Funding the cost of taking legal action to prevent a breach of restrictive covenants on the Wildernesse Estate

The WRA was established in 1996 following the successfully fought case brought by a resident on the estate to prevent a significant covenant breach at a property named Westwood on Blackhall Lane. At that time, the owners of Westwood applied for a modification to the one house per plot covenant under section 84 of the Law & Property Act, 1925. They did not deny the existence of the covenant in the conveyance of 23 October 1925 but they argued that the character of the neighbourhood had changed such that a modification was justified. They started the development having received planning permission. As a result, an injunction was served by the resident (interestingly, from a neighbouring road and not a direct neighbour) and this was supported in writing by numerous other residents from the estate. The application to the Lands Tribunal for the modification was denied. The cost of funding the injunction was c. £80k-£90k and was funded by around 70 residents with a further 30 signed letters of support. This ruling established the "thin end of the wedge" principle. It followed two other rulings in the 1980s when covenant breaches were successfully fought by a small handful of neighbours at their own effort and expense in cases that established that the estate was a building scheme within which all covenant holders stand to benefit from the continuing integrity of all covenants. The WRA was established to help to co-ordinate the ongoing preservation of the covenants by monitoring planning applications and potential threats and, by way of the modest annual subscriptions, taking preliminary legal and other professional advice where appropriate to determine whether or not, in the case of a potential breach, further, and likely costly, legal action would be required.

This continues to be a key component of the role statement of the WRA and the day to day activities of its executive committee to this day. For the avoidance of doubt, the annual subscriptions are intended to be no more than sufficient to fund early stage legal and professional advice and other general administrative costs. They would not be sufficient to stand behind any legal action. As a voluntary residents' association, the WRA does not benefit from the covenants itself and so is not in a position to bring any action, such as an injunction or defence at Lands Tribunal, itself. If action must be taken then it must be by a covenant holder, i.e. a fellow resident on the estate. But how might that neighbour seek to pursue such action? Can they finance it alone and, indeed, should they be expected to? Or are they, and others who might act together, acting on behalf of the majority of the estate's residents when they fight a covenant breach?

In the latter case, the WRA would play a role in co-ordinating the residents, in gathering all relevant expert advice and in putting together a structure whereby a large group of residents would provide the funds to pursue appropriate legal action. The WRA committee remains absolutely confident that the character of the estate, in no small part enhanced by the preservation of the conservation area, has not changed since the 1920s in such a way as to compromise the integrity of the building scheme nor the enforceability of the restrictive covenants. It will work with residents to ensure the preservation of the covenants. There are certain plots on the estate where such breaches are possibly live and there is always the threat of new owners or developers seeking to develop properties on land protected by the covenants. We are confident that we would continue to be successful in ensuring that the

one house per plot and 75 foot building line (to which there are a small number of exceptions) covenants are not breached in the future. Covenants are not a matter for planning officers at the council, so it is possible to have planning permission on a plot where covenants would be breached but this should not affect the outcome to any legal proceedings.

Where the WRA identifies a situation when a covenant breach is likely, where it is deemed necessary to serve injunction against development and/or defend the position at the Lands Tribunal, it will take appropriate legal and other professional advice. This advice would, initially, be covered by the working capital of the WRA. If such funds proved insufficient then we would come to members to ask for additional funding.

At such a time, the WRA Committee would provide as much information as possible to members. This might include, inter alia: an analysis of the legal advice received to date and the strength of the legal position; a full cost and risk analysis; details of our professional advisers, the likely process and timetable; a communication strategy; and a governance structure for the action to ensure that funds are used wisely and appropriately.

All of this information would be provided at the time of explaining to WRA members what is required to pursue a legal action (precise timing and content of release being under legal advice to ensure our position is not weakened by inappropriate disclosure to the other side). We would also seek to secure support from non-WRA members at the same time.

It is recognised that not every household would be willing or able to finance a legal case. There are three primary elements to the ultimate possible cost in the event of losing a case:

- The legal costs;
- Potential damages claim; and
- Reimbursement of other side's costs

The courts would need to be satisfied that those bringing the case have the financial resource to go through with the case. The total exposure to loss on a single case could well run to more than the estimated legal cost of £250k, which itself is a very crude estimate. However, it is hoped that the majority of residents (of which there are at least 160) would seek to contribute to a fighting fund, first by way of pledge/letter of intent and then by legally binding commitment. Spread across many members, the cost to each individual household would be kept to a very manageable sum. It is possible, of course, that certain households would be willing to pledge disproportionately large sums.

It is not our intention at this stage to establish some kind of pledge pool. Rather, we believe residents should look at the details around each and any case presented by the WRA before deciding whether they would commit to help funding a legal action. However, we did want to remind everyone as to the process and we do view ongoing membership of the WRA as an expression of support for the WRA's role statements and so an implicit expression of support, to one degree or another, to participate with all WRA members, and other estate residents, in legal action to protect the restrictive covenants.

Just as the majority of residents on the estate choose to be members of the WRA and to support its activities as laid out in the role statement, it is to be hoped that the majority of members, and even residents who are non-members, would be prepared to support actions to preserve the covenants. These covenants have helped define the qualities of the estate as recognised in its status as a conservation area and this status, in turn, helps us preserve the covenants. The WRA exists to preserve the covenants, preserve the conservation area and, with the support of our members, ensure strong enforcement to protect the special and unique character of our estate.

WRA Committee