FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CB/OAF/2019/0029**
Property	**:**	**23 Stanley Road Hoylake Wirral CH47 1HN**
Applicant	**:**	**Ms Joan Mary Healey**
Representative	**:**	**Orme Associates**
Respondents	**:**	**Mr John Ridley Cameron** **Mr Michael Asher Woolf** **Dotebroom Limited**
Representative	**:**	**Cripps Pemberton Greenish Solicitors**
Type of Application		**s21(1)(ba) and s21(2) of the Leasehold Reform Act 1967**
Tribunal Members	**:**	**Judge J Murray LLB** **Mr Richard Harris MBE FRICS**
Date of Decision	**:**	**6 July 2020**
Date of Determination	**:**	**14 August 2020**

DECISION

ORDER

That the purchase price for the freehold interest of 23 Stanley Road Hoylake Wirral CG47 1HN be determined at £333

That the conveyance do contain the following restrictive covenants:

1. Not to erect, construct or place any additional building or erection upon the Property without first obtaining the consent in writing of the vendor or its agents, nor to make structural elevation or alteration to any building or other structure now or hereafter erected, constructed or placed upon the said property aforesaid without first obtaining the like consent.

2. Not to use the Property or any part thereof otherwise than as a single private residence or the residence of medicine or surgery or a registered dental practitioner only and for no other purpose so that such practitioners shall not receive any patients to reside in the Property nor have any shop or dispensary for dispensing or selling drugs thereon.

3. Not to do or cause or suffer to be done, or suffer upon the Property, anything which shall or may be or become a nuisance (whether indictable or not) damage or annoyance to the Transferor or its successors in title or to the neighbourhood and not to fix, fasten or place or permit to suffer to be affixed, fastened or placed upon the Property or any part thereof any name plate (except the name of the house or a plate of the size and description commonly used by a medical man or a registered dentist) advertisement board, placard or notice of any description.

THE APPLICATION

1. The Applicants through their agent Orme Associates issued applications on the 8th July 2019 for orders under s21of the Leasehold Reform Act 1967 (“the Act”) for determination of the price payable for, and a determination of the provisions to be contained in the conveyance of the Freehold of a house known as 23 Stanley Road Hoylake Wirral CH47 1HN ("the Property ").

2. The Respondents, two individuals and a Limited Company, are the Freeholders of the Property.

3. A notice under Part 1 of the Act was served upon the Respondents on the 1st April 2019.

4. A notice in reply to the Tenant's Claim dated 7th May 2019 was served by DCW Management Services Agent for the Respondents under cover of a letter of the same date, along with a Notice of Request for Particulars of Rights of Way and Restrictive Covenants required by Tenant and Notice by the Landlord requiring certain restrictive covenants to be included in the conveyance.

5. The Tribunal is therefore asked by the Applicants to determine the issues of the price payable for the transfer of the freehold interest pursuant to s21 of the Act, and the nature of the restrictive covenants to be included in that transfer.

6. Directions were made by a Procedural Judge on 16 October 2019 for each party to simultaneously provide three copies of a bundle of documents containing a statement of case, and any valuation, with an extra party should be sent to the other party. The Applicant's bundle was to include a copy of the application from, a draft transfer, lease and claim notices. The parties were to include details of the costs sought, how they are calculated and the specification of the work to which they relate. The parties were to subsequently lodge statements in reply, again simultaneously.

7. The directions were subsequently extended by the Tribunal at the joint request of the parties.

8. The Application was listed to be determined on the papers alone, unless either of the parties requested an oral hearing. The Applicant did request an oral hearing, but this was refused by the Tribunal, particularly in the light of Covid-19 recommendations.

THE PROPERTY

9. The Tribunal met for deliberations. The Tribunal considered the application in the light of the evidence and submissions filed by the parties, and its own expert knowledge.

THE LEASE

11. The Lease was made on the 22nd January 1953 between Alliance Assurance Company Limited and one Stanley Harold Lunt for a period of 999 years, paying a ground rent of £25 per year by equal half yearly payments.

