Neutral Citation Number: [2024] UKUT 0414 (LC)

Case No: LC-2024-0005

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPLICATION UNDER SECTION 84 OF THE LAW OF PROPERTY ACT 1925

20 December 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RESTRICTIVE COVENANT – DISCHARGE OR MODIFICATION – planning consent for demolition of redundant agricultural buildings and erection of modern office unit – restriction preventing erection of buildings other than those designed for and to be used for agricultural purposes – whether restriction secures practical benefit through enjoyment of amenity in a field – application for modification granted with compensation

BETWEEN:

BEECHES CAPITAL

Applicant

-and-

ALISON HUNT AND OTHERS
(AS PERSONAL REPRESENTATIVES OF
THE ESTATEOF MARGARET ADELINE HUNT)

Objectors

Beeches Farm,
Icknield Way,
Tring,
Hertfordshire HP23 4LA

Mrs Diane Martin, TD, MRICS, FAAV
23-24 October 2024
Royal Courts of Justice

Ms Brooke Lyne, instructed by Gardner Leader LLP, for the applicant
Mr Richard Power, instructed by Allan Janes LLP, for the objectors

The following cases are referred to in this decision:

Blue Angel Properties Ltd v Jenner [2020] UKUT 0360 (LC)

Re Fermyn Wood [2018] UKUT 0411

Introduction

1. This is an application under section 84 of the Law of Property Act 1925 for the Tribunal to discharge or modify a restriction, imposed in a conveyance dated 4 November 1959, which prevents the applicant from implementing a planning permission to demolish former agricultural buildings and redevelop as a rural business and enterprise hub. The application land, Beeches Farm, is situated on the outskirts of Tring on the north side of the B488 Icknield Way which forms the north western boundary of the town.

2. The applicant, Beeches Capital, is a private unlimited company which primarily acts as an investment vehicle for the Dean family and owns the freehold of Beeches Farm. The applicant was represented by Mr Andrew Screech, who is Property Director of Beeches Property (Tring) Limited, which is 49% owned by the applicant. Mr Screech is married to Sarah Dean, one of the three directors of the applicant.

3. The original objector to the application, Mrs Margaret Hunt, owned adjoining land with the benefit of the restriction. She died in May 2024 and her objection was continued by the personal representatives of her estate, represented by her daughter Mrs Alison Hunt.

4. I inspected the application land and the objector's property on 15 October 2024, accompanied by Mr Screech, Mrs Hunt and the applicant's solicitor Mr Alex Tigwell of Gardner Leader.

5. At the hearing the applicant was represented by Ms Brooke Lyne, who called The Revd Professor Robert May BA(Hons) BPI Dip Mgt MA AoU FRTPI, a director of the firm Ryan & May, to give expert evidence on planning and amenity. The objectors were represented by Mr Richard Power, who called Mr Malcolm Kempton FRICS, a chartered surveyor and founding director of Kempton Carr Croft, to give expert evidence on practical benefits secured to the objectors by the restriction. No expert valuation evidence was adduced.

Factual background

The properties and the restriction

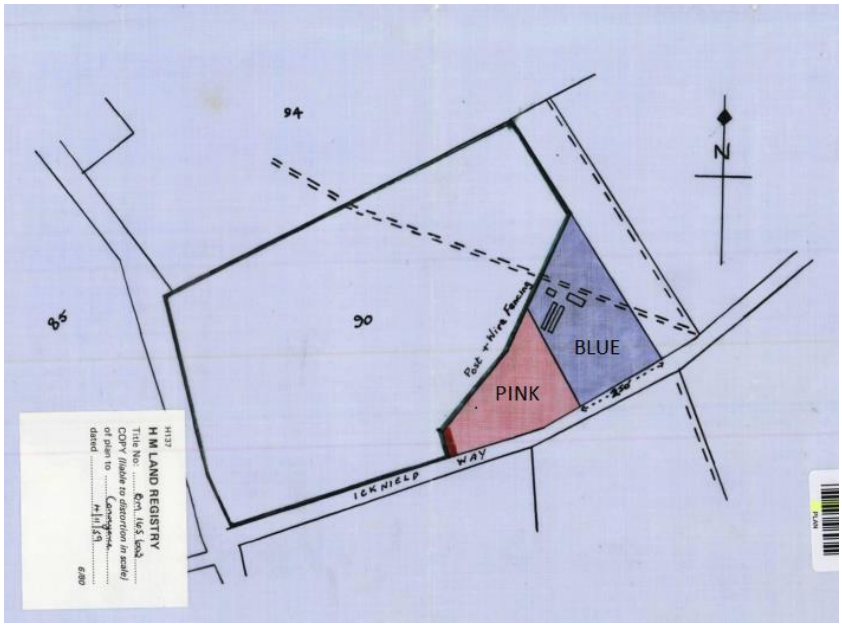
6. The application land was sold away from the surrounding land by a conveyance dated 4 November 1959 between Thomas Leslie Sole, the vendor, and John Trevor Pritchard and William Bernard Poole Pritchard, the purchasers. The property conveyed was described in two parts, coloured pink and blue respectively. This application is concerned with the land described as coloured blue. The conveyance contained restrictive covenants at clause 3 by which the purchasers undertook:

