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RESTRICTIVE COVENANTS

The attached paper has been prepared by the Law Commission following upon the discussions held at Lacon house on 9th and 16th May 1966. The paper attempts to deal with these matters upon which it appeared that those attending the meetings were broadly agreed. It also seeks to indicate certain problems upon which further reflection is necessary. Finally it contains a statement of the provisional views of the Law Commission upon a number of points on which no agreement was reached at the meeting.

Specific points drawn to the attention of recipients include the following:-

(1) Paragraph 4(c) Suggestions for a useful expression to describe the class of stipulations and restrictions annexed to land which will be constituted by positive and restrictive covenants would be welcomed. For the reasons given in the paper it is thought that if possible "covenants in rem" should be avoided.

(2) Paragraph 5(c) Suggestions are invited as to how the existing practices here described, assuming that it is necessary to preserve them, can conform to the broad plan for the future treatment of restrictive covenants. Recipients are asked, in this context, to consider whether it would be satisfactory to adopt the principle that where on its creation a covenant is annexed to retained land "and each and every part of it", the benefit should pass on a subsequent transfer of any part unless the contrary is expressly provided. But there is also the problem of a common vendor who seeks to modify the benefit of annexed obligations on subsequent sales off of plots. (See (A) in the following main paragraph).

(3) Paragraph 6(c) Recipients are asked to consider and make suggestions for dealing with the difficult problem of limiting the effectiveness of personal covenants affecting the use of land where attempts are made by assignment of benefit or otherwise, to extend them beyond the immediate contracting parties. Even though obligations arising under such personal covenants will not be restrictive covenants within the new concept, unless they can be subjected to some control, the complication of conveyancing arising from such practices, particularly in respect of indemnities, will not be alleviated. One must also anticipate attempts to back up valid future restrictive covenants with collateral personal covenants, and consider what preventive means could be devised in this respect.

(4) Paragraph 8(ii) Recipients are invited to give further consideration to the question of future registration of restrictive covenants under s. 10 of the Land Charges Act, 1925. The Law Commission's provisional view remains that such registration will be unnecessary in respect of covenants created in accordance with the current proposals, that it is increasingly ineffective and that the financial savings resulting from its abandonment would be

appreciable. The arguments "against change" are summarised in Paragraph 8 (iii) of the paper and they are found unconvincing.

(5) Paragraphs 15, 16 and 22. State provisional conclusions of the Law Commission. Comment would be welcomed.

(6) Paragraph 19. The "age factor" was discussed at the meeting of 16th May 1966. The Law Commission's provisional view does not favour the introduction of a formula tied to a specific period, taking the view that the age of covenants is merely one factor to be considered in the exercise of discharge or modification jurisdiction.

(7) Paragraph 23. These procedural suggestions are purely tentative and are offered for comment.

It will be observed that in the enclosed paper no attempt has been made to deal specifically with two matters:

(A) Building Schemes. The Law Commission's provisional view is that in future there should be no different treatment of, or principles underlying covenants arising under such schemes and other restrictive covenants. There is, of course, the special question to be considered relating to such schemes on which suggestions are invited under (2) of the preceding paragraph.

(B) Trade Protection Covenants. The Law Commission's provisional view is that covenants of this type can legitimately be created as proper restrictive covenants where the requirements of substance set out in Paragraph 3 of the enclosed paper are met. (e.g. where the common vendor, as part of his development, plans a shopping centre). In other cases, covenants of this type appear to be imposed purely for trade protection motives. It is felt that when the issue arises the determination of the question of validity in this context must be left, as it has been in the past, to the Courts, the discharge of whose functions in this sphere would probably be assisted by providing a test of predominant purpose.

The Law Commission proposes to hold a further discussion upon Restrictive Covenants in about one months time in an endeavour to reach generally acceptable conclusions.

This is a working paper circulated for information and criticism. It is not intended to covey the concluded views of the Law Commission.

LAW COMMISSION

FIRST PROGRAMME ITEM IX.

RESTRICTIVE COVENANTS

INTRODUCTION

1. The object of this paper is an endeavour to summarise the broad lines of agreement on Restrictive Covenants emerging from discussions held on 9th and 16th May 1966 at Lacon House with members of the Bar, the Law Society, the Society of Public Teachers of Law and others concerned. These discussions were arranged to meet the Lord Chancellor's request that the Law Commission should give priority of consideration to the law of restrictive covenants with a view to formulating proposals for legislation which could be introduced alongside the proposals for legislation on positive covenants following the recommendations of the Wilberforce Committees Report (1965 Cmnd. 2719).