12. The Applicant's Form 1 stated that:
(a) The Applicant acquired the lease on the 2nd September 1970.
(b) The application lease was unregistered.
(c) The Rateable Value on 23rd March 1965 was 178
(d) The Rateable Value on 31st March 1990 was 455

THE LAW

13. The relevant law is contained in the Leasehold Reform Act 1967

Leasehold Reform Act 1967

S10 (4)

As regards restrictive covenants (that is to say, any covenant or agreement restrictive of the user of any land or premises), a conveyance executed to give effect to section 8 above shall include—

(a) such provisions (if any) as the landlord may require to secure that the tenant is bound by, or to indemnify the landlord against breaches of, restrictive covenants which affect the house and premises otherwise than by virtue of the tenancy or any agreement collateral thereto and are enforceable for the benefit of other property; and

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(b) such provisions (if any) as the landlord or the tenant may require to secure the continuance (with suitable adaptations) of restrictions arising by virtue of the tenancy or any agreement collateral thereto, being either—

(i) restrictions affecting the house and premises which are capable of benefiting other property and (if enforceable only by the landlord) are such as materially to enhance the value of the other property; or

(ii) restrictions affecting other property which are such as materially to enhance the value of the house and premises;

(c) such further provisions (if any) as the landlord may require to restrict the use of the house and premises in any way which will not interfere with the reasonable enjoyment of the house and premises as they have been enjoyed during the tenancy but will materially enhance the value of other property in which the landlord has an interest.

(5) Neither the landlord nor the tenant shall be entitled under subsection (3) or (4) above to require the inclusion in a conveyance of any provision which is unreasonable in all the circumstances, in view—

(a) of the date at which the tenancy commenced, and changes since that date which affect the suitability at the relevant time of the provisions of the tenancy; and

(b) where the tenancy is or was one of a number of tenancies of neighbouring houses, of the interests of those affected in respect of other houses.

s21 Jurisdiction of tribunals.

(1) The following matters shall, in default of agreement, be determined by the appropriate tribunal namely,—

(a) the price payable for a house and premises under section 9 above;

(b) the amount of the rent to be payable (whether originally or on a revision) for a house and premises in accordance with section 15(2);

(ba) the amount of any costs payable under section 9(4) or 14(2);

(c) the amount of any compensation payable to a tenant under section 17 or 18 for the loss of a house and premises.

(cza) the amount of the appropriate sum to be paid into court under section 27(5);
(ca) the amount of any compensation payable under section 27A;

(1A)
. . . . . .

(1B) No application may be made to the appropriate tribunal under subsection (1) above to determine the price for a house and premises unless either—
(a) the landlord has informed the tenant of the price he is asking; or
(b) two months have elapsed without his doing so since the tenant gave notice of his desire to have the freehold under this Part of this Act.

(2) Notwithstanding section 20(2) or (3) above, the appropriate tribunal shall have jurisdiction, either by agreement or in a case where an application is made to a tribunal under subsection (1) above with reference to the same transaction,—

(a) to determine what provisions ought to be contained in a conveyance in accordance with section 10 or 29(1) of this Act, or in a lease granting a new tenancy under section 14; or

(b) to apportion between the house and premises (or part of them) and other property the rent payable under any tenancy; or

(c) to determine the amount of a sub-tenant's share under Schedule 2 to this Act in compensation payable to a tenant under section 17 or 18.

(2A) For the purposes of this Part of this Act a matter is to be treated as determined by (or on appeal from) the appropriate tribunal—

(a) if the decision on the matter is not appealed against, at the end of the period for bringing an appeal; or

(b) if that decision is appealed against, at the time when the appeal is disposed of.

(2B) An appeal is disposed of—

(a)if it is determined and the period for bringing any further appeal has ended; or

(b) if it is abandoned or otherwise ceases to have effect.

SUBMISSIONS AND EVIDENCE

APPLICANTS SUBMISSIONS

14. The Applicants submitted their statement of case dated 5 May 2020 by Mr. Andrew Orme, Property consultant.

15. Mr. Orme confirmed at the outset of submissions that the Applicants wished to acquire the freehold reversion to the Property free from restriction so as to permit redevelopment of the plot and to unlock value, and the Applicant proposed its own set of covenants in place of those the Respondent proposed.