> "3. FOR the benefit and protection of the adjoining and neighbouring land now held by the Vendor and edged green on the plan attached hereto and so as to bind the land hereby conveyed into whosesoever hands the same may come the Purchasers jointly and severally covenant with the Vendor that the Purchasers and those deriving title under them will at all times here after observe and perform the following conditions –

(I) (a) Not at any time hereafter to erect any building or erection of any kind whatsoever on the land coloured pink on the said plan other than fences and gates and (b) Not to erect any building or structure upon the land coloured blue on the said plan other than (i) buildings designed and to be used for agricultural purposes and being of a height of not more than seven feet to the eaves and twelve feet to the ridge and (ii) not more than one private bungalow or private dwellinghouse built to plans previously approved by the Vendor or his Surveyor in writing the fees of such Surveyor being paid by the Purchasers such approval not to be unreasonably withheld

…"

7. This application seeks discharge or modification of the restriction at (b) (i), which is underlined to distinguish it. The enclosed plot on which a bungalow has been erected is now held under a separate title and is not included in the application. The plan below shows the pink and blue coloured land, which together were the land sold in November 1959.



8. On 7 March 1960 Beeches Farm was sold to Drayton Beauchamp Poultry Farm Limited, a company of which the Pritchards were directors. On 3 May 1973 planning consent was issued to Dalgety Egg and Poultry Division for demolition of existing buildings and erection of a bungalow, two large hen rearing houses and two feed hoppers. The two hen rearing houses, known as shed A and shed B, remain on the application land, along with the two feed hoppers and two other small sheds. The ridge height of the sheds is 5m (16.4 feet) and it is not disputed that their height exceeds that permitted by the restriction. Ownership passed in 1976 to Dean Farm Eggs Limited, in 2006 to Peter Dean, and in March 2021 to Phase Investments Limited which, in December 2021, changed its name to Beeches Capital. Peter Dean remains the owner of the bungalow plot and is a named respondent but not an objector to the application.

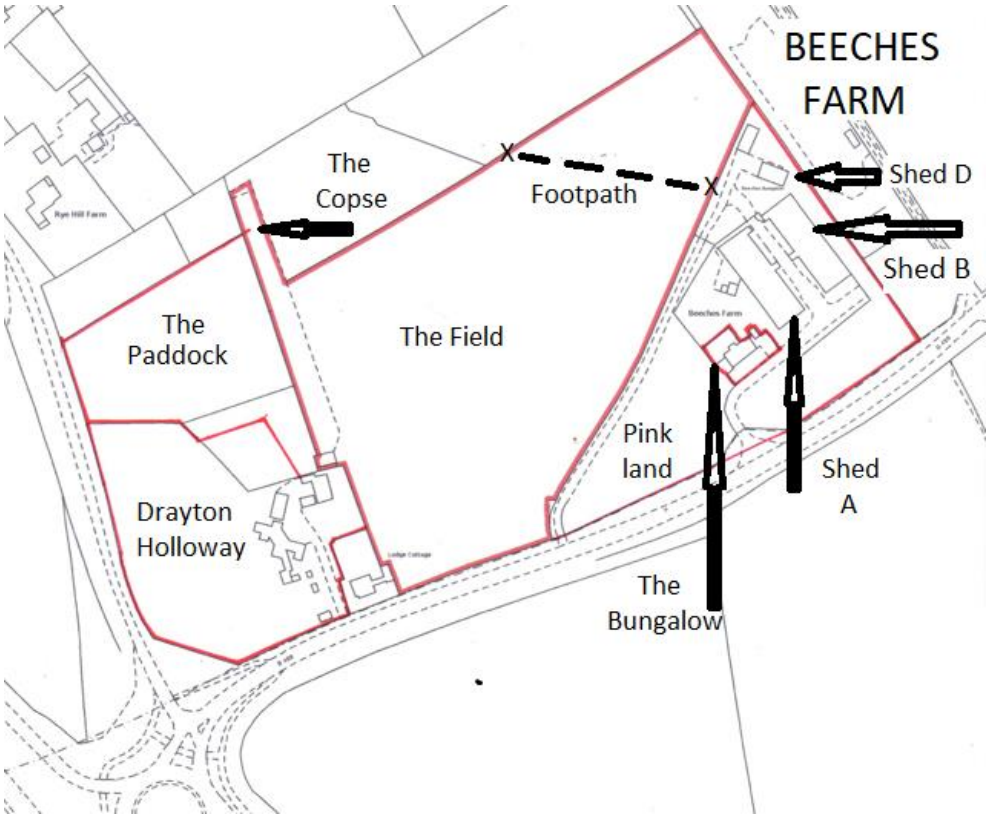
9. In 1967 Mr Don Hunt and Mrs Margaret Hunt purchased a house known as Drayton Holloway, with an adjoining paddock, which had previously belonged to Mr Sole and thus

had the benefit of the restriction in the 1959 conveyance. In 1993 Mr and Mrs Hunt purchased the 7.25 acre field ("the field") and strip of woodland ("the copse") between Drayton Holloway and Beeches Farm, which similarly had the benefit of the restriction.

