

UPPER TRIBUNAL (LANDS CHAMBER)



[2023] UKUT 00196 (LC)

UTLC Number: LC-2022-532

Royal Courts of Justice
Strand, London WC2A 2LL

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RESTRICTIVE COVENANTS – DISCHARGE OR MODIFICATION – covenant not to alter the external appearance or construct additional buildings – proposal to erect a single storey rear extension and carry out a loft conversion with rear dormer roof extension - whether covenant secures practical benefits of substantial value or advantage – application for modification granted

AN APPLICATION UNDER SECTION 84 OF THE LAW OF PROPERTY ACT 1925

BETWEEN

SEAN DENIS DOHERTY (1)
DINO ZOCCHEDDU (2)

Applicants

-and-

ALEXANDER PASKHIN

Objector

Re: 4 Kerfield Place,
London,
SE5 8SX

Mrs Diane Martin MRICS FAAV
4 July 2023
Royal Courts of Justice
Decision Date: 10 August 2023

The applicants representing themselves

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Introduction

1. This is an application for the Tribunal to discharge or modify a restrictive covenant (“the restriction”) that burdens the title to 4 Kerfield Place, London, SE5 8SX (“the Property”), preventing any alteration to the exterior appearance of the building and the construction of additional buildings. The applicants, Mr Doherty and Mr Zoccheddu, wish to exercise permitted development rights to provide a single storey extension to the rear, and a loft conversion with rear dormer roof extension, both of which would be in breach of the restriction.
2. The restriction is contained in the second schedule to a transfer dated 8 June 1984 (“the 1984 transfer”) between The Mayor and Burgesses of the London Borough of Southwark (“the Council”), Wates Second Land Limited (“the Company”) and James Jonathan Platts (“the Purchaser”) for the benefit of the Council and all other purchasers of lots within the scheme of development on the Selborne Estate.
3. Around mid-2021 the applicants began to engage with their immediate neighbours and showed them architectural drawings of the proposals. They received support from all neighbours apart from Mr and Mrs Pashkin, owners of the adjoining property 5 Kerfield Place, which was at that time occupied by tenants. After some email exchanges the applicants proposed a deed of mutual release to the Pashkins, who initially agreed to consider a limited release subject to payment of compensation. They also requested a party wall award.
4. Communications then lapsed until the applicants initiated the engagement of a party wall surveyor in July 2022. The agreed surveyor made a party wall award dated 26 September 2022. Mr and Mrs Pashkin did not challenge the award but stated that if work commenced they would seek an injunction because of the restriction.
5. The application to the Tribunal was made on 30 October 2022. An approved publicity notice was served on the Council, the 17 houses in Kerfield Place, and two houses located to the rear of the Property in Daneville Road. One objection was received from Mr Pashkin (“the objector”), who provided a witness statement but stated that he did not wish to attend a hearing.
6. I made an inspection of the Property and 5 Kerfield Place on 28 June, accompanied by the applicants and the objector in their respective properties. I also walked to see other properties in the estate where extensions and loft conversions have taken place.
7. The hearing was attended by the applicants, who represented themselves and called Mr Peter Roberts FRICS CENV to give expert evidence. Mr Roberts is a partner with Dalton Warner Davis LLP in London, and an RICS Registered Valuer with 28 years’ post-qualification experience. I am grateful to him in particular for his helpful evidence on technical aspects of the proposed works and on the party wall award.

Factual background

8. The area known informally as the Selborne Estate, in Camberwell south London, was developed in the early 1980s to provide an extensive area of semi-detached and terraced houses and blocks of flats. The Property (No.4 on the plan below) is a two bedroom, two storey mid-terrace house within a cul-de-sac development. The houses are of timber frame construction, clad with red brick under tile roofs. The Property has a small rear garden with a gate in the rear fence giving access to an allocated car parking space in a gated parking area behind the terrace. This access would be used for construction of the proposed extension and loft conversion.