16. These were as follows:

Tenants' Proposed Build Covenants

(a) Any building constructed on the land must remain within the original footprint area shown shaded white in the lease plan (above) and will so respect the building line.

(i) No other building must be placed on the Blue land, save for garages of other outhouse of a maximum of say 150m2 and save for any temporary structure, with a restriction not to use as a separate dwelling.

(ii) Any building must not be in excess of 2.5 storeys above ground.

Tenants User Proposal

A right to arrange the building to comprise of up to eight self-contained apartments

(iii) A restriction to residential use only within Use Class C3 Use Classes Order 1986 (as amended)

(iv) A restriction on use against Houses in Multiple Occupation (HMO) within the meaning of ss 254 – 260

Tenants Proposed Build Covenants

(v) No boat, caravan or commercial vehicle over 7.5 tons class to be kept at the premises.

(vi) Any vehicle(s) kept at the premises must be taxed, tested and roadworthy

Agreed in principle subject to drafting

(vii) Not to do or cause to suffer to be done, or suffer upon the premises, anything which shall or may be or become a nuisance (whether indictable or not) or annoyance to the vendor or its successor in title or to the neighbourhood and not to fix, fasten or place or permit to suffer to be affixed, fastened or place upon the premises, or any part thereof any name plate (except the name of the house or a place of the size and description commonly used by a medical man or a registered dentist(advertisement board, placard or notice of any description (save for temporary signs)

17. Mr Orme referred to changes between the 1950s to date, as the street had undergone "continuous flux" with the addition of new dwellings through development of garden land increasing building and unit density. With the addition of purpose built flats and limited subdivision so houses. Changes of use included a Bed and Breakfast Hotel at number 15, and a Care Home at Numbers 76 – 78.

18. The north side of the street (numbers 56-78) had particularly been the subject of considerable charge notably in density.

19. On the north of the street three two storey blocks of flats comprising of 16 flats in had been built in the 1980s opposed the subject property.

20. Mr Orme stated that on his count, there are 28 houses (counting the three blocks of purpose built flats totalling 16 flats as two, being the number of houses they replaced), from a line crossing the street at right angles from number 15 and westward to Red Rocks (seashore) and of those, 53.5% comprise freehold not subject to a lease, or lease in same ownership (total 15 houses) and 46%% have a title split vertically between leasehold and freehold with each title in separate ownership (13 houses). He set out a table showing properties clear of any restrictive covenants, and noted that only numbers 19 and 64a had restrictive covenants.

21. Of the 13 houses, four were owned by the Respondents, and the remaining 9 by Gridwain Limited.

22. Mr. Orme's conclusions were that the Applicant's house was too small for the plot, and that it was suitable for remodelling, and the viable route would be to replace the old house with a new one, that a "force for change" was evident on the street, and that supply pressures on land resources would lead to more, similar development. That there were 13 freehold houses free of similar restrictions, meant that to give the Applicants a "clean title" would not be the "first chink in an otherwise complete cover of an estate by a set of restrictions".

23. Mr. Orme confirmed that he valued the transfer price as £333.25.

RESPONDENT'S SUBMISSIONS

24. The Respondent submitted a statement of case dated 27 April 2020.

25. The Respondent confirmed that the matter between the parties was whether the terms of the acquisition ought to include restrictive covenants similar to those included in the existing lease limiting, inter alia, the use of the property to a single family dwelling, which would have the effect of preventing the conversion of the Property, inter alia, into flats.

26. The Respondent described the Property as located in a 1950s development adjacent to the Royal Liverpool Golf Club, consisting of large detached houses originally subject to similar leases granted in the same or similar terms to the lease of the Property.

27. The Respondent's valuer Richard Hutt FRICS described the vicinity of the Property as being a "prestige residential location", characterised by large detached homes in their own grounds, the user clauses in the Lease having been designed to preserve the appearance and ambience of the locality.

28. The Respondent was said to have substantial property interests in the vicinity. The submissions confirmed that there was no estate scheme or other restriction that would as a matter of property law prevent a change of use or character. The Respondent filed a plan showing properties owned by the Respondent which they stated were sufficient proximate to benefit from the proposed covenants. The Respondent asserted that it was immaterial that there might be other properties within the vicinity of the subject house that were not subject to similar restrictive covenants.