10. Other adjacent properties, Lodge Cottage, part of Rye Hill Farm and a small strip of land to the east of Rye Hill Farm, also benefit from the restriction but their owners have not objected to the application.

11. The location of the various properties and buildings is shown on the plan below, together with the route of a public footpath across the field. This currently crosses between Sheds B and D but would be diverted around the new buildings under the approved plans for redevelopment. The main sheds and the bungalow are enclosed within a close boarded timber security fence, approximately 2.5m high.

12. The five bedroom house at Drayton Holloway dates from the 1930s and is set in a garden with mature trees, the boundary of which is 195m from the north west corner of Shed A. The boundary between Beeches Farm and the field is a post and barbed wire fence. About three years ago the objectors planted an indigenous hedge on the field side, and a line of beech/birch tree saplings further inside the field. The trees did not take and very few survive. The field is down to grass and used for taking an annual crop of hay. Otherwise it is used informally by the objectors for quiet recreation.



History of non-agricultural use and planning consents

13. Mr Screech gave evidence on the history of the application site and its occupation for business use, culminating in planning permissions granted by Buckinghamshire Council ("the Council") in 2022 for conversion to offices and, separately, for redevelopment as offices. The key events concerning non-agricultural use are summarised below:

1999	Egg farm business ceased. Shed A partially converted to offices and meeting rooms, with the installation of windows and provision of a new light grey metal roof. Remainder of shed A used for archival file storage.
2005	Office use of shed A ceased following unsuccessful application and appeal for retrospective permission, refused principally on highways grounds.
2006	The Dean family business merged with another egg production and packing company to form Noble Foods.
2009	Exploratory correspondence between Peter Dean and Don Hunt regarding proposed improvement of a shared access at the south west corner of Beeches Farm and potential release of the covenant to regularise non-agricultural use
2016	Noble Foods IT team moved into the offices in shed A. The Dean family office moved into new office space created in the former storage area in shed A. Those occupations have continued to the present day.
2019 - 2022	Applications to achieve lawful development certificate for storage use in shed B and part of shed A, change of use from storage to flexible business use under class B8, together with retention of office use in part of shed A.
25 May 2022 (22/01238/APP)	Planning approval for demolition of redundant buildings and external works to sheds A, B and D to provide replacement roofs, in black finish with rooflights in the ridge, and full height windows between sections of black stained larch cladding. Known as "the conversion scheme".
18 Oct 2022 (22/02399/APP)	Planning permission for scheme of demolition and redevelopment to form rural enterprise and business hub (use class E) comprising two single storey office/business units which in part exceed the covenanted height restrictions, with single storey link building. Known as "the redevelopment scheme".

Jul – Dec 2023	Approval of non-material amendments and discharge of surface water and lighting conditions relating to the redevelopment scheme.
April 2024	Permission for new access to Beeches Farm from the main road.

Legal background

14. 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.

15. Ground (a) of section 84(1) is satisfied where it is shown that by reason of changes in the character of the property or neighbourhood or other circumstances of the case that the Tribunal may deem material, the restriction ought to be deemed obsolete.

16. 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.

17. 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."

18. 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.

19. If the applicant is able establish that the Tribunal has jurisdiction to modify the covenant, the Tribunal must then decide whether to exercise its discretion to do so.

20. If it does, 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.

21. 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 and agreed matters

22. The application was made on 14 December 2023 seeking discharge or modification of the restriction, under grounds (a), (aa) and (c), to permit implementation of the planning permission granted on 18 October 2022 for the redevelopment scheme.

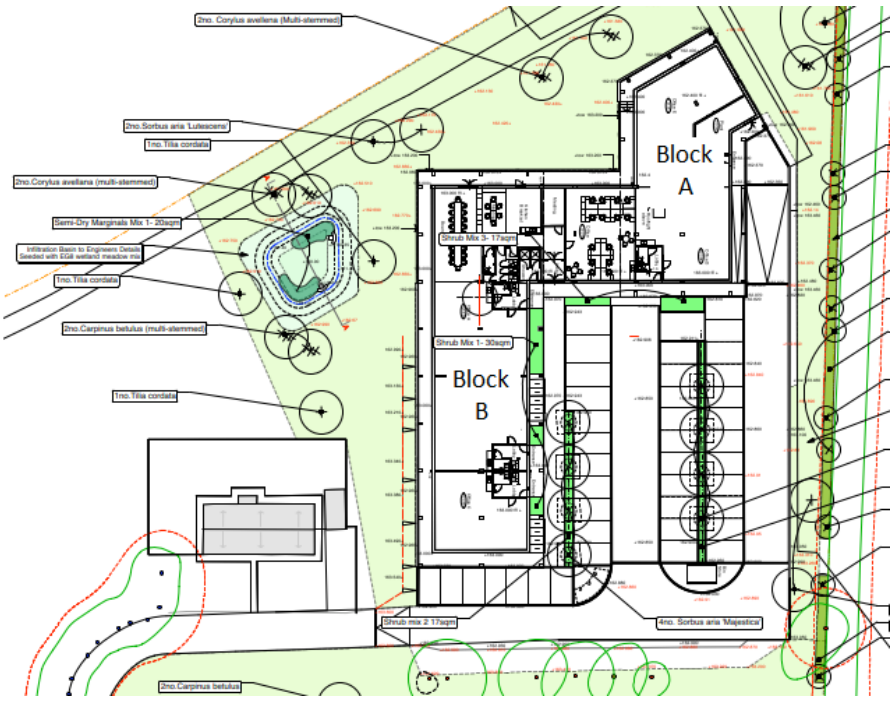
23. By the time of the hearing it was agreed between the parties that the restriction prevented the erection of buildings for non-agricultural use, but not the use of existing buildings. The applicant could therefore implement the conversion scheme, which received planning consent on 25 May 2022, without being in breach of the restriction.