PRINCIPLE

2. The Law of Restrictive Covenants should, as far as possible, be assimilated to the proposals for the law of positive covenants formulated by the Wilberforce Committee. This involves the result that restrictive covenants to be imposed in future will take on a character closer to that of legal interests in land and more removed from their present classification as equitable interests.

SUBSTANCE OF RESTRICTIVE COVENANTS

3. The substance of Covenants will be that they consist of obligations:

(a) of a negative character;

(b) relating to the use of the land upon which they are binding;

(c) of a character intended to and capable of benefiting other land. Benefit in this context involves some restriction upon the use of the land affected which increases or maintains the value of the land intended to be advantaged or which conduces to its more convenient and beneficial user.

CREATION OF RESTRICTIVE COVENANTS

4. In order validly to create such obligations in the future:-

(a) the land to be burdened and the land to be benefited must be identified in the creating instrument either by a plan or by an adequate description;

(b) the substance of the covenant (conforming to 3 above) must be set out in or incorporated into the creating instrument. (see note).

(c) the benefit and burden of the covenant must by the creating instrument be respectively annexed to the lands intended to be benefited and burdened. This can be done by the use of a formula such as "covenant in rem" which should be given a statutory meaning. (See note).

Note (b) The alternative of "incorporation" is to meet the possibility, which the Law Commission is exploring, of framing statutory sets of covenants, on the lines of Table 'A' of the Companies Act 1948, for adoption by parties in appropriate cases.

Note (c) One would hope to find a more suitable formula than "covenant in rem", because of its somewhat artificial connotation and its latinity. What is intended is that obligations should be annexed to land and correlative rights to other land but, at least for the time being, these obligations and rights are distinguished in important respects from such other annexed or appurtenant rights e.g. as easements and it would be confusing merely to describe them in simple terms of annexation.

LAND TO BE BENEFITED

5. (a) The benefit of restrictive covenants may legitimately be annexed to land not at the time of their imposition benefit in the ownership of a party to the creating instrument, as long as the requirements relating to the substance and the creation of the obligations are observed. There is no difficulty in such non-party landowner taking enforcement procedure by reliance upon s. 56 L.P.A. 1925.

(b) The effect of valid creation will be to cause the annexed benefit to enure to the advantage of every part of the advantaged land. (Just as the obligation will affect every part of the land burdened). It may be safely left to the Courts in the exercise of their enforcement jurisdiction (as modified – see Paragraph 16 below) to refuse relief in cases where a part of the land benefited is, in fact, too remote from the burdened land to derive any real benefit.

(c) A difficult problem is created by the continuance of present practices under which the covenantee reserves the right on subsequent sales-off of retained land to omit or to pass on in a modified form the benefit of previously imposed restrictive covenants. Amongst the purposes of the creative method (Paragraph 4 above) is to produce certainty as to the identity of the benefited land and this is reflected in the proposals for automatic passage of the benefit and burden of covenants upon transfer of the land to which they are respectively annexed. Further in building scheme cases (at present governed by the principles basically laid down in Ellison v. Reacher [1908] 2 Ch. 374) the power to modify the burden of covenants imposed in respect of other plots within the scheme is not uncommonly reserved by the common vendor; the continuance for the future of these practices appears to be open to similar objections. It is for consideration, therefore, whether there are any means, alternatively to prohibition, whereby such practices, assuming their retention be desirable, can be preserved without undermining the basic concepts of

certainty and automatic passing of benefits and burdens which underlie the new treatment of restrictive covenants.

(d) Special treatment is likely to be required of certain special classes of restrictive covenants i.e.

(i) those arising by the use of special statutory provisions such as the National Trust Act 1937 s.8., the Green Belt Act 1938 s. 22, the Forestry Act 1947 s. 2 and the National Parks Act 1949 s.16;

(ii) the covenants entered into with local authorities under the Housing Act 1957 s. 151, the Town and Country Planning Act 1962 ss. 17, 18 and 37, or under Local or Private Acts including clause 17 of the 1960 Edition of the Stationery Office Model Clauses and variants thereof. (See Wilberforce Report footnote to page 7).