29. At 9.2 of his report, Mr Hutt considered any variation of the covenants would be "most unwise", on the grounds of "good estate management" alone. He said that any valuation was prepared on the basis that no consent existed for such alterations or changes of use.

30. At 12.7 of his report, Mr. Hutt stated that to part from the covenants would be a "relative travesty" given the special environment that Stanley Road provides to the owners of other nearby properties. At 12.9 he asserted that "in a location such as this, the retention of such user provisions reinforce the quality of the residential nature and location and nearly environment and in my opinion, not only sustains but also enhances the value of both the subject property abut also other properties in the near vicinity, including those in which the freeholder has an interest. At 12.10 he stated that a change from use as a single private residence would have a "deleterious impact" upon the capital value of the other buildings concerned, particularly those houses on the south eastern side of Stanley Road which generally comprise larger style detached houses with imposing approaches, all of which enjoy views over the grounds and course of the Royal Liverpool Golf Club.

31. He asserted it was evident that the principal concern of the original lessor was to secure a settled residential environment and that in reliance of that, purchases of other long leases acquired other properties on that understanding.

32. The Respondent's plan showed that in immediate proximity, they own numbers 27, 29 and 35 on the southern side of Stanley Road, and further upon on the northern side of Stanley Road, numbers 2, 8, 22, 26, 30, 36, 42, 44 and 52. On Beach Road, just off Stanley Road, they own numbers 2,3,4 and 6. On the other side of the Royal Liverpool Golf Club, they own 18, 36 and 64 McQueen's Drive.

33. They put forward the cases of Moreau v Howard de Walden Estates Limited LRA/02/2003 and Cadogan v Erkman [2011] as authority for the proposition that whether or not the covenants would materially enhance the value of adjoining retained land is a matter of general impression rather than specific valuation.

34. The Respondent asserted that in an area comprising predominantly of high value single private residences, it was necessary to ensure continuation to preserve the character and value of the retained land; that an uplift in vehicular traffic, an increased number of households, the risk of significant management issues typical in blocks of flats, an increased risk of nuisance arising from noise, the possibility of the flats being used as rental investments with an uplift in tenant turnover, and the wider need for exterior storage and disposal of refuse.

35. They further relied upon the case of Black v Trustees of the Eyre Estate (1995) LVT, unreported, as authority that a covenant which controls the use of a property such as restricting its use to a single private residence can generally be repeated in the conveyance.

36. The Respondent referred to paragraph 12.16 of their expert report, which stated "I consider that the restrictive covenants that exist in the lease are entirely reasonable in all the circumstances and that to depart from them would have a negative impact of other properties in the locality including those in which the freeholder has an interest".

37. The Respondent filed a draft transfer which contained the following restrictive covenants that they proposed to insert and sought the Tribunal's approval for:

That the conveyance do contain the following restrictive covenants:

1. Not to erect, construct or place any additional building or erection upon the Property without first obtaining the consent in writing of the vendor or its agents, nor to make structural elevation or alteration to any building or other structure now or hereafter erected, constructed or placed upon the said property aforesaid without first obtaining the like consent.

2. Not to use the Property or any part thereof otherwise than as a single private residence in the occupation of one family or the resident (sic) of medicine or surgery or a registered dental practitioner only and for no other purpose so that such practitioners shall not receive mental or other patients to reside in the Property nor have any shop or dispensary for dispensing or selling drugs thereon.

3. Not to do or cause or suffer to be done, or suffer upon the Property, anything which shall or may be or become a nuisance (whether indictable or not) damage or annoyance to the Transferor or its successors in title or to the neighbourhood and not to fix, fasten or place or permit to suffer to be affixed, fastened or placed upon the Property or any part thereof any name plate (except the name of the house or a plate of the size and description commonly used by a medical man or a registered dentist) advertisement board, placard (sic) or notice of any description.

38. The Respondent accepted that they must show, inter alia, that a restrictive covenant will "materially enhance the value of other property", which might include preserving existing value; summing up their submissions they contended the test in s10(4) was satisfied, and that the proposed covenants would materially enhance the value of (sufficiently proximate) other property in which the landlord had an interest.