24. It followed from this agreement that the benefits secured to the objector by the restriction were derived from being able to prevent the redevelopment scheme but not the conversion scheme. It was therefore necessary to compare the impact which each scheme would have on the objectors.

25. The agreement had come late in the day and it was clear that neither of the experts had been instructed in these specific terms, but each was aware of the conversion scheme as one of the series of planning consents secured by the applicant.

The redevelopment scheme

26. The single storey office buildings proposed to be built following demolition of the existing buildings and structures would cover, in part, the footprint of existing sheds A and B and retain their orientation from south east to north west, as shown on the approved landscaping site plan below. The two new blocks, A and B, would be linked by a flat roof section of lower height. The total gross external area ("GEA") of sheds A and B is 1,422 sq m. The total GEA of the new blocks and link building would be 1,103 sq m, a reduction of 22.4%. When removal of the feed hoppers and other small sheds is taken into account the total reduction in floor area would be 32%.



27. The proposed new buildings would be of timber frame design, with gently sloping roofs suitable for bio-diverse planting and for photovoltaic panels. At its highest point the new roof would be would 5.5m, compared with the current building ridge height of 5.0m. The covenant restricts development to buildings of no more than 12 feet (3.66m). The elevations would be of burnt larch (i.e. dark colour) vertical cladding and full height non-reflective glazing, under a Glulam (glued timber laminate) overhang structure supported on uprights. Some of the gaps between uprights would be infilled with screens of spaced burnt larch verticals, to break up the appearance and provide solar screening for occupants. Exterior lighting would be low level or affixed to the buildings under the canopy, with directional accessories. 13 trees, a mix of hazel, whitebeam, hornbeam and lime, would be planted in the space between the buildings and the field.

28. Parking for 41 cars would be provided in front of the buildings; an increase in provision from the current estimate of 25 available spaces. The group of existing buildings is enclosed and screened by close boarded timber fencing, approximately 2.5m high. This would be removed to open up views from the site and create landscaped areas for walking and sitting.

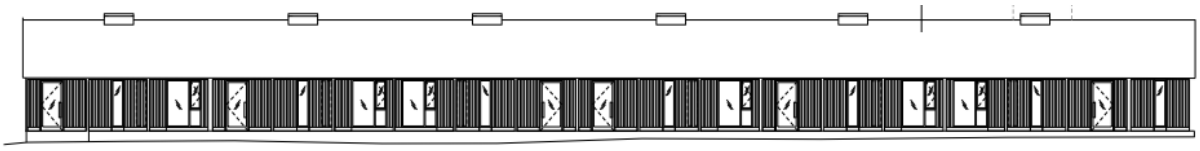
29. 17 conditions were attached to the planning permission, of which those particularly relevant to this application concerned the materials to be used, the parking scheme, the landscaping scheme and the need for approval of schemes for lighting and surface water drainage.

30. The elevations of most concern to the objectors were those which would face out into the field, without the benefit of the current close boarded fence for screening. A visualisation from the design and access statement submitted with the planning application is provided below. It does not show any of the tree planting specified in the landscaping scheme.

The conversion scheme

31. The existing shed A has green stained timber clad walls, with brown timber framed windows and a very light coloured insulated roof. Shed B retains its agricultural construction of unstained timber clad walls, with no windows, and a fibre cement sheeted roof with ridge vents. Shed D is similar. The conversion scheme proposed external works to those three sheds, demolition of the feed hoppers and three small redundant sheds, but no new building work. The buildings would be re-clad in black stained larch, with new

floor to eaves windows in black/grey aluminium clad frames. The replacement roofs, of the same height as the exiting ones, would be cementitious profile sheets finished in black, with flat glazed rooflights along the ridge. The proposed appearance of the west elevation facing out into the objectors' field is shown below, although the roofs would be finished in black.



Elevation B - West

32. It is not apparent from details submitted with the planning application for the conversion scheme whether the existing close boarded fence which screens visibility of the existing buildings would be retained or removed. It seems likely that it would be removed, to open up the site and the grounds in the same way as for the redevelopment scheme, however there is no planting or landscaping scheme associated with the conversion scheme.