TRANSFER OF BENEFIT AND BURDEN OF COVENANTS

6. (a) It is generally agreed that in future when a valid restrictive covenant has been appropriately created (see Paragaph 3 and 4) then – subject to the resolution of the difficulties indicated in Paragraph 5(c) above-its benefit and burden should automatically pass to those acquiring legal estates in the lands benefited and burdened respectively.

(b) It appears to follow from this proposition that:-

(i) the owner for the time being of a legal estate in the land to which the benefit of a restrictive covenant is annexed should, prima facie, be entitled to enforce it against those for the time being owning or occupying the land to which the corresponding burden is annexed; and that the owner and occupier for the time being of the land burdened should be under the obligation of the covenant annexed.

(ii) when any covenantee or covenantor (or their successor) has parted with his interest in the land benefited or burdened, such person will cease to be entitled to enforce the benefit or liable to observe the burden of the annexed covenant.

(iii) specific assignments of the benefit of restrictive covenants should, for the future, be ineffective; they will in fact be unnecessary because of automatic passing of the benefit.

(iv) in this field it also appears that the provisions of s. 78 and 79 of the L.P.A. 1925 will no longer serve any useful or effective purpose.

REGISTRATION

7. (a) Registered Land

It is agreed that the burden of covenants should appear on the Register against the land to which the burden is annexed. So far as the benefit is concerned, it may be impracticable at the present time, generally to enter this on the register against the land benefited. But this should be the ultimate aim and where it could be achieved now e.g. in the case of plots contained in the development schemes of land to which the head title is registered, assuming such schemes to be clear as to identification and actual annexation, it should be provided for.

8. (b) Unregistered Land

(i) Generally speaking registration of restrictive covenants does not appear to be necessary for the protection of purchasers; and it would be still less necessary in the future assuming that all valid covenants will conform to the statutory requirements as to creation (Paragraph 3). It is agreed that, in this context, an increased use of the provisions of s. 200 L.P.A. 1925 would extend considerable protection at the present time in these cases (common title) to which it applies.

(ii) If registration were essential to protect the interests of purchasers, then clearly, it ought to be effective registration. Registration under s. 10 of the L.C.A. 1925 (against names) is increasingly ineffective to afford protection. Registration against land e.g. as a local land charge is obviously preferable. If, as may be, administrative considerations preclude registration of future restrictive covenants against land (by the creation of a new register under s. 10 of the L.C.A. 1925) either as land charges or local land charges, the question arises whether the continued registration of such covenants under s. 10 L.C.A. 1925 really serves any useful purpose. On the whole it is thought not.

(iii) It is, however, agreed that the increased rate of the extension of compulsory title registration and the continued need for search, as far as possible, in the Land Charges Register in respect of subsisting post-1925 covenants, would not justify (for a mere decade or so) modifying an existing and accepted practice. On the other hand, given the extension of registration to the whole of the country, it will be many years before all titles appear on the Register and the saving of costs of registration of newly created covenants and probably the more extensive saving of the expense of operating the Land Charges Registry to deal with new registrations of this kind, seem to outweigh the arguments in favour of continuing registration under the Land Charges Act, 1925. Finally, it is suggested that abolition of such registration would be introducing a new system, grafted on to one already sufficiently complicated. It is, however, felt that the removal of the need to take an additional, but unnecessary step, i.e. to make an

application for registration is not a change which would be unacceptable to the public or the solicitors profession.

PUBLICITY OF REGISTERS AND RELATED MATTERS

GENERAL

9. The general question of publicity of the Land Registry raises important points of public policy and ought not to be raised in the present limited exercise. The history of earlier attempts to enforce publicity for dealings in land suggests that any attempt to establish the principle of publicity by a side wind would be likely to be met with considerable professional and lay opposition. Since persons proposing to acquire interests in land to which when acquired the obligations of Restrictive covenants will be annexed, it is essential, as in the case of obligations arising under positive covenants, that such persons should be in a position to ascertain, so far as is possible, before they enter into binding commitments what their situation would in that event be. It is for this reason that registration of restrictive covenants should be open to public inspection. The desirability of inspection arises therefore both before contractual commitments are undertaken and after they have been undertaken and before they are completed. In the first case, the need for publicity is of a general character; in the second case, it is the unsatisfactory position of contracting lessees and assignees of leases that requires specific attention.