9. The objector's house (No.5 on the plan) adjoins the Property along its northern boundary and is the penultimate house in the terrace of six. It has a conservatory extension to the rear (not evident on the plan) and a third bedroom in a perpendicular first floor extension which extends over a passageway to join No.7 in the adjacent terrace. The garden fence between the Property and No.5 is 2m high.
10. The plan is extracted from the applicants' submitted title plan, to which the applicants have added lines around No.3 and No.5. The line around No.5 may not correctly reflect the extent of the title, particularly the full extent of the first floor extension which, from my inspection, appeared to extend all the way over to No.7.
11. At ground floor level the Property comprises an entrance hall/kitchen and living room from which a door gives access to the rear garden. The proposed single storey rear extension would extend 3.0 m into the garden across the full width of the house, with a flat roof at a height of 3.0 m. Glazed doors folding/sliding doors would give access to the garden. The flat roof would have two roof lights.
12. At first floor level the property comprises two bedrooms and a bathroom. The proposed loft conversion would provide an additional bedroom and shower room, with under eaves storage.

13. On 2 and 3 February 2021 the Council issued certificates of lawfulness for each element of the proposed works.
14. In July 2022 Mr James Lewis BSc (Hons) MRICS FFPWS of James Lewis Chartered Surveyors, Woking was appointed by the applicants and the objector as the Agreed Surveyor to make a party wall award, including a schedule of condition of the objector's property. The award was dated 26 September 2022 and neither party challenged the award by appealing within 14 days to the County Court.
15. Clause 2 of the award sets out the works the applicants may carry out and clauses 4 to 8 set out the conditions to be adhered to in doing so. More details of the indemnity and compensation provisions are covered later in this decision. Clause 11 states that the authority to carry out works under the award is conditional on those works being commenced within 12 months.

The legal background

The 1984 transfer and the restriction

16. The 1984 transfer states at clauses 5 and 6:

“5. AND IT IS HEREBY EXPRESSLY DECLARED by the Council and by the Purchaser that it is their intention and the Purchaser purchases upon the express understanding that each transferee of a lot on the Estate is to have the benefit of the restrictions conditions and stipulations binding on all other lots forming part of the Estate whether such lots are sold by the Council to transferees before or after the date of the Transfer

6. THE Purchaser hereby covenants with the Council and all other persons claiming under it as purchasers of any part of the land comprised in the title above mentioned and with the object and intent of binding the land hereby transferred into whosoever hands the same may come and for the benefit of the land comprised in the title above mentioned other than the premises that he the purchaser and his successors in title the owners and occupiers for the time being of the Premises (and who are included in the expression “the Purchaser”) will at all times hereafter observe and perform the restrictions conditions and stipulations set out in the Second Schedule hereto”

17. The premises were defined as No.4 Kerfield Place, Camberwell and Parking Bay No. 135. The estate was defined by reference to a title plan of land in the ownership of the Council.
18. The restriction in the Second Schedule which is the subject of this application states:

“4. The exterior appearance of the buildings walls fences and other erections now on the premises shall not hereafter be altered and no additional buildings walls fences or other erections shall hereafter be constructed or maintained on the premises”

19. On 7 February 2023 the Council issued a deed of release from the restriction on the Property.
20. The owner of No.3, Mr Will Thompson, signed a statement dated 12 April 2023 confirming his support for this application, which he does not feel will affect the value, security or amenity of his property.

Statutory provisions

21. Section 84(1) of the Law of Property Act 1925 gives the Tribunal power to discharge or modify any restriction on the use of freehold land on being satisfied of certain conditions.
22. Ground (a) of section 84(1) is applicable where a restriction has become obsolete as a result of changes in the character of the property or the neighbourhood since it was imposed.
23. Ground (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.
24. Ground (b) is applicable where those entitled to the benefit of a restriction have agreed, expressly or by implication, by their acts or omissions, to the restriction being discharged.
25. Where ground (c) is relied on, the Tribunal may discharge or modify a restriction if it is satisfied that doing so will not injure the persons entitled to the benefit of the restriction.
26. 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 relevant areas, as well as the period at which and context in which the restriction was created or imposed and any other material circumstances.”
27. 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

28. An application was made for discharge of the restriction, or modification in the alternative, under grounds (a), (aa), (b) and (c).
29. I will first consider the application under grounds (a) and (c) since the submissions for each ground rely on essentially the same evidence and can be dealt with concisely. I will then consider the application under ground (aa), by reference to the conditions to be fulfilled under s.84(1A). Finally, with the benefit of my decision under ground (aa) it will be possible to deal quickly with the application under ground (c).