Submissions

33. For the applicant, Ms Lyne submitted that the restriction should be deemed obsolete under ground (a). Since it was imposed in 1959, the application land and its use had altered significantly. The sheds and silos erected in the 1970s did not comply with the height restriction, and they were physically altered in 1999 by the provision of windows looking out over the field. If an indirect objective of the restriction was to prevent the use of the land except for agricultural purposes, that use had ceased in 1999.

34. The character of the neighbourhood had altered materially since 1959, by development of the Icknield Way Industrial Estate 500m to the east; construction of the Aston Clinton bypass with two new roundabouts - only 120m from Drayton Holloway - and a new development of 226 dwellings on land to the south of the application site. The neighbourhood could no longer be described as simply rural, but was better characterised as an edge of settlement area.

35. In summary, the objective of preventing use other than for agriculture could no longer be achieved because neither the present commercial use of the buildings, nor the applicant's conversion scheme breach the restriction. The end result and eventual use of the redevelopment scheme would be substantially the same.

36. In the alternative, Ms Lyne submitted that the redevelopment would cause no injury to the objectors and should therefore be discharged or modified under ground (c). Under ground (aa) she submitted that the proposed use for the redevelopment scheme was reasonable, was impeded by the restriction and did not secure any practical benefits for the objectors when compared with the conversion scheme. Should the Tribunal determine that the restriction does secure some limited benefit then a small amount of money would be adequate compensation.

The objection

37. Mrs Alison Hunt explained why she and her family, as executors of her mother's estate, objected to the application. Her brother Andrew Hunt had provided a witness statement but was unable to appear at the hearing due to ill health. His evidence was short, and substantially the same as that of Mrs Hunt, so I ruled that it would be admitted on the papers.

38. The thrust of the objection was that, notwithstanding the grant of planning permission, the redevelopment scheme would not be a reasonable use of land in an agricultural area within the Chiltern Hills Area of Outstanding Natural Beauty ("AONB"). AONBs are now known as National Landscapes, but I will use the term AONB for consistency with the evidence. Mrs Hunt did not object to the conversion scheme, which she considered took into account the design guidelines for the AONB and was in line with the restriction. By contrast, she considered that the redevelopment scheme had an unsympathetic scale and design, which would be visually intrusive, create light pollution, and lead to intensification of business use. It would be the first stage of urbanisation of land on the north side of Icknield Way.

39. Mrs Hunt was keenly aware that the applicant and its predecessors had, over the years, increased their business use at the application site - initially without planning permission, and then with certificates of lawful development. Once lawful business use at the site was established, planning permission for conversion and then redevelopment had become easier for the Council to accept and approve. She feared that if this application was allowed there would, in due course, be further redevelopment proposals for the site, including residential development of the application site and the bungalow plot.

40. The objectors had grown up at Drayton Holloway and still continued to enjoy the peaceful outdoor lifestyle made possible by the paddock and the field. Mrs Hunt explained that if the application for discharge or modification of the restriction was successful, the impact on the objectors would be a loss of amenity in their enjoyment of the field as a natural and unspoilt area for family recreation in the open countryside. This would arise from loss of privacy, due to overlooking by people looking out from the office buildings and walking in the grounds; loss of tranquillity, through increased noise from more people, cars and general activity at the buildings; light pollution from the buildings when used after dark, in winter especially. The objectors felt that being able to prevent this was a substantial benefit to them.

41. Mr Power submitted that the restriction ought not to be deemed obsolete under ground (a) because the character and nature of the application site and neighbouring land on the north side of Icknield Way remained primarily agricultural. The permitted business use at the application site had not profoundly altered its character and the original purpose of the restriction, in restraining the size and type of buildings, continued to be achieved.

42. With regard to ground (aa) Mr Power submitted that the many practical benefits secured to the objectors by the restriction were substantial and, in any event, such that money would not be an adequate compensation for their loss. He relied on the decision of the Tribunal

(Judge Cooke and Mr Mark Higgin FRICS) in *Blue Angel Properties Ltd v Jenner* [2020] UKUT 0360 (LC) in which it was said at [25]:

> "25. …Crucially therefore, if the covenants, in preventing the proposed development, give Mrs Jenner any practical benefits of substantial value or advantage, then they cannot be discharged or modified. If they do not, then they can be discharged or modified only if the applicant can show that money will be an adequate compensation for any loss she will suffer from that discharge or modification."

43. In their decision the Tribunal found that in protecting the objector from potential loss of amenity the covenants did confer benefits of substantial advantage and value. But they said at [133]:

> "133. In case we are wrong about that, we would add that the practical benefits of the covenants in preventing the proposed development, to Mrs Jenner – and specifically to Mrs Jenner who has lived here for decades and raised her family here – could not be compensated by money."

44. It was accepted by the objectors that the redevelopment scheme would cause no loss of market value to Drayton Holloway, or the field.

