

LANDS TRIBUNAL

LP/ /

FORM OF APPLICATION UNDER SECTION 84 OF THE LAW OF PROPERTY ACT 1925 TO DISCHARGE OR MODIFY A RESTRICTIVE COVENANT

1. Applicant:

The Mayor and Burgesses of the London Borough of Enfield of Civic Centre, Silver Street, Enfield EN1 3XA. Tel: 020 8379 1000

2. Applicant's Representative:

Solicitor to the Council, London Borough of Enfield, Civic Centre, Silver Street, Enfield, EN1 3XA. Tel: 020 8379 1000. Ref: Legal/P/AS

3. Application Land:

Broomfield House and Park, Palmers Green, London N13, as the same is shown edged red on the attached plan (Appendix 1). The application land is not registered.

4. Applicant's Interest in the Land:

Freehold

5. Land in which the Applicant has an Interest:

This is the same as the application land.

6. Land Subject to the Burden of the Restrictive Covenant:

This is the same as the application land.

7. Land to which the Benefit of the Covenant is believed to Attach:

Land at Palmers Green, London, N13 comprising part of the former Broomfield Estate as the same is shown edged brown on the plan attached, the addresses of the properties most directly affected (i.e. within approximately 250 metres of the boundary of the application land) are:

68 - 136 (even) Powys Lane
111 - 137 (odd) Powys Lane

22 - 70 (even) Dawlish Avenue
19 - 69 (odd) Dawlish Avenue

1 - 69 (odd) Cranford Avenue
2 - 60 (even) Cranford Avenue

1 - 57 (odd) Hawthorn Avenue
2 - 74 (even) Hawthorn Avenue

2 - 10 (even) Elmwood Avenue
1 - 23 (odd) Elmwood Avenue

55 - 149 (odd) Broomfield Avenue
46 & 56 - 108 (even) Broomfield Avenue

5 - 30 Broomfield Lane

1 - 33 (odd) Belmont Avenue
2 - 46 (even) Belmont Avenue

8. The Legal Instrument under which the Restriction was imposed:

Conveyance made 25 March 1903 between Reginald Cecil Lybbe Powys Lybbe of the first part, Edward Home and Hamilton Fulton of the second part and the Urban District Council for the District of Southgate of the third part, a certified copy of which is attached.

9. Whether the Applicant is in Breach of any of the restrictions imposed by the legal instrument under which the covenant was imposed:

The Applicant is not in breach.

10. The Restrictions, the Subject of this Application:

Please see Appendix 2 attached.

11. Whether the Application is for (i) discharge; or (ii) modification; or (iii) discharge or modification in the alternative:

The application is for modification.

12.1 The modification that is sought is set out at Appendix 3 and the Applicant relies on the following grounds of Section 84(1) of the Law of Property Act 1925 in support of the Application:

- (aa) That (in a case falling with sub-section (1A) below) the continued existence of the restriction would impede some reasonable user of the land for public or private purposes or, as the case may be, would unless modified impede such user.
- (b) That the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified.
- (c) That the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction.

12.2 The relevant particulars of the grounds are as follows:

- (aa) The covenant in respect of which modification is proposed was imposed in 1903 at a time when the Broomfield Estate was being broken up and sold. Clearly times have changed considerably in the century since and the restrictions in question now unduly prohibit reasonable uses of the buildings. For example, for many years prior to 1984 part of Broomfield House was used as a cafe, run by or franchised by the Local Authority as landowner, which produced an income which could be applied towards meeting maintenance costs. This may have been in breach of the relevant restrictions but as far as can be ascertained, no objection was ever made. Presently the planning and listed building legislation achieves the sort of safeguards which may well have been the original objective of the covenant in this case.

Broomfield House and stable block are now dilapidated (the house having been largely destroyed by fire in 1984) and require substantial investment to restore them. Both are grade II star listed. Such investment can only be secured if there is the ability to produce a long term income flow for maintenance of the house and stable block, and thereby also give impetus for the improvement of the historic gardens and park. In order to minimise the possible detriment to beneficiaries of the covenant, it is proposed that the limitations on use be modified, rather than removed.

It is proposed in the first place to let the house to a charitable body that is representative of local community bodies interested in its restoration and preservation. The building will be used as described in the draft modification at Appendix 3. The continued existence of the restriction in

its present form would prevent such reasonable use and does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them. In preventing such reasonable use designed to secure the restoration of what is intended to remain a publicly accessible facility, the continued existence of the restriction in its present form is contrary to the public interest.

PROVISIONS OF THE DEVELOPMENT PLAN

The land is owned by the Council of the London Borough of Enfield and the Council's planning policies are set out in its Unitary Development Plan (UDP) which was formally adopted in March 1994. Interim Amendments to the Unitary Development Plan were published in June 1997.