PRE-CONTRACT INSPECTION

10. (a) Registered Land

Assuming that it be practicable, as seems the case, for the future to enter the burden of restrictive covenants upon a separate register relating to the title affected, there is no difficulty in and no objection to such register being open to public inspection. In passing it should be mentioned that the same reasoning would apply to other registrable or registered charges and encumbrances. To limit the right to inspection of such register to persons having a defined or disclosed interest, apart from difficulties of definition or administration, would unduly restrict the opportunity of and would not meet the requirement for pre-contract inspection.

(b) Unregistered Land

Assuming that registration of future covenants be essential which is at present not agreed, then having regard to public nature of the Registers right under the Land Charges Act 1925 it is desirable to find the means by which the right of inspection can be made as fully effective as possible. Registration as Local Land Charges (and therefore against land) is preferable in principle to registration as Land Charges (against names only). But if registration as Local Land Charges is administratively impracticable, then one must be content with the present unsatisfactory position.

POST-CONTRACT INSPECTION

11. Subject to the well known limitations arising from the inherent difficulties of search in the Land Charges Registry in respect of post-1925 restrictive covenants, the post-contract inspection rights of contracted purchasers of freeholds are broadly satisfactory. It is, however, agreed, despite the fact that additional expense may be incurred, that steps should be taken to reinforce the position of certain classes of persons to enable them better to inform themselves of the burden of restrictive covenants which may affect them. For this purpose it is agreed:

(a) Registered Land
s. 110 of the Land Registration Act 1925 requires amendment to give a prospective lessee or assignee the same rights in respect of search and copy entries on request as a prospective purchaser, so far at least as restrictive covenants are concerned. There seems no valid reason to limit this extension to leases for long terms or at a premium or to assignments in such cases, because the prospective tenant or assignee of short tenancies at a rack rent will not normally concern himself with restrictive covenants.

(b) Unregistered Land
Collaterally with the suggested change for registered land it is agreed that s. 44(2), (3) and (4) of the L.P.A. 1925 should be amended (with consequential change to s.44(5)) subject to contracting out, to give prospective lessees and assignees the right to call for the title to the reversion or head lease in order to ascertain, as far as they may within the limits of s. 10 L.C.A. 1925, whether or not the land is burdened by restrictive covenants. For the reasons previously given there seems no need to limit the effect of such amendment to long term or premium leases etc.

LESSOR-LESSEE COVENANTS BENEFITING OTHER THAN DEMISED LAND

12. It is agreed that covenants of this type are a casus omissus in the definition of Class D (ii) charges under s. 10 of the Land Charges Act 1925. If it be concluded that future restrictive covenants affecting unregistered land should continue to be subject to registration under that Act, then the opportunity should be taken to include this type within the definition of the class.

DISCHARGE AND MODIFICATION OF RESTRICTIVE COVENANTS

GENERALLY:

13. The object of s. 84(1) of the L.P.A. 1925 was, in the public interest, to provide a means whereby restrictions on land use or development which are in whole or part substantially dead, can be deprived of their legal basis. The hypothesis is that, but for the successful invocation of the s. 84 process, the restrictions would be upheld by the Courts. In this two problems are linked, the first is of the basic and continued legal validity of the covenant itself (for this purposes .84 (2) provides a means of resolution); the second is, validity being assumed, whether the Court will in a particular case enforce the restriction. Consideration of the factors affecting the exercise of this jurisdiction seems to offer a position from which problems of

discharge and modification can be more clearly seen, for it is only where the court is likely to enforce a covenant, that it is really necessary to provide discharge and modification procedures.

14. Enforcement of Restrictive Covenants by the Courts

Accepting basic and continued validity, the exercise of enforcement jurisdiction is, speaking generally, governed by the principles laid down in Shelfer v. City of London Electric Light Co. [1895] 1 Ch. 287 viz that relief by way of injunction should only be refused when:-

(i) the injury to the plaintiff's legal rights is small, capable of being estimated in money and adequately compensated by a "small" money payment and

(ii) where it would be oppressive to the defendant to grant an injunction.

But the emphasis laid in (i) on the plaintiff's "legal rights" makes this principle of far less utility to a defendant in restrictive covenant cases than a test of actual harm to the plaintiff; and, the factor of "oppression" to the defendant, essential to principle (ii), is but rarely relevant in such cases.

15. It is striking that in the field of restrictive covenants affecting land, the courts have adopted a position fundamentally different from that taken up in relation to contractual restrictions affecting trading activities. If it is right that free development to the maximum social advantage of our limited available land resources is a matter of public concern, just as freedom of trade was regarded as a vital public necessity in earlier times, one may pose the question whether "public interest" might not be a legitimate consideration in considering enforcement jurisdiction. If, however, it be accepted that public interest can be given due weight in the exercise of discharge and modification jurisdiction (see below) then it is unnecessary to complicate the more limited question of the factors affecting enforcement jurisdictions by consideration of the public interest aspect.