APPLICANT'S REPLY

39. The Applicant submitted a reply to the Respondents' statement of case dated 27 May 2020.

40. Mr. Orme pointed out that the Respondent's reversion had a limited value and that the Respondent's evidence focused on the proposed restriction non-intensification of use away from a single dwelling house, whilst the Applicant had offered to restrict the use of the land to a maximum of eight apartments, and no comment by the Respondent's expert was made on such a restriction being offered and how that might affect the value of other property in the street.

41. He discussed the figures behind length car ownership in the United Kingdom and pedestrian traffic and comparative high levels of crime in tower blocks in the 1960s and 1970s suggesting that more pedestrians on the streets would reduce anti-social behaviour.

42. The provision of eight flats he said was likely to add between 8 to 18 residents in the street, and a maximum of eight households, and that on average, households in the UK owned 1.3 cars, although this figure was from an RAC survey in 2008. He pointed out that there would be off street parking and the only discernible increase in road use would be from passing traffic up to number 23. He invited the Respondent to express a view as to any restrictions on numbers of vehicles permitted.

43. Mr. Orme offered to consider restrictions to limit rents to a minimum terms of not less than 12 months to avoid an uplift in tenant turnover or holiday lets, with the associated disruption to a neighbourhood.

RESPONDENT'S REPLY

44. The Respondent submitted a reply to the Applicant's statement of case dated 26 May 2020.

45. The Respondent asserted that the Applicants statement was a composite document, being entirely advocacy, and it not purport to be an expert report compliant with Rule 13 of the Tribunal Rules, and that consequently the Applicants had not filed any expert evidence.

46. The Respondent summarised three substantial points in the Applicant's case as being:

(a) The restrictive covenants do not run with the land because they have not latterly been enforced or retained in respect of other properties;

(b) The restrictive covenants claimed by the Respondent exceed those contained in the lease

(c) The restrictive covenants do not materially enhance the value of other property held by the Respondent, and/or covenants offered by the Applicant would provide the same protection.

47. As to the Applicants being bound by the existing restrictions, the Respondent asserted that s10(4)(a)(b)(i) of the Leasehold Reform Act 1967 was engaged by restrictions on the construction on, and use of the premises covered by the lease. The covenants were entirely orthodox restrictive covenants and could not be considered merely personal between the parties on the Applicant's apparently ad hominem claim that the Respondent had not enforced such covenants/not included them on grants of freehold to other leaseholders in the vicinity. This was not the test.

48. In respect of the suggestion that the covenants claimed by the Respondent might exceed those contained in the lease, the Respondent asserted they had simply adopted more modern terminology to achieve the same effect. They suggested the Tribunal might omit the words "in the occupation of one family" which did no more than clarify the words "single private residence".

49. In respect of material enhancement, the Respondent referred to paragraph 12.16 of Mr. Hutt's report.

50. The conversion of the existing house into apartments was the principle risk identified to the Respondent's property; Mr. Hutt stated that the area would change and not for the better, and would have a "deleterious impact" upon the capital value of the other properties concerned. Mr. Hutt had also considered the effect of more intensive use of the site by conversion to apartments, and concluded that the value of other property would be adversely affected.

51. In conclusion they re-asserted that if the covenant materially enhances the value of other property held by the Landlord then the test in s10(4)(b)(i) is met.

DETERMINATION

52. The Tribunal considered the Respondent's submission that the Applicants did not file an expert report compliant with Rule 13 of the Tribunal Rules, in that Mr. Orme's submissions were made as an advocate and did not purport to be expert evidence. It is not clear what the grounds of the Applicants objection are, other than Mr Orme's evidence is composite and not separate from the submissions

53. Rule 19(5) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 states

(5) A written report of an expert must—
(a)contain a statement that the expert understands the duty in paragraph (1) and has complied with it;
(b)contain the words "I believe that the facts stated in this report are true and that the opinions expressed are correct";
(c)be addressed to the Tribunal;
(d)include details of the expert's qualifications and relevant experience;
(e)contain a summary of the instructions the expert has received for the making of the report; and
(f)be signed by the expert

54. Whilst Mr. Orme's report is not separate to his submissions, as the Applicant recognises, it is not unusual for surveyors to appear both as advocates and experts before the Tribunal which goes some way to reducing the costs of the process.