The Proposals Map of the UDP identified Broomfield Park as being included within an area designated as Metropolitan Open Land. The UDP sought to identify areas where significant change was likely to take place during the Plan period. The house and its environs were identified as an 'Area of Opportunity'. The site was numbered on the Proposals Map as Site 6/AO. Further details were included in a schedule contained in Appendix 3 of the Written Statement. The column headed 'Remarks' contains the following statement 'Land owned by LBE. Would be suitable for community use or office use, with a degree of public access'. Paragraph 1 of Appendix A3 emphasised that these details were 'provided for information purposes only and should not be interpreted as being in any way prescriptive'.

Development of the site will need to comply with a number of policies in the plan, however, UDP policies considered to be of particular relevance to the site include:

- (I) EN1 - Environmental quality
- (I) C1 - Heritage conservation
- (I) E1 - Business development
- (II) O1 - Buildings in Metropolitan Open Land
- (II) C1 - Archaeology
- (II) C2 - Archaeological evaluation
- (II) C12 - Management of listed buildings
- (II) C13 - Listed buildings at risk
- (II) C14 - Repair of buildings at risk
- (II) C17 - Built development in the curtilage of listed buildings

- (II) C18 - Use of the grounds of listed buildings
- (II) C19 - Development within historic landscapes
- (II) C20 - Management of historic landscapes
- (II) GD1 - Development in suitable location
- (II) GD3 - Suitable design
- (II) GD6 - Traffic generation
- (II) GD7 - Car parking standards
- (II) GD8 - Vehicular access, servicing, turning
- (II) GD11 - Disabled access
- (II) T13 - Access to public highway
- (II) T15 - T18 - Pedestrians, footpaths, traffic curtailment
- (II) T19-21 - cycling, cycle parking
- (II) T32 - parking for disabled people

A brief has been prepared by the London Borough of Enfield Environmental Services Group, in consultation with key interest groups and acts as Supplementary Planning Guidance. Under 'Acceptable Uses', the brief states that 'Uses acceptable in terms of the Council's UDP could include institutional, community, food and drink, office or residential uses. Any such use, or similar use of a type and of a detailed design which would have no material adverse impact on the historic fabric of the House, its parkland setting, or the amenity of local residents could be acceptable in principle'. The Brief goes on to state that 'in view of the architectural and historic importance of Broomfield House in the locality, the Council will seek an agreement with any developer to provide public access thereto. The provision of meeting/exhibition rooms available to the local community and a Park cafe service is particularly encouraged. The possible provision (within Broomfield House or the Stable Block) of a small environmental resource centre for use by local schools and a 'Millennium garden' (within the Park) with plants from around the World, could be considered' .

RECENT PLANNING HISTORY

The House and Park were acquired for public use by the former Southgate Urban District Council (the statutory predecessor in title to London Borough of Enfield) in 1903. The subsequent uses of the house included a museum (housing both a local collection and exhibitions); a clinic run by the District Health Authority, occupying part of the first floor; and a cafe occupying part of the ground floor. The building was substantially damaged by fire in 1984.

A number of proposals have been considered over the years and the site has previously had the benefit of Conditional Planning Permission (ref TP/96/0796) and Listed Building Consent (ref LBC/96/0024) for the following:

- Partial demolition, repair, adaptation and restoration of fire damaged listed building for use as pub/restaurant
- Ancillary residential accommodation and meeting rooms
- Construction of single storey extensions for use for food preparation and beer storage
- Laying out of terrace to the east side of the building
- Provision of associated car parking on part of existing driveway, and yard areas
- Associated works, including formation of new and improved vehicular accesses through listed walls, involving their partial demolition

These permissions were associated with legal agreements under Section 106 of the Town and Country Planning Act 1990 and Section 278 of the Highways Act 1980. Further applications were made relating to details pursuant to conditions within the said permissions but these were not determined. In 1999 planning consent was refused for the erection of a single storey building on the site and listed building consent was refused for the demolition of Broomfield House.

The site currently has the benefit of planning consent (reference LBE/03/0013 copy attached) for permission of the Local Planning Authority to develop land situated at Broomfield House, Broomfield Park, Palmers Green, London, N13 for restoration, conversion from museum use and extension of listed building involving construction of single storey extension and conservatory to eastern flank together with new entrances to proposed community rooms and café, and lowering of basement floor level to provide accommodation for community rooms, a café, educational facilities, function rooms and ancillary office accommodation together with other minor works as well as conversion of existing garden into kitchen and provision of new car park with 41 spaces utilising existing access from Broomfield Lane.

