Landmark Chambers

Ground (aa) of s.84(1) of the Law of Property Act 1925

Tom Weekes QC

November 2019

Title

Ground (aa) enables the Tribunal to discharge or modify a restriction if:

1.The continued existence of the restriction "would impede some reasonable user of land…".

2. In impeding that user, the restriction:

- "…does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them".

- Or, is "contrary to the public interest".

3. And "that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the discharge or modification".

Title

Shephard v Turner [2006] 2 P&CR 28. Carnwath LJ (at para 23) said that "substantial" means something like:

> "…considerable, solid, big".

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Possible impacts on amenity:

Noise.

Light pollution.

Shadowing.

Overlooking.

The sight of something that is overbearing or unattractive.

Loss of light/daylight/sunlight.

Loss of a feeling of spaciousness and tranquillity.

Loss of an attractive view.

Increased traffic and loss of parking.

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Re Zopats Developments' Application [1966] 18 P&CR 156, Erskine Simes QC:

"…the prospect terrifies while the reality will prove harmless".

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Stannard v Issa [1987] AC 175, Lord Oliver (at pp.187-188):

“Given any set of restrictions it is not usually difficult to conjure up colourful or hypothetical examples of things which could be done within the framework of the covenants as they stand and which, if done, would substantially impair or defeat the purpose for which the covenants were imposed…”.

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Hennessey's Application [2018] RVR 133.

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Martin Roger QC and Mr AJ Trott:

Planting the Leylandii trees was an “unattractive strategy” (para 56). But (para 59):

“The Tribunal cannot disregard the presence of the trees, or any other of the facts on the ground, when considering whether the density restriction secures practical benefits of substantial value or advantage. At most the Tribunal might consider the possibility that a more sympathetic owner of the application land might, in future, be prepared to remove the trees.”

(1) Re Zenios [2010] UKUT 260 (LC)

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1. The restrictions were contained in a Scheme of Management under the Leasehold Reform Act 1967.

2. Hampstead Garden Suburb had the benefit of the covenants a “custodian of the public interest”. So any harm caused by the modification of the covenant would not be adequately compensated in money.

3. The development would be the “thin end of the wedge”.

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(2) Stanborough's Application [2012] JPL 756.

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The Tribunal is sceptical about claims by an applicant that, if an application is dismissed, he will carry out a development that, whilst allowed by the covenants, is even worse for objector.

Me: Do you agree that it would be difficult for the Tribunal to form any clear idea of what you might do if your application was dismissed?

Applicant: Yes.

(3) Re Surana's Application [2016] UKUT 368 (LC)