55. At the conclusion of his submissions Mr. Orme addresses the requirements of Rule 19(5); He does not include the precise words of Rule 19(5)(b), "I believe that the facts stated in this report are true and that the opinions expressed are correct"; neither however does the Respondent's expert. Both use similar wording to the precise wording. He confirms he understands his duty to the Tribunal, he contains details of his qualifications and relevant expertise, and he outlines a summary of the nature of his instructions, at least as extensively as the Respondent's expert does; the report is signed. We are satisfied that Mr. Orme's submissions can be accepted as expert evidence complying with Rule 19, and that in all the circumstances it would be fair and just to do so, in accordance with the overriding objective.

56. The two issues for the Tribunal to determine therefore were:

(a) The Price payable for the transfer of the Freehold to the Applicants.

57. The price agreed by both expert witnesses for the Transfer of the freehold is £333 calculated on the basis of the unexpired term of a 999 year lease commencing in 1953 at a ground rent of £25 per annum, calculated on the conventional basis. The Tribunal agrees and adopts that calculation which is not in dispute between the parties.

(b) What restrictive covenants (if any) should apply to any conveyance of the land

58. s10(4)(b)(i) of the Leasehold Reform Act 1967 frames the general principle that a landlord cannot require the continuance of covenants imposed by a tenant's lease, on the transfer of the freehold, unless, in the case of a restrictive covenant, it is capable of enforcement by persons other than the landlord, or will materially enhance the value of other property. This is the limb that the Respondent relies upon in the present case.

59. Valuation evidence is not required to quantify the benefit, but there must be some evidence of uplift in value or prevention of diminution in value) Earl Cadogan v Betul Erkman [2011] UKUT 90, and Trustees of the Sloane-Stanley Estate v Carey Morgan [2011] UKUT 415; the mere assertions of a party's representative would not be sufficient.

60. The President, in the Carey Morgan case stated that there must be evidence to satisfy the Tribunal, albeit as a matter of general impression, that there will be some monetary uplift in value (albeit unquantified) or the prevention of some monetary diminution in value (albeit unquantified).

61. In the present case, the experts argue, unsurprisingly, for their own respective position on the material enhancement part.

62. Mr. Orme for the Applicants argued that if the covenant was imposed for the purposes only of securing a ransom payment, then it is not a covenant capable of benefit other land, either at common law or within the meaning of the relevant wording in paragraph 5(1)(b)(i) of Schedule 7 of the Leasehold Reform Housing and Urban Development Act 1993, which provides very similar provision for the enfranchisement of leases, as in the case of Kutchukian v Keepers of the Free Grammar School of John Lyon [2012[UKUT 53(LC).

63. He put forward a lengthy argument that the restrictive covenants in the lease did not touch and concern the land.

64. Mr. Orme stated that the Respondent has transferred Hillstone Grange, 17 Stanley Road to Mr. and Mrs. Corfe on 10th August 2005, for a consideration of £10,000, with no restrictive covenants and thereafter planning consent was obtained in 2013 for a property in the garden, and then part of the land was sold later that year to create 17A. They obtained planning consent to convert to provide 7 apartments from number 17 and were now seeking to sell with the benefit of such consent.

65. Other properties had similarly had their freeholds transferred with no covenants or restrictions being imposed. Numbers 31, 27, 25 and 76 had their freehold unencumbered with no covenants. Mr. Orme asked for proof of all freeholds transferred by the Respondent, and asserted that the Respondent could not meet the test in Kutchukian or otherwise prove that it was bona fides in seeking protection by a restrictive covenant.

66. Mr. Orme said that 13 of the 28 houses in the enclave appear free of covenants, and as a consequence that must diminish the value of the covenants that remain. The value restrictions bring to a particular parcel of land he said was outweighed by the activity sought to be prevented simply taking place on another parcel of land.

67. Mr. Hutt for the Respondent pointed out the potential effects of removing the covenants and the impact of a denser population, higher turnover of residents of rented apartment buildings, increased traffic flow, amongst other changes, which would affect the nature and consequently the value of the area.