The evidence on amenity

For the applicant

45. Professor Robert May qualified as a Member of the Royal Town Planning Institute in 1988 and has spent his career working in the field of town and country planning, initially for local planning authorities and then in private practice. He is a director of Ryan and May, a small planning consultancy established in 2020 with a UK wide practice. For the last 10 years he has specialised in providing expert evidence on amenity matters.

46. Professor May was instructed by the applicant to provide a summary of the planning history of the application site, and his expert opinion on the wide range of the matters raised in objection to the application. This included commenting on planning issues, concerning whether the redevelopment scheme was a reasonable user of land within the AONB, as well as assessment of the likely impact of the scheme on the objectors.

47. Whilst much was written in evidence for both parties about the nature of the redevelopment scheme, and its appropriateness within an area designated as an AONB, it was not in the end submitted on behalf of the objectors that the application should fail under ground (aa) because the scheme was not a reasonable use of the application site. Therefore, I will not spend time reviewing Professor May's evidence on that subject, but will focus on his opinions on the practical impact on the objectors should the redevelopment scheme be permitted.

48. It was Professor May's opinion that the benefit secured to the objectors by the restriction was limited to preventing the erection of non-agricultural buildings, and did not include control over appearance, nor factors arising from use such as noise, light, traffic and other disturbance. He observed that with business use now established under class E, without breach of the restriction, the existing buildings could be used as a creche or day nursery for children, which might be noisier and generate more traffic than the proposed office use.

49. Professor May pointed out that one of the conditions of the planning permission for the redevelopment was that a lighting scheme should be approved by the Council, and that had now happened. Exterior lighting on the buildings would be at a height greater than the eaves height of existing buildings, but would be sited under the roof overhang. However, the planning permission for the conversion scheme contained no condition requiring approval of a lighting scheme so, unless statutory nuisance could be established, the objectors would be in a position where there was no control over lighting and its effect. Professor May accepted that the redevelopment scheme would have full height windows to a greater eaves height than in the conversion scheme, and therefore a greater surface area of windows potentially causing light emission. However, the roof overhang and the intermittent vertical slatted screens were design features which would mitigate that. The glazing was to be non-reflective so there would be no effect from reflected sunlight. This was not a condition of the conversion scheme.

50. The rural location would be respected by the use of timber materials and a green roof in the building design, together with planting and landscaping of the outdoor areas adjacent to the field. When Professor May inspected the properties in July and August 2024 he observed the hedge and tree planting undertaken along the field boundary by the objectors. This prompted him to request further visualisations (like the one earlier in this decision) to show the screening effect of the objectors' hedge and trees after periods of five years and 10 years. He had not appreciated that the trees were failing to become established.

51. In conclusion, it was Professor May's opinion that should the redevelopment scheme be implemented there would be no impact on Drayton Holloway or the paddock, since they are too far away from the application site. Any impact on the field would be benign and no injury would result from it. The change in appearance of the application site would diminish over time, as landscaping matured. Any possible loss of privacy from overlooking must be considered in the light of the public footpath which already crosses the field. In conclusion, Professor May considered that the loss of amenity would be, at most, very marginal.

For the objectors

52. Mr Malcolm Kempton is a Fellow of the Royal Institution of Chartered Surveyors who has worked in the property profession for over 40 years, with a particular focus on valuation advice. In 1986 he co-founded Kempton Carr in Maidenhead, which now trades as Kempton Carr Croft. Mr Kempton takes regular instructions to act as an expert witness or single joint expert and has appeared before the Tribunal in s.84 cases. In this case he was instructed directly by Mrs Hunt to assess the impact on the objectors' property of discharge or modification of the restriction to permit the redevelopment scheme.

53. Mr Kempton said that he was mystified as to how planning permission was granted for the redevelopment scheme in the AONB and that he shared the objectors' surprise and disappointment that the guidelines in the Chilterns Buildings Design Guide for Development of Agricultural Buildings were not followed. It was his view that the restriction was put in place to stop urban creep and to keep the tranquillity and peace of the benefited land.

54. Mr Kempton described the redevelopment scheme as intrusive, modern and large. Due to the distance of the scheme from the house and garden, he thought it was unlikely to have any adverse effect on the privacy enjoyed there although in winter, when trees were bare, the modern structure would be visible. But it was his opinion that the buildings would give an overbearing and intrusive feel to the field and would significantly affect its privacy and the objectors' enjoyment of it. Mr Kempton accepted that the field has a road frontage, so is exposed to traffic noise, and that the presence of the public footpath affected privacy to some extent. However, the public footpath is at the far end of the field from the house and he understood that it was not well used. Mr Kempton accepted that modern technology can reduce light spillage from commercial buildings, but maintained his view that it would still create an urban feel to the land. Additional car movements created by the redevelopment scheme at Beeches Farm would further detract from the rural nature of the field.

55. When asked to agree that the view of the buildings from the field would, in time, be mitigated by planting in accordance with the approved landscaping scheme, and the planting carried out on the boundary by the objectors, Mr Kempton commented that this would only occur if the trees which had died were replaced.