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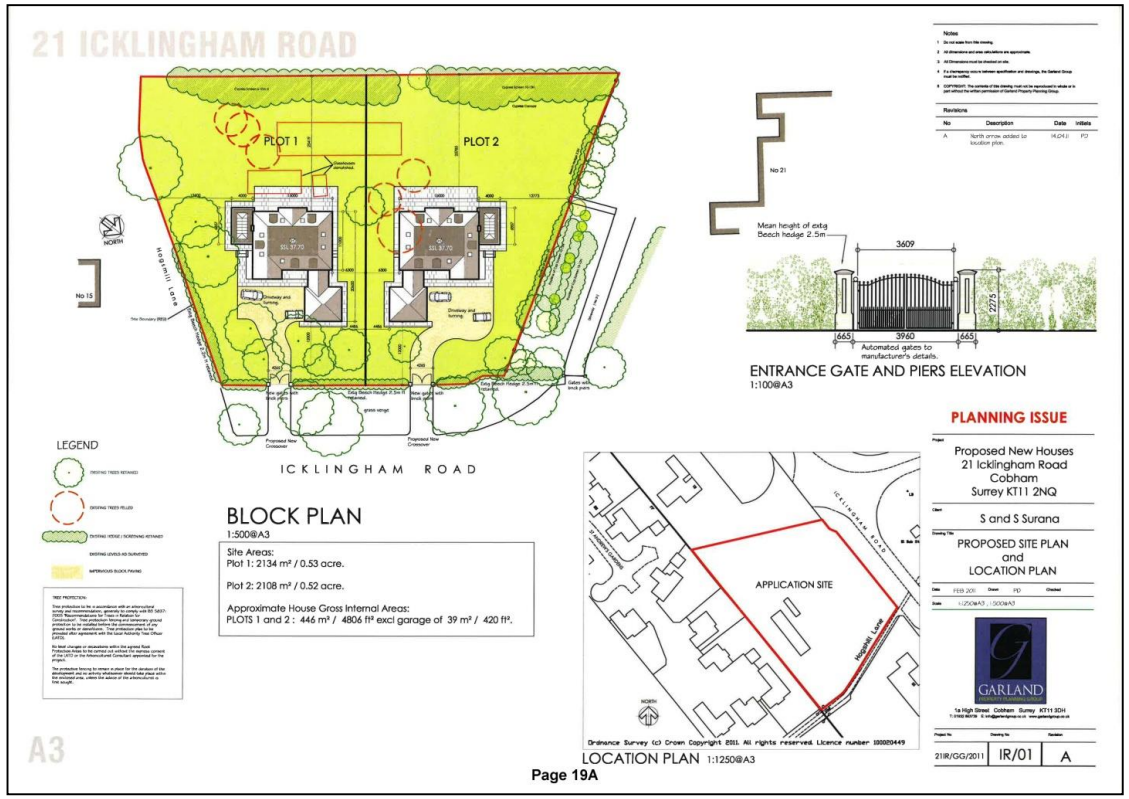
21 ICKLINGHAM ROAD
PLOT 1
PLOT 2
Hogshill Lane
No 15
NORTH
ICKLINGHAM ROAD
LEGEND
BLOCK PLAN
1:500@A3
Site Areas:
Plot 1: 2134 m² / 0.53 acre.
Plot 2: 2108 m² / 0.52 acre.
Approximate House Gross Internal Areas:
PLOTS 1 and 2 : 446 m² / 4806 ft² excl garage of 39 m² / 420 ft².
No 21
Mean height of extg Beech hedge 2.5m
3609
2275
665
3960
665
Automated gates to manufacturer's details.
ENTRANCE GATE AND PIERS ELEVATION
1:100@A3
APPLICATION SITE
Hogshill Lane
Ordnance Survey (c) Crown Copyright 2011. All rights reserved. Licence number 100020449
LOCATION PLAN 1:1250@A3
PLANNING ISSUE
Proposed New Houses
21 Icklingham Road
Cobham
Surrey KT11 2NQ
S and S Surana
PROPOSED SITE PLAN
and
LOCATION PLAN
GARLAND
21IR/GG/2011
IR/01
A
A3

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"…the prospect terrifies while the reality will prove harmless".

Martin Roger QC and Andrew Trott FRICS:

"…we do not consider that the benefit of retaining the application land as an undeveloped plot, rather than the site of two further dwellings largely concealed from view by the sort of high hedge common in the area, is substantial".

(4) Theodossiades' Application [2017] UKUT 461

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Attempt to rely on a “thin end of the wedge” argument.

But:

1. There had already been breaches of the density covenants.
2. There were doubts about the enforceability of some of the covenants.
3. There were 12 flats in a property on the other side of the road.
4. The proposed development (although containing flats) would look like a house.
5. Further developments of flats might not be that bad.

(5) University of Chester's Application [2016] UKUT 457 (LC)

