House Park, he considered there would be a substantial impact on numbers 1, 3, 3a, and 5, with a lesser impact on 7 and 13. He agreed with Mr May that there would be no material impact on 15 New House Park.

47. Dr Miele said that the proposed use and density of occupation of the application land would impact on character. In planning terms, the effect of the restrictions was to confine the use of the land to class C3 (dwellinghouses), whereas the proposed use would fall within C2 (residential institutions). There was no provision within the general development order for such a change of use, and the fact that this change would require planning permission was indicative of the difference in the nature of the two uses. A C2 use includes a wide variety of uses, for instance hospitals, barracks, nursing homes etc, all of them institutional in nature and, on any basis, different from private family houses with large gardens.

48. After he had written his expert report, Dr Miele had made a dusk visit to the applicant's development at Epsom. Following this visit, he was of the view that there would be significant light spillage from the proposed building. He described the light emitted by a standard domestic building, where first floor lighting tended to be turned on later in the evening, and the pattern of varied lighting would be similar to that of the objectors' properties. Based on his observations at Epsom he considered the proposed development would be different in two ways. First, elderly residents would be more likely to stay in their own rooms, many of which were at first floor level and above. Secondly, there was a uniformity to the lighting in each room which would not be the case in a series of individual houses. The combined effect would be a more intensive passive illumination of the grounds from light spillage from the care home than would be experienced from family houses.

49. We should record that we were invited by the parties to undertake a visit to one of Signature's existing care homes, the property at Epsom being the suggested example. We told the parties that we would consider whether to do so after conducting our visit to the application site. Having done so we did not think we would be assisted by a further visit to an operational site. We were able to view the Epsom site on Signature's website and already had a clear impression of the intended appearance of the proposed development. We did not consider the concerns of the objectors about noise or other operational issues were significant to our decision. A visit to a different site would not enable us to assess the impact of Signature's proposals on the visual amenity of the objectors. We also reached a clear conclusion on the outcome of the application on basis of our visit to the application site.

50. Having inspected the application land and viewed it from the objectors' properties, we consider that the proposed development would affect the amenity of the majority of the objectors to

a significant degree, and have no hesitation in concluding that the ability to prevent the development of the site as proposed is a practical benefit of substantial advantage to most objectors. We do not have to decide which side's visualisations of the development are the more reliable. The differences between them are marginal and it is sufficient that even Signature's versions show that the development would, in our view, be highly intrusive. The visual impact, particularly on the objectors living in Mile House Lane, would be significant from both gardens and conservatories and from upper floors, and would be only partially mitigated by additional boundary planting.

51. We preferred and placed significant weight on Dr Miele's evidence as to the impact on the objectors' amenity both of the bulk of the new building and of the light coming from it. Where at dusk there is presently, on the evidence of many of the objectors, virtual darkness, if the development was completed there would be a bank of light from a significant number of windows and, in the case of the Mile House Lane properties, from the courtyard. The sources of light, from fittings on the ceilings of residents' rooms, would be uniform in style and more or less continuous across the width of the site on the southern side. It would, in short, appear institutional.

52. We accept Dr Miele's evidence that outlook amounts to more than what can actually be seen at any one time. Despite the presence of screening the objectors would perceive an incongruously large block of property in relatively close proximity to their boundaries. For Mr May to suggest that there would be no or negligible visual impact, is in our view not credible. We also reject his view that the chimneys of the development would be domestic in scale. The view from the majority of the objectors' properties would be of a building too large for a domestic setting.

53. We are satisfied that the implementation of Signature's proposals would have a much greater adverse impact on the amenity of the objectors than the construction of three or five detached houses on the site, which is the likely alternative use if this application is unsuccessful. Domestic property would be on a smaller scale and would be occupied in a manner which was comparable to the use the objectors make of their own properties; it would also lack the elements of uniformity and the institutional character of the proposed development. We acknowledge that the privacy and outlook enjoyed by the objectors could be compromised to a degree, compared to their current levels, by the full or partial implementation of the 2013 planning permission but we are satisfied that the consequential changes would be on nothing like the same scale as Signature's care home.

54. Given Signature's proposed client group and their intention to create a calm environment we think it unlikely that the objectors' fears over noise, deliberate interference with privacy, and even "stranger danger" would prove to be intrusive features in their own right, but low level noise and the presence of a large number of people in close proximity to the objectors' gardens would be likely to contribute to the experience of living next to an institution rather than in an exclusively domestic setting.

55. Having reached the conclusion that the ability to prevent the development of the adjoining land on the scale and for the purpose proposed by Signature is of substantial benefit to the objectors it is not necessary for us to consider the valuation evidence which sought to quantify that benefit in monetary terms. Our conclusion as to substantial advantage is sufficient to dispose of the application under the first limb of s.84(1A).

56. The application was also put on the basis that impeding the proposed use is contrary to the public interest although, rightly in our view, Mr Hutchings did not develop this suggestion at the hearing and we are satisfied that this is not a case to which the public interest alternative is engaged.

Ground (c)

57. It follows from our conclusion as to the substantial advantage which the restrictions afford to the objectors, the applicant's reliance on ground (c) – that no injury would be caused to the objectors by modification of the restrictions – also fails.

Conclusions

58. The applicant has failed to satisfy us that ground (aa) or ground (c) have been made out, and the application is therefore refused.

59. This decision is final on all matters other than the costs of the application. The parties may now make submissions on costs and a letter giving directions for the exchange of submissions accompanies this decision. The attention of the parties is drawn to paragraph 12.5 of the Tribunal's Practice Directions dated 29 November 2010.



Martin Rodger QC
Deputy Chamber President

Peter D McCrea FRICS
Member

4 March 2019

Schedule of Objectors

Mark Antcliffe and Emma Antcliffe	266 London Road
Stuart Chappell and Victoria Chappell	268 London Road
Stephen Wragg and Esther Wragg	5 Mile House Lane
Elaine Deyes and Paul Deyes	7 Mile House Lane
Richard Rowledge and Stephanie Rowledge	9 Mile House Lane
Mark Behan and Christina Behan	11 Mile House Lane and 1 New House Park
David Blackburn and Anne Blackburn	3 New House Park
Catherine Lovett and Andrew Lovett	3a New House Park
Mohammed Hussain and Ruhela Khatun	5 New House Park
William Barnett and Geraldine Barnett	7 New House Park
David Issott and Rosalind Issott	13 New House Park
Elizbieta Hickman	15 New House Park