16. Nevertheless for the reasons given in Paragraph 14 it is suggested that the principles laid down in Shelfer's case are too restricted to be of value in providing more flexibility in the exercise of the Courts enforcement jurisdiction in restrictive covenant cases. If, as suggested, annexation of benefit to land is to enure for the "whole and each and every part" of that land, the consequences of failing to widen the principles could be serious.

17. Discharge and Modification by the Lands Tribunal

On the construction which has been given to s. 84(1) of the L.P.A. 1925 it is generally agreed that the present powers of the Lands Tribunal are too restricted. The Tribunal should be able to discharge or modify covenants even if the covenantees concerned would suffer injury or be deprived of practical advantages provided that compensation for the exercise of such powers can take into account loss of amenity as well as loss of value of land affected and provided that the Tribunal where appropriate, imposes protective conditions in any order for discharge or modification.

18. It is generally accepted that recognition must in this context be given to the fact that control of land use is increasingly a matter of public concern and decreasingly to be governed by privately imposed restrictions. The Lands Tribunal already has regard to the position of planning permission in considering s. 84 applications. The problem is how in the exercise of their powers they should weigh the balance between the public interest in the most efficient use of land and the private benefits which flow from the enjoyment of enforceable restrictions. If it concludes that the relevant diminution of these benefits (including amenity loss) can be properly and adequately compensated for by money and that the public interest justifies the discharge applied for as leading to a more efficient land use appropriate to the circumstances then there is a case for the exercise of their powers. In addition to compensation, the Tribunal may of course, and should where appropriate impose conditions of a protective character.

19. It is also generally agreed that there are factors, not specifically referred to in s. 84(1) L.P.A which are relevant to the exercise of those powers; for example, the very age of the covenants in question. In the last fifteen years development has changed the social distribution of classes and activities in most built up areas in such a way that many pre 1939 war covenants, albeit still enforceable, are outdated. It is for consideration whether the Lands Tribunal should not be empowered in the exercise of these powers, to approach applications for discharge or modification of covenants imposed prior to a certain date on the basis that they are prima facie to be regarded as obsolete, subject always to extended powers to compensate objectors and to impose reasonable protective conditions.

20. Whatever solutions are found to the problems indicated in Paragraphs 18 and 19 above, it is agreed that s. 84(1) will require rewriting, if only because as now construed, the present compensation provisions do not make sense.

JURISDICTION AND RELATED MATTERS

JURISDICTION

21. A number of problems have arisen affecting the respective jurisdictions of the courts and the Lands Tribunal, not only from the impact of the Court of Appeal's decision in Re Purkiss Application (1962) 1 W.L.R. 902 on the former practice of the Lands Tribunal and its predecessor Authority relating to the determination of legal issues arising upon applications under s.84(1) L.P.A. 1925, but also from the more general question of duplication of proceedings concerned with the validity or enforceability of covenants. These problems may be summarised as:-

(a) should application to the Tribunal under s. 84(1) be conditional upon the applicant's acceptance of the basic and continued validity and enforceability in law of the relevant covenant?

(b) should the Tribunal have and exercise jurisdiction to determine legal issues incidental to s. 84(1) proceedings whether these issues are simple or complicated?

(c) should an applicant be entitled by one and the same application, and if so by what procedures, to challenge the basic or continued validity of a covenant and as an alternative to seek its discharge or modification?

Consideration of these problems is affected by the present differing practices of the Courts and the Tribunal as to costs – but there is nothing immutable in this respect. Resolution of the problems must pre-suppose satisfactory changes aimed at simplifying and expediting the relevant procedures whilst at the same time ensuring that all objectors with a locus standi have the opportunity to substantiate their case. Such changes are briefly discussed below.