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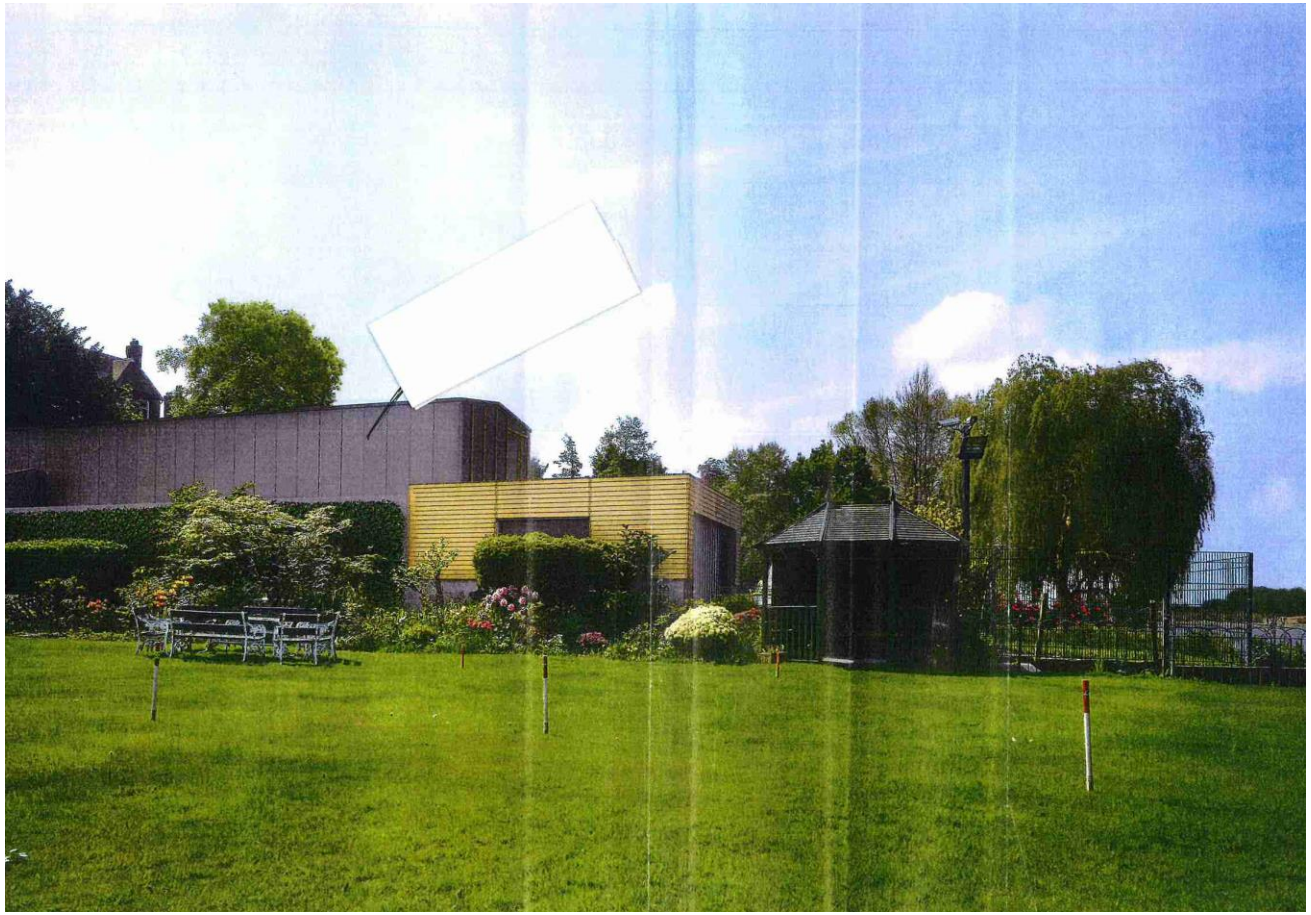

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Martin Roger QC and Peter McCrea FRICS:

"The proposed new boathouse was described by the planning officer as overbearing and by Mr May [the objector's expert] as being visually intrusive and of a different scale to the other buildings and structures along this part of the river. We agree with both assessments and with Mr May's further observation that the zinc clad upper section of the façade would be alien to the locality and would provide a particularly unattractive backdrop to the Witters' carefully tended garden."

(6) Pendennis Shipyard (Holdings) Ltd v A&P Falmouth Ltd [2017] UKUT 430 (LC)

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The covenant:

Able to repair boats, but prohibited from repairing ships.

Prohibited from building boats or ships.

Pendennis sought a modification to enable it to build or fit out “any commercial or military craft”.

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The modification was allowed, but only to permit work on yachts and pleasure vessels. The prohibition as it related to commercial/military vessels remained.

HHJ Bridge and Peter McCrea FRICS:

“There is no legal impediment to Pendennis selling its shipyard and taking its business elsewhere. The objectors [are correct to say] that the Pendennis shipyard could then fall into the hands of a competitor to A&P which, in the event of the covenant being modified, would be able to use the Wet Basin in order to build and repair commercial and military vessels.”

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Thank you for listening

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