



HM Courts &
Tribunals Service

The Upper Tribunal (Lands Chamber)

There is an application to discharge (i.e. remove) or to modify a restrictive covenant affecting the use of the land referred to below.

Take notice that an application under section 84 of the Law of Property Act 1925 to discharge (i.e. remove) or to modify restrictions imposed in a covenant affecting the land referred to below has been made to the Tribunal. If you are legally entitled to the benefit of the covenant and you wish to object to the application, you should object within 1 month of the date of this notice.

The application relates to land at 2 WOODLAND WAY, PETTS WOOD, ORPINGTON, BR5 1ND. The applicants are MR PETER LIVETT AND MRS SUSAN LIVETT of 2 WOODLAND WAY, PETTS WOOD, ORPINGTON, BR5 1ND.

The covenant, contained in a conveyance dated 22nd OCTOBER 1931 made between THE CHISLEHURST AND ORPINGTON ESTATES LIMITED and J H LUPTON, S SEEL AND J SUTCLIFFE (2) AND E M DENNIS (3) in respect of which the application is made contains the following restrictions:

"2. A private dwellinghouse and one only not a bungalow with the appropriate outbuildings shall be erected on the property ... And no building shall be used ... otherwise than as a private dwellinghouse only.
3. No act deed or thing shall be done or permitted to be done on the property hereby assured or in or upon any building erected thereon which may be or grow to be an annoyance nuisance damae or disturbance to the vendors or to the owner or tenant of any other plot or part of the estate."

The application seeks the **discharge** of the restrictions on the following grounds:

- (a) that the restrictions ought to be deemed obsolete:
- (aa) that unless discharged the restrictions would impede the use of the land for two only private dwellinghouses; that such use is a reasonable use; that in impeding that use the restrictions do not secure to the persons entitled to the benefit of it any practical benefits of substantial value or advantage; and that money will be an adequate compensation for the loss or disadvantage (if any) which any person will suffer from the discharge;
- (b) that the proposed discharge will not injure the persons entitled to the benefit of the restrictions.

Alternatively, the application seeks the modification of the restrictions so as to permit the demolition of the existing dwellinghouse and the construction of two private dwellinghouses on the application land in accordance with a decision made by HM Planning Inspector date 8 July 2020 (under reference number App/G 5180/W/20/324569) in respect of planning permission decision date 29 July 2019 made by Bromley, London Borough Council (under reference number DC/19/03259/Full1).

Modification is sought on the following grounds:

- (a) that the restrictions ought to be deemed obsolete:
- (aa) that unless modified the covenant would impede the use of the land as two only private dwellinghouses; that such use is a reasonable use; that in impeding that use the restrictions do not secure to the persons entitled to the benefit of it any practical benefits of substantial value or advantage; and that money will be an adequate compensation for the loss or disadvantage (if any) which any person will suffer from the modification;
- (b) that the proposed modification will not injure the persons entitled to the benefit of the restrictions.

You may inspect the application, plan and other documents at 2 Woodland Way, Petts Wood, Orpington, Kent BR5 1LB between the hours of 10:00am to 4:00pm Monday to Friday. A copying charge may be payable if copies are required.

If you are a person legally entitled to the benefit of the restrictive covenant and you wish to object to the application, you may download a Notice of Objection form (Form T 381) from the Lands Chamber website or contact:

The Registrar, Lands Chamber, 5th Floor, Rolls Building, 7 Rolls Building, Fetter Lane, London EC4A 1NL (or telephone 020 7612 9710)

and ask for an objection form. The form should be completed and signed and sent to the Tribunal and the applicants or, if they are represented, their solicitors **within 1 month of the date of this notice**.

Persons who file objections become parties to the case, and, provided they are entitled to object, they may appear at the hearing of the application, if there is one. Objecting to an application is the assertion of a property right. The applicants will be asked whether they accept that the person giving notice of objection is entitled to the benefit of the restriction of which discharge or modification is sought. If it does not accept this, it will be for the Tribunal to determine whether or not the objector appears to be so entitled and should therefore be admitted to oppose the application. If such a determination has to be made the general rule is that the unsuccessful party will pay the costs of the party in whose favour the determination is made.

Regarding the application to discharge or modify a restrictive covenant, when there is a person or people entitled to its benefit the applicant is seeking to have a property right removed from them. For this reason, successful objectors may normally expect to have their legal costs paid by the unsuccessful applicant. Likewise, although they will usually pay their own costs, unsuccessful objectors will not normally be ordered to pay the costs of successful applicants. Only an objector who acts unreasonably may be required to pay some or all of the applicant's costs. The applicants may rely on a lack of objections, or a failure on the part of any particular person to object, in support of the application.

If you are unsure of your position, you should seek legal advice.

Signed:

Status: APPLICANTS: Mr Peter Livett, 2 Woodland Way, Petts Wood, Orpington BR5 1ND

Publication Date: 8th April 2022

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