Ground (a) – the restriction ought to be deemed obsolete

30. The applicants submitted that there had been a gradual change to the character of the neighbourhood of the estate since it was developed in the early 1980s when the restriction was imposed. They said there are plenty of examples of additional structures such as conservatories and extensions to the front, side and rear of properties, together with conversions of attics and garages, which demonstrate that the restriction no longer fulfils its purpose and has become obsolete.
31. In his expert report Mr Roberts reviewed the Council's record of planning permissions granted for properties within the Selbourne Estate, which is available from 2000 onwards. He established that between 2008 and 2022 planning permissions or certificates of lawfulness were granted for extensions and alterations to 10 properties in Kerfield Place, Cuthill Walk, Evesham Walk and Allendale Close. By his own observation where possible, and using Google Maps aerial view, he concluded that probably no more than half of those had been implemented. One of those yet to be implemented is a permission dated 11 November 2022 at 14 Allendale Close, for a rear ground floor extension and dormer loft conversion, very similar to the works proposed by the applicants. I heard no evidence as to why there may have been a delay in implementation, and in particular whether there is any issue over breach of the restriction.
32. In their joint witness statement the applicants provided satellite views which appear to show extensions, conservatories, roof lights and solar panels added to 24 properties on the estate in Kerfield Place, Cuthill Walk, Allendale Close, Love Walk and Evesham Walk. This number far exceeds the number of permissions recorded by Mr Roberts, which may be because the permissions pre-date the start of the online records in 2000, or because permissions were not sought. For example, the objector said that the conservatory to his house was in place when he purchased it in 2007 and had been constructed many years previously.
33. There appears to be only one example on the estate of an attic conversion with dormer roof extension. This is visible from the street at 15 Allendale Close. There is no record of permission in the planning system for this conversion, which may pre-date the records, and I have received no evidence of whether the owner secured a release from the covenant.
34. Many rear gardens appear, from the satellite views, to have sheds in them, which would also be in breach of the restriction, and the applicants supplied photographs of two properties where fences have been erected around front gardens in breach of it. The applicants themselves have a shed in their garden, which they provided after moving in.

35. The objector stated that he had no objection to the applicants providing a shed, nor to them erecting a new higher fence along his boundary. But he made no other submissions on the matter of the restriction being obsolete.
36. The burden of proof that a restriction has become obsolete is a high one and it requires first a consideration of the original purpose of that restriction. Clauses 5 and 6 of the 1984 transfer are typical provisions for a scheme of development, which creates reciprocity of obligation and benefit. The applicants pointed out changes made to various properties within the estate but, with the benefit of Mr Roberts' analysis of planning permissions and implementations, and from my inspection of the estate, I cannot agree that changes in the character of the neighbourhood are sufficient in number and so widespread that the restriction ought to be deemed obsolete. The overall purpose of the restriction in maintaining the general appearance of the estate is still relevant, and the application for discharge or modification under this ground fails.

Ground (b) – those entitled to the benefit have agreed to discharge or modification

37. The applicants submitted that the deed of release from the Council, the consent of their neighbour at No.3, the lack of objection from anyone other than the objector, and breaches of the restriction elsewhere on the estate are all evidence of express or implicit agreement to the discharge or modification of the restriction. They submitted that the objector himself, in utilising and benefiting from his conservatory extension, had behaved as though the covenant was discharged or modified.
38. The points made by the applicants are valid, so far as they concern the Council and others who have not objected, but the fact remains that one person with the benefit of the restriction has explicitly not agreed to it being discharged or modified. The objector's agreement to a discharge of the restriction cannot be inferred simply from his ownership of a property which breaches it. Moreover, although he initially indicated willingness to agree to modification subject to payment of compensation, agreement was never reached. Ground (b) is therefore not satisfied.

Ground (aa) and the conditions to be fulfilled under s.84(1A)

Are the proposed uses reasonable and does the restriction impede those uses?