The site currently has the benefit of a resolution to grant listed building consent (reference LBC/03/0025 draft copy attached) by the Local

Planning Authority which has been referred to the Government Office for London for confirmation that it may be issued. This is to restore and refurbish the house involving works to reinstate the slate roof, walls and sash windows, the repair and restoration of interior to recreate original interior, including rebuilding to allow for a lift; new service staircase and lowering of ground floor; remodeling a south-east corner to include secondary staircase; the creation of a secondary service staircase; the creation of a structural glass roofed area to the east of the rebuild sixteenth century gable; a new glass conservatory extension to eastern elevation, new entrance in the southern elevation, new terrace with portico in the western elevation, the local lowering of basement floor level to accommodate installation of boilers and other plant involving demolishing basement steps and extending area. Installing new access steps and relocating door opening. New entrance to north elevation of garden store, together with removal of internal partition and refurbishment to enable use as a kitchen; other ancillary surfacing and landscaping works around the buildings and in connection with the improved parking provision. Demolition of several temporary and low quality buildings around the greenhouse and stable block is also proposed.

- (b) It is intended to rely on the failure to object to these applications as an act or omission that implies agreement to the modification proposed.
- (c) It is submitted that the modification sought would not materially injure any party entitled to the benefit of the covenant. In particular the modification will allow a scheme of restoration and future operation to proceed in relation to Broomfield House and stable block, which has been formulated in conjunction with local groups having an interest in the buildings and park. In terms of public access, full public access was never permitted under the original covenants - a town hall for example is essentially inaccessible except when allowed by the Local Authority. The modification proposed will not reduce public accessibility but will increase it, notably allowing the restoration of a Grade II Star Listed Building rendered totally inaccessible since 1984.

In terms of physical factors it is submitted that the modification will not cause any injury beyond activities already permitted. For example in terms of traffic and parking, use as a Town Hall or Library would be unlikely to produce significantly less traffic than planning policies and the physical constraints of the site, would allow for an unrestricted use.

13. Signed:

Dated:

Borough Secretary and Solicitor
London Borough of Enfield
Civic Centre
Silver Street
Enfield
Middlesex
EN1 3XA

Ref: Legal/P/AS

Solicitor for the Applicant

I have paid the setting down fee of £200 and I accept responsibility for the conduct of the case and the payment of later fees.

LANDS TRIBUNAL FORM

RESTRICTIVE COVENANTS APPLICATION: PUBLICITY NOTICE

1. TAKE NOTICE that an Application under Section 84 of the Law of Property Act 1925 to modify a restrictive covenant affecting the land referred to below has been made to the Lands Tribunal. If you are legally entitled to the benefit of the covenant and you wish to object to the Application, you should object within 28 days of the date of this Notice.
2. The Application relates to land at Broomfield Park, Palmers Green, London N13.
3. The Applicant is the Mayor and Burgesses of the London Borough of Enfield of Civic Centre, Silver Street, Enfield, Middlesex EN1 3XA.
4. The covenant in respect of which the Application is made contains the following restriction:

Not to use the buildings other than as a Town Hall Library or other Municipal buildings and not to use them for any trade or business.

A transcript of the full text of the restriction is attached as Appendix A.

5. The Application seeks the modification of the restriction so as to permit the buildings to be used for the purposes set out in the text of the modification sought, attached as Appendix B.

Modification is sought on the following grounds:

- (aa) That unless modified the covenant would impede the use of the buildings for community uses where such uses cannot be described as 'municipal' and/or could be said to involve an element of trade or business, even if the user is a non-profit distributing or charitable organisation; that such use is a reasonable use; that in impeding that use the restriction does not secure to the persons entitled to the benefit of it any practical benefit of substantial value or advantage; and that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the modification;
- (b) That the persons of full age and capacity entitled to the benefit of the restriction have agreed, expressly or by implication, by their acts or omissions to the discharge of the restriction;

- (c) That the proposed discharge will not injure the persons entitled to the benefit of the restriction.
6. You may inspect the Application, plan and other documents at Civic Centre, Silver Street, Enfield EN1 3XA during office working hours. A copying charge may be payable if copies are required.
7. If you are a person legally entitled to the benefit of the restrictive covenant and you wish to object to the Application, contact

THE LANDS TRIBUNAL, 48/49 CHANCERY LANE, LONDON, WC2A 1JR

(or telephone (020) 7947 7200) and ask for a Form of Objection (form LPD). The form should then be completed and signed and posted to the Tribunal **within 28 days of the date of this Notice.**

8. Persons who lodge Applications become parties to the case, and, provided they are entitled to object, they may appear at the hearing into the Application, if there is one. The Tribunal may make an award of costs against an unsuccessful party. The Applicant 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 unaware of your position, you should seek legal advice.

9. **Signed:**

Dated:

Borough Secretary and Solicitor
London Borough of Enfield
Civic Centre
Silver Street
Enfield
Middlesex
EN1 3XA

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