56. Mr Kempton had been asked to consider whether the redevelopment scheme would cause any loss of capital value to the objectors' property. He said that it was difficult to quantify any diminution in value attributable to the current scheme but, if modification was permitted, this might give rise to applications for further developments in future which could cause a considerable loss of value.

Discussion

Ground (a) - obsolescence

57. The restriction was imposed 65 years ago and therefore the possibility that it ought to be deemed obsolete by reason of changes in the character of the application land or the neighbourhood must be considered. In the case of *Re Fermyn Wood* [2018] UKUT 0411 (LC) the Tribunal (Deputy President Martin Rodger QC and Mr Andrew Trott FRICS) identified four connected matters to be considered for an application under ground (a):

> "35. In determining whether the 1929 covenant can be discharged under ground (a) it is therefore necessary to consider a number of connected matters. It is first necessary to identify the purpose or object of the covenant, which may be stated in the instrument imposing the restriction or may be inferred from the nature of the restriction or from the known circumstances. Next it is necessary to ask whether the character of the property or the neighbourhood has changed since the covenant was

imposed. Thirdly, whether the restriction has become obsolete by reason of those changes, in the sense that the object for which the restriction was imposed can no longer be achieved. Fourthly, and finally, whether some material circumstance other than a change in the character of the property or the neighbourhood has had that effect."

58. The over-arching purpose of the restriction was stated to be "For the benefit and protection of the adjoining and neighbouring land…". It may be inferred from the wording of the restriction imposed on the blue land that its purpose was two fold. First to restrict new buildings to a bungalow and to those "…designed and to be used for agricultural purposes…"; second to limit the height, and therefore the visibility, of the agricultural buildings. Ms Lyne submitted that since agricultural use had ceased in 1999, and the conversion scheme would not breach the restriction, an implied restriction to agricultural use could no longer be achieved. Moreover, the restriction on height had been breached from the outset when the sheds A and B were built. This, together with the changes in the character of the neighbourhood since the restriction was imposed meant that the original purpose could no longer be achieved.

59. Mr Power submitted that the restriction was not obsolete because the objectors continued to secure benefits from it on their adjoining land. In any event, the character of the neighbourhood on the north side of Icknield Way, around the application land, had not changed. The industrial estate and residential developments referred to by Ms Lyne were to the south of Icknield Way and outside the AONB boundary.

60. From my inspection and the evidence that I heard, I do not consider the restriction to be obsolete. The character of the buildings on the application land has not changed from that envisaged by the restriction. Whilst their use may no longer be agricultural, their appearance is, and the purpose of the covenant was to control appearance, not use. It is agreed that, for the same reason, the conversion scheme is unobjectionable and would not breach the restriction. The neighbourhood of the application land on the north side of Icknield Way and in the AONB has not changed, Icknield Way having formed the natural boundary for new development. The restriction continues to achieve the purpose for which it was imposed in protecting the adjoining and neighbouring land. No other material circumstances were put forward.

61. The application fails on ground (a).

Ground (aa) – Whether in impeding a reasonable use the restriction secures practical benefits to the objectors and, if so, whether money will be an adequate compensation for their loss

62. It was accepted by the objectors that the redevelopment scheme, which had been through the scrutiny of the planning system, was a reasonable use of the application land. It was accepted by the applicant that that use is impeded by the restriction.

63. The case on behalf of the objectors was that the redevelopment scheme, by comparison with the conversion scheme, would lead to a loss of amenity in the enjoyment of their field, arising from the visibility of an intrusive modern building, loss of privacy from overlooking by people inside the building and in the grounds, and disturbance from the activity of more people and more cars at the site. It was not submitted that this loss of amenity would create an associated loss of value. On the contrary, it was submitted that

because a monetary value for compensation cannot be attributed to the potential loss of amenity the application under ground (aa) should fail.

64. The case for the applicant was that the redevelopment scheme would reduce the volume and floor area of buildings on the application land which, together with the careful attention to design features and the use of subtle colours, would be a visual improvement over the conversion scheme. The essential difference between them in terms of potential light spill was a small amount of additional glass above existing eaves height, through which light would be visible for a few hours of darkness in winter. Mrs Hunt had confirmed that the field was not used much after dark. Daylight visibility of the buildings from the field would diminish over time as the planting matured, although it was accepted that the objectors' trees, which had been incorporated into Professor May's future visualisations, were unlikely to grow.

65. It was further submitted that loss of privacy and disturbance are not amenity issues which should be considered relevant for an agricultural field which lies beside a busy road and has a footpath crossing it. In any event, even with the conversion scheme, once the close boarded screening fence was removed there would be similar activity within the grounds. Should the Tribunal find any marginal loss of amenity would be suffered by the objectors, a small amount of money could be awarded in compensation.

66. Counsel for the parties referred me to several authorities where the meaning of the words "secure" and "any practical benefits" had been considered at length. But in the end each case stands on its own facts and must be decided in the light of those. In this case Professor May acknowledged the possibility that the redevelopment scheme might cause a very marginal loss of amenity to the objectors in their enjoyment of the field. At that stage he had still anticipated that the objectors' trees would, within 10 years, provide mitigation of visual intrusion by screening.