22. It is generally agreed that the Tribunal should have and exercise the right to determine legal issues affecting the status of objectors and that, if possible, some means should be devised for avoiding duplication of proceedings. Disagreement really centres around the question whether legislative provisions governing the Tribunal's discharge and modification functions should clearly enable it to adjudicate upon the basic or continued validity or enforceability of the covenant itself. It must be appreciated that if the Tribunal is given such jurisdiction it will from time to time arrive at decisions affecting the nature of rights and burdens under covenants annexed to land thus interfering with the apparent rights or obligations of the landowners affected. Accepting that duplication of proceedings is to be avoided if possible, the possible solutions are either that validity and enforceability issues arising in relation to the covenant as such should be reserved to the Courts or that they should be determinable, at first instance, by the Tribunal. It is felt that the former solution would not be generally acceptable if it involved conferment upon the Courts of jurisdiction to discharge or modify. The factors which led to the conferment of this new and important function upon the Official Arbitrator, rather than upon the Courts, are, it is thought, at least as weighty today as they were forty years ago. If validity questions were to be left to the Courts and discharge and modification to the Tribunal this would merely perpetuate the present unsatisfactory situation in which duplication of proceedings arises. Subject to resolving the problem of costs and procedural questions, the latter solution, i.e. validity jurisdiction exercisable by the Tribunal when an applicant is seeking relief in the alternative, provided that legal issues are determined by a legally qualified member of the Tribunal with an appeal to the Court of Appeal direct, seems the more attractive. It would have the further advantage that issues of validity etc. like legal issues concerned with locus standi of objectors, could normally be dealt with as preliminary issues – again subject to necessary procedural changes. There would, of course, still be room for the exercise of the Courts jurisdiction to determine validity issues. This would be resorted to in cases where the applicant realises that he has no reasonable prospect of obtaining discharge or modification relief from the Tribunal and that his only practical course is to limit his attack to one on validity or enforceability.

PROCEDURE

23. It is generally agreed that there is room for considerable improvement in procedure in s. 84 cases before the Lands Tribunal; if the proposals for the re-writing of s. 84(1) are accepted and if the suggestion as to the jurisdiction of the Tribunal in validity and enforceability cases is adopted, such improvements are essential. The following procedural pattern is suggested for consideration:-

(1) The applicant for relief should state what his application is really for. The present practice is that the applicant merely states, that he is applying for discharge or modification and relies upon a combination of the grounds at present shown in s. 84(1) by reproducing their language. It is thought that applicants should be required to state whether they are applying for a decision as to validity etc. of the covenant as such and as an alternative whether they are applying for discharge or for modification and if the latter for what modification specifically they are applying.

(2) The applicant should also, in his application, state the specific grounds upon which each part of his application is based. The application would, virtually, acquire the status of a pleading in High Court actions.

(3) Immediately following the lodging of the application the applicant should attend on a member or the Registrar of the Tribunal on an appointment for directions as to service i.e. upon whom the application should be served and as to manner of service. The notice served should provide an opportunity to the person served to sign a consent to the application, if he desires to do so after consideration; it should also state that if he objects he should notify this fact to the applicant and to the Tribunal.

(4) When service has been effected and objectors notices or consents received, the applicant should take an appointment for directions notice of which should be given to the objectors. At this appointment appropriate directions should be given including

(a) where necessary written statements of grounds of objections

(b) where necessary orders for discovery

(c) where legal issues as to validity etc. or locus standi arise, the definition of the issues to be determined and an appointment for their determination as preliminary issues by a legally qualified member of the Tribunal. It may be that (c) would have to be postponed in difficult cases until the steps ordered under (a) and (b) are completed.

(5) Where appropriate, the preliminary hearing on legal issues.

(6) When the covenant or the status of any objector survives the hearing on the legal issues, a final hearing on the merits of the application for discharge or modification.

24. This suggested procedural pattern would, it is thought, clarify, simplify and expedite proceedings before the Lands Tribunal. It is believed that, at present, objectors often do not appreciate what is the applicant's real intention and are led into making and pursuing objections which they would not if they knew e.g. that all the applicant was really seeking was some minor variation. It is also believed that applicants are frequently left in the dark as to the real basis of an objector's grounds. The suggestions contained in (1) (2) and (4(a)) of Paragraph 23 are aimed at

overcoming these difficulties. The suggestions as to appointment for directions as to service, (3) in Paragraph 23, and as to directions generally, (4) in Paragraph 23, are designed to overcome the delays at present experienced in seeking to deal with these matters by correspondence which, it is understood, is often protracted and consuming of much time and effort.

COSTS

25. Reference has been made in Paragraph 21 above, to the different practices as to costs which are followed by the Courts and by the Tribunal. It is considered that there is no reason why these practices should not be assimilated and why a satisfactory general principle applicable to both could not be laid down.

23 May, 1966.