39. It is accepted by the applicants that implementation of their proposed extension and loft conversion is impeded by the restriction.
40. The fact that the Council has granted certificates of lawfulness for the ground floor extension and the loft conversion, both of which fall within nationally defined parameters of permitted development, is strong evidence that the proposed uses are reasonable in a general sense. The fact that the Council has also signed a deed of release from the restriction and that the neighbour at No.3 has written in support of the proposals gives further weight to them being reasonable at this property. I am satisfied that they are.

Does impeding the proposed uses secure practical benefits of substantial value or advantage?

41. Mr Roberts made an internal and external inspection of Property and the objector's property on 5 April 2023. He considered the practical benefits of the restriction to the objector in preventing potential impacts on sunlight and daylight, on outlook and loss of view, overlooking, and on noise and peacefulness. None of these factors had been raised by the objector, but they are typical benefits secured by a restriction, so it was helpful to have Mr Roberts' opinion on them.
42. Commenting first on the proposed loft conversion and dormer roof extension, Mr Roberts noted that it would not extend above the existing roof line or forward of the eaves, and would be in a north east facing elevation, so would have no impact on sunlight or daylight to the objector's property. It would only be visible from the objector's first floor room by leaning out of that window. The view from the dormer window would be out over the objector's rear garden, but that garden is already overlooked by the applicants' rear window at first floor level, and also by the rear windows of No.3 and No.6, so there would not be any new loss of privacy. The provision of an additional bedroom in the loft could lead to an increase in the number of residents at the Property, and possibly an awareness by the objector of more noise. Mr Roberts noted that the timber stud party wall between the properties would be enhanced by the loft conversion, so that use of that room should not lead to additional noise leakage into the objector's property.
43. Regarding the single storey extension, which would sit alongside the objector's conservatory, Mr Roberts did not anticipate interference with sunlight and daylight to the objector's property, and noted that it would not be visible from inside the conservatory. It would be visible from the objector's first floor room, as the applicants' garden is now, but this would not result in a loss of view or outlook.
44. Mr Roberts assessed the market value of the objector's property at £740,000. He acknowledged the difficulty in finding evidence of property sales sufficiently similar and close in time to demonstrate whether neighbouring ground floor extensions, such as proposed by the applicants, might have had an influence on value. However, based on his own experience of the greater London residential market, and general market principles, he could see no grounds to consider that the proposed works would cause diminution in value to the objector's property, which already has a conservatory extension. Mr Roberts considered separately the likely market impact of the attic conversion and concluded that whilst some prospective purchasers might be put off, others would see it as evidence of an opportunity for a similar conversion at the property they were considering, which would enhance its value not diminish it.
45. Finally, Mr Roberts considered whether modification would be a 'thin end of the wedge' leading to further applications for modification coming forward on the estate. From his review of other development on the estate, which has taken place despite the existence of the restriction, he considered that modification would not release any pent-up demand.
46. I have said earlier that none of the above matters were raised by the objector, whose sole concern was the risk of structural damage to his property should the applicants be permitted to carry out their proposed works. He pointed out that structural enhancement would be provided to the Property as part of the proposed works, but not to his property, and was concerned at the deformation calculations which he saw for the first time with the design drawings attached to the applicants' witness statement. The objector said that even

with the best documentation and building controls, mistakes can be made during construction and he wanted the applicants to provide him with a renovation warranty to protect his property value and the interest of his mortgage lender. He also mentioned the risk to the public who walk under his first floor flying freehold should the loft conversion cause problems to his property.

47. The applicants submitted in rebuttal that a right to structural integrity and safety is provided to all members of society by building regulations, not to an individual property owner as an advantage of a restrictive covenant. Notwithstanding that view, they submitted that they had behaved reasonably by obtaining a party wall survey, obtaining structural analysis from the project manager, confirming that there would be 'constructor insurance' and obtaining statements from the project manager that building regulations will be followed.
48. Moreover, the applicants asserted that the objector has provided no evidence at all for his assertions.