67. It was apparent during my inspection that the visibility, and therefore impact, of the current buildings is mitigated largely by the close boarded security fence. Removal of this fence is what will expose the objectors to full visibility of the redevelopment scheme, or the conversion scheme, until any new planting has matured. The restriction does not secure retention of the fence, but it does constrain the type of building that would be visible in its absence. I consider that to be a practical benefit secured to the objectors, although not a substantial one. The essential difference between the two schemes arises from the modern design and flat roof of the redevelopment scheme. The buildings would have a greater height of glazing than the conversion scheme and a starkly modern appearance on high ground in a rural setting. Both schemes would involve business use and activity at the application site and I do not consider that preventing any marginal difference between the levels of activity could be described as a practical benefit to the objectors in their enjoyment of the field.

68. The visualisations in the design and access statement for the redevelopment scheme did not show any trees or shrubs in situ, but the approved soft landscaping drawings provided for a total of 13 trees in the space between the buildings and the field boundary, with nine of them around the north west corner of block B - where it would be most visible walking up the field from Drayton Holloway. The mix included hazel, whitebeam, hornbeam and lime, the combination of which would, in perhaps 10 – 15 years, begin to screen the visual impact of the new buildings when viewed from the field.

69. The nature of the fence along the boundary with the field is not specified in the approved landscaping scheme, but the objectors have attempted with their own planting scheme along that boundary to provide themselves with mitigation. The hedge plants survive and will in due course be a useful screen at lower level along the boundary. It is unfortunate that their trees have died since the objectors would have had the benefit of screening a few years earlier than with any planting done by the applicants as part of the redevelopment scheme.

70. The applicants were seeking either discharge or modification to permit the redevelopment scheme, but I do not consider that it would be appropriate to discharge the restriction. Modification to permit a carefully specified scheme with 17 conditions attached is a measured step which neither precludes, nor sets a precedent for, any future applications on this land or other parcels of land at Beeches Farm which are subject to the restriction.

71. Before exercising discretion to modify the restriction I am required by s.84(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." When the restriction was imposed 65 years ago the context of planning policy was very different. It is evident from decisions of the Council made in respect of the application site in recent years that the transition to non-agricultural use has been found acceptable. In the report recommending that planning permission be granted for the redevelopment scheme the delegated officer explained that redevelopment of a previously developed site was acceptable within the national and local policy framework, subject to the 17 conditions attached to the permission. I am therefore satisfied that the pattern for granting planning permission is established and I have been made aware of no other material circumstances.

72. The applicant had considered the possibility that a sum of money might be awarded in compensation to the objectors for a marginal loss of amenity but did not propose any particular sum. Mr Kempton said that the loss of amenity which would be suffered by the objectors was not of the kind which could be quantified by any diminution in market value, and Mr Power submitted, relying on *Blue Angel Properties,* that this meant the Tribunal did not have jurisdiction to discharge or modify the restriction.

73. Mr Power's proposition is not correct, and nothing in *Blue Angel Properties* supports it. It is possible to assess compensation for a loss of amenity even if the loss of that amenity might not be recognised by a diminution in market value. If the protection afforded by the restriction was of substantial value or advantage, ground (aa) would not be made out. If the protection was not of substantial value or advantage it would be necessary to determine whether its loss would be capable of being adequately compensated for by a payment of money. I must therefore form my own view as to whether the loss of amenity I have described is capable of being compensated in money and, if it is, what sum would be adequate compensation.

Determination

74. I consider that a sum of £15,000 would be adequate compensation for the loss of amenity the objectors will suffer until the tree planting reaches maturity. That allows a little over £2,000 per acre for a marginal loss of amenity to them in their enjoyment of the 7.25 acre

field. It would enable them to undertake further tree planting in mitigation of the loss of amenity should they wish.

75. I am therefore satisfied that I have jurisdiction to modify the restriction under ground (aa), to permit the redevelopment scheme, because the restriction does not secure to the objectors any practical benefits of substantial advantage, and I can award a sum in compensation for the marginal loss of amenity they will suffer from the modification.

76. If follows that ground (c) is not made out because the proposed modification will injure the objectors.

77. The following order shall be made:

The restrictions in the Charges Register for the property known as Beeches Bungalow, Icknield Way, Tring (Title BM448089) 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 grant of planning permission on 18 October 2022 by Buckinghamshire Council under reference 22/02399/APP and subject to the conditions attached thereto may be implemented in accordance with the terms, details and approved drawings referred to therein. Reference to the above planning permission shall include any subsequent planning permission that is a renewal of that planning permission, any non-material amendments that are approved and any other matters approved in satisfaction of the conditions thereto."

78. An order modifying the restriction shall be made by the Tribunal provided, within three months of the date of this decision, the applicant shall have:

1. Signified its acceptance of the proposed modification of the restriction in the Charges Register of the Property; and

2. Provided evidence that the sum of £15,000 has been paid to and received by solicitors acting for the Estate of Margaret Adeline Hunt.

Mrs Diane Martin, TD, MRICS, FAAV

20 December 2024

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, 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.