68. The Tribunal determines in this case that control over the occupation of the subject property is of importance to the Respondent, and removal of the restrictions will impact on the potential value of their other holdings in the vicinity. Whilst there is no estate plan, or planning controls that would otherwise restrict the proposed development, that is not material to the Tribunal's decision.

69. Similarly there is no need to find that the covenant touches and concerns the land; it is clearly stated in the lease, and the question for the Tribunal is framed by the 1967 Act; the requirement for material enhancement of value within subsection n10(4)(b)(i) is the sole relevant consideration.

70. Mr. Orme's references to car usage and pedestrian presence, or the private rented sector being an important supply source to meet housing demand were not considered of relevance to the decision the Tribunal had to make.

71. Mr. Orme asserted that as 13 of the 28 houses were free from covenant, that would diminish the value of the covenants that remain. Whilst that is undoubtedly true, it also appeared to the Tribunal to be a recognition by Mr. Orme that the covenants do indeed create value, albeit that value will decrease the more properties have them removed; but whilst more than half of the properties retain the covenant, then there would appear to be value in it.

72. s10(5) Leasehold Reform Act 1967 prevents inclusion in the transfer of any provision which is unreasonable in the circumstances in view of the date the tenancy commenced, and changes since that date which affect the suitability at the relevant time of the provisions of the tenancy, and, where the tenancy is one of a number of tenancies of neighbouring houses, the interests of those affected in respect of other houses.

73. The covenants were clearly considered of importance in 1953, and have by and large on the evidence of the parties kept the locality as a similar environment, subject to some natural growth, since that time. The majority of the properties are to this day, large, detached villas as private residences.

74. The Tribunal considered the question posed by s10(4)(b)(ii) of material enhancement of the value of other property at length. The Tribunal noted that the Respondent does not have total control of the area, having only four houses in the immediate vicinity; they do not own the adjoining properties which are said to be free of restriction. The nature of the area is changing, with a push for flats and retirement accommodation. The sizes and layouts of plots are varied, and there is a degree of fragmentation.

75. The Respondent's titles are held as four separate titles, not on one; the situation is not analogous to the freehold owner of a block of flats. The properties were built at different times.

76. The Tribunal's view was that it was inevitable that over time, older houses without restrictive covenants would likely fall to redevelopment into flats as developers would be able to outbid given the costs of demolition and rebuild would not be subject to full rates of VAT as a house renovation buyer would be.

77. The Tribunal considering the evidence before it, the expert evidence and submissions made by both parties in a finely balanced decision determined that the restrictive covenants would have some impact on other property held by the Respondent, in that restricting user of properties to single private dwelling houses would retain the nature and ambience of the area to a sufficient extent as to enhance the value of other properties belonging to the Respondent.

78. It is likely that the effect will not be substantial, but it is not in our jurisdiction to determine this amount; we do however observe that the Respondent does not own the properties immediately adjoining number 23, (21 and 25) which are said to be freehold with no restrictions on title. there is no general "estate plan".

79. The Tribunal considers it would be right to omit the words "in the occupation of one family" which go beyond the current terms of the lease from the proposed new covenants.

80. The Tribunal determines that following restrictive covenants should be included in the transfer of the freehold:

1. Not to erect, construct or place any additional building or erection upon the Property without first obtaining the consent in writing of the vendor or its agents, nor to make structural elevation or alteration to any building or other structure now or hereafter erected, constructed or placed upon the said property aforesaid without first obtaining the like consent.

2. Not to use the Property or any part thereof otherwise than as a single private residence or the residence of medicine or surgery or a registered dental practitioner only and for no other purpose so that such practitioners shall not receive any patients to reside in the Property nor have any shop or dispensary for dispensing or selling drugs thereon.

3. Not to do or cause or suffer to be done, or suffer upon the Property, anything which shall or may be or become a nuisance (whether indictable or not) damage or annoyance to the Transferor or its successors in title or to the neighbourhood and not to fix, fasten or place or permit to suffer to be affixed, fastened or placed upon the Property or any part thereof any name plate (except the name of the house or a plate of the size and description commonly used by a medical man or a registered dentist) advertisement board, placard or notice of any description.

Judge John Murray

6 July 2020