Would money be an adequate compensation for loss or disadvantage caused by modification

49. The objector stated in his notice of objection that he was seeking a figure of £200,000 for compensation. In his witness statement he explained that this figure was his estimate of the likely loss he would suffer in a worst case scenario of severe structural damage to his property. It was a mid-point between his estimate of the cost of rebuilding his property at £259,000 and the potential for loss of value of his property at 20% (up to £165,000) together with consequential losses such as the cost of temporary accommodation during rectification works.
50. I allowed the objector to submit a late witness statement, so when Mr Roberts wrote his report he had not seen the reasoning for the compensation claim of £200,000. However, Mr Roberts commented that he would have expected the objector to have appealed the Party Wall Award if he disagreed with it, so that the County Court could deal with the construction issues. Since this did not happen, Mr Roberts said he had no reason not to rely on the award, which would provide the objector with protection against loss or disadvantage arising from implementation of the works.
51. At the hearing, which the objector did not attend, I asked Mr Roberts to review, within the bounds of his professional expertise, the party wall award and the attached drawings to explain the nature of the construction which has caused the objector's concern and how he would be protected under the award. I also asked the applicants to make submissions on this.
52. Mr Doherty explained that the applicants had invested much time and effort in finding a loft conversion solution which would be structurally feasible within a timber framed building. They eventually found the Telebeam system based on a light aluminium structure which would be supported between the front and back walls of the Property, avoiding any need to make intrusions to the party wall. With my permission, after the hearing Mr Doherty submitted an email from a Mr Rowsell at Telebeam confirming that the Telebeam structure and the dormer structure would be completely independent of the

party wall. He also supplied an email from Steven Davidson, the architect at Build Team who would be managing the project, confirming that neither the Telebeam structure nor the dormer structure would intersect with the party wall and that the works would be compliant with building regulations, planning and party wall requirements.

53. Mr Roberts explained that the party wall award covered mainly the works to construct a single storey extension, which would require excavations adjoining the objector's property and intrusions to the party wall at ground floor level. However, the list of approved works in clause 2 of the award did include work to the roof of the dormer extension where it would adjoin the party wall. He drew my attention to s.7(2) of the Party Wall etc. Act 1996 ("the 1996 Act") which provides:

"(2) The building owner shall compensate any adjoining owner and any adjoining occupier for any loss or damage which may result to any of them by reason of any work executed in pursuance of the Act."

54. S.10 of the 1996 Act covers the resolution of disputes by the appointment of either one surveyor agreed by the parties, or a surveyor appointed by each party together with a third surveyor selected by them. Sub-paragraphs (10) and (13) state as follows:

"(10) The agreed surveyor or as the case may be the three surveyors or any two of them shall settle by award any matter-

- (a) which is connected with any work to which this Act relates, and
- (b) which is in dispute between the building owner and the adjoining owner.

...

(13) The reasonable costs incurred in-

- (a) making or obtaining an award under this section;
- (b) reasonable inspections of work to which the award relates; and
- (c) any other matter arising out of the dispute,

Shall be paid by such of the parties as the surveyor or surveyors making the award shall determine."

55. S.12 covers security for expenses and s.12(1) states:

"(1) An adjoining owner may serve a notice requiring the building owner before he begins any work in exercise of the rights conferred by this Act to give such security as may be agreed between the owners or in the event of dispute determined in accordance with section 10."

56. Mr Roberts confirmed that whilst the objector would have a means under the 1986 Act of resolving a dispute over security for expenses or for compensation under section 10(10), the provisions of s.10(13) would still leave him exposed to an award of costs. He suggested that the applicants could give to the objector a warranty to underwrite, for a single occasion, all the costs arising under s.10(13), irrespective of any award against the objector. A proposed form of words for such a warranty was provided to me.

General considerations

57. S.84(1B) requires the Tribunal, when determining whether s.84(1A) applies, to take into account the development plan and any declared or ascertainable pattern for the grant or refusal of planning permissions in the relevant area. I received evidence on this in Mr Roberts' report, in which he noted 10 other planning permissions granted within the estate since the year 2000 for single storey extensions similar to the one proposed in this application. Some of the permissions, like the one obtained by the applicants, were certificates of lawfulness for proposals within the national definition of permitted development. Only one other permission had been granted for a loft conversion, which has not yet been implemented. Although satellite views show that skylights have been added to a handful of houses, in only two instances are they placed in the front elevation of the roof. However, whilst single storey extensions are not exceptional on the estate, and the proposed form of loft conversion is novel, both elements of the proposals have been screened by the Council and are confirmed to fall within the definition of permitted development.
58. The Tribunal is also required to take into account the period at which and context in which the restrictions were created or imposed and any other material circumstances. When the restriction was imposed, in the 1984 transfer, it was for the benefit of all properties on the Selbourne Estate. From my inspection, and from evidence provided by the applicants, it appears that the restriction has been relatively effective in maintaining the integrity of the original building layout and appearance on the street facing elevations. There are two exceptions where side extensions have been built, with planning permission, two instances where low picket fences have been erected around front gardens, and two instances of front facing roof lights. By contrast, the restriction has been significantly breached to the rear of the properties by the provision of conservatories and extensions under modern permitted development policy. Implementation of the applicants' proposals would follow this general pattern and have only a minor impact on the street facing elevation by the installation of two roof lights.

Discussion of ground (aa)

59. Taking the considerations required by s.84(1A) in turn, I conclude from the evidence of planning policy for permitted development and the grant of permission that the applicants' proposed uses are reasonable. It is agreed that they are impeded by the restriction.
60. Turning to the range of practical benefits which can typically be secured to a property owner by a restriction such as the one under consideration, these would include protection from loss of daylight or sunlight, protection of outlook and view, protection from overlooking and protection from noise. Mr Roberts considered each of these carefully and I agree with his conclusion that modification of the restriction to allow the applicants' proposals would lead to no loss of value or advantage in terms of those benefits. I also agree with his conclusion that there is no evidence of pent-up demand for modifications elsewhere on the estate to suggest that a modification for the Property would be likely to lead to many more applications. However, if there were to be other applications for modification, each would be considered on its merits.
61. It is the objector's strongly held view that the restriction protects his property from the risk of structural damage caused by the applicants' proposals, and he has put a figure on the prospective cost and/or loss to him of the most serious structural damage. He has rightly

identified that he could be indemnified against such cost and/or loss, and the applicants' expert has explained how such indemnification is provided by the party wall award and the 1996 Act. The applicants have gone further in offering to indemnify the objector, for a single occasion, against costs which might be awarded against him under the dispute resolution provisions of the 1996 Act.

62. The purpose of the restriction was to limit changes to the appearance of the estate and to prevent new buildings. I do not accept that the restriction can be considered to secure the practical benefit of structural protection to the objector, because there is no evidence that it was intended to do so, but I am satisfied that the indemnity provisions of the 1996 Act, enhanced by the applicants' warranty, would give him peace of mind.
63. I conclude that the restriction does not secure any practical benefits of value or advantage to the objector.

Determination

64. I am satisfied that ground (aa) is made out and that I have discretion to modify the restriction which impedes a reasonable use of the Property and does not secure the persons entitled to the benefit of it any practical benefits. It follows that ground (c) is also made out because the proposed modification will not injure those persons.
65. The applicants have offered to indemnify the objector against an award of costs against him for a single occasion when he uses the dispute resolution provisions of the 1996 Act. I will include the proposed indemnity within the conditions for modification
66. The following order shall be made:

The restrictions in the Charges Register for 4 Kerfield Place, London SE5 8SX shall be modified under section 84(1)(aa) of the Law of Property Act 1925 by the insertion of the following words:

“Provided that the development permitted under the Certificates of Lawfulness granted on 2 September 2021 under reference 21/AP/2439 and on 3 September 2021 under reference 21/AP/2438 and subject to the conditions attached thereto may be implemented in accordance with the terms, details and approved drawings referred to therein.

The condition of modification is that in the event of a dispute arising such that s.10 of the Party Wall etc. Act 1996 applies, on the first occasion only, no application for costs shall be made against the adjoining owner and any reasonable costs awarded against the adjoining owner shall be reimbursed by the building owners.”

67. An order modifying the restriction shall be made by the Tribunal provided, within three months of the date of this decision, the applicants shall have signified their acceptance of the proposed modification of the restriction in the Charges Register of the Property.

Mrs Diane Martin MRICS FAAV

Right of appeal

Any party 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.