

ENGLAND AND WALES / JUDGMENT

Duncan Grossart v Vikki Ames

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Neutral Citation Number: [2026] UKUT 00139 (LC) IN THE UPPER TRIBUNAL (LANDS CHAMBER) AN APPLICATION UNDER SECTION 84 OF THE LAW OF PROPERTY ACT 1925 Case No: LC-2025-209 Royal Courts of Justice, Strand, London WC2A 2LL 21 April 2026 TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007 RESTRICTIVE COVENANT – DISCHARGE OR MODIFICATION – planning permission for erection of five dwellings – restriction on part of site preventing use other than for a single dwellinghouse - whether the restriction is obsolete – whether it secures practical benefits of substantial value or advantage - whether discharge or modification will injure the objector – s.84, Law of Property Act 1925 – application allowed and restriction discharged without compensation BETWEEN: DUNCAN GROSSART -and- VIKKI AMES Sturt Farm Barn, Sturt Road, Haslemere, Surrey, GU27 3SE Applicant Objector Mrs D Martin TD MRICS FAAV 12 February 2026 Ms Katie Helmore, instructed by Acuity Law Limited for the appellant The objector representing herself © CROWN COPYRIGHT 2026

Introduction

1. This is an application by Mr Duncan Grossart (“the applicant”) for discharge or modification of a restriction (“the restriction”) which prevents him from implementing a planning permission for the erection of five dwellings, of which three would be located on the parcel of land known as Sturt Farm Barn (“the application land”).
2. The application land includes a single storey barn conversion known as Sturt Farm Barn, a large garage and a number of sheds. By a transfer in 1996 its use was restricted to a single dwellinghouse. The benefit of the restriction lies with Mrs Vikki Ames (“the objector”) who owns the adjacent listed property, Sturt Farm House, and objects to the application.
3. The whole area of land formerly known as Sturt Farm has a complicated history of ownerships, culminating in the recent development of 132 residential units known as Grasslands Close. Aspects of that history are relied on by the applicant in seeking discharge or modification of the restriction under grounds (a), (aa) and (c) of section 84(1) of the Law of Property Act 1925.
4. The applicant was represented by Ms Katie Helmore, who called Mr Andrew Highwood LLM FRICS FAAV, a director of Savills based in London, to give expert valuation evidence. The objector represented herself. 5. I made a site inspection of the application land, Grasslands Close and Sturt Farm House on 11 February 2026 accompanied by Ms Helmore, the applicant’s agent Mr Alfred Lawson and the objector. I am grateful to Mr Lawson for

providing poles with flags to indicate the roof line of the proposed new houses on both the application land and the unburdened land. I am grateful to the objector for allowing me into her home. Factual background History of Sturt Farm and the restriction

6. The plan below shows the location of the application land (Sturt Farm Barn), the objector's property (Sturt Farm House) and other properties referred to by the parties.
7. Sturt Farm was a small grassland farm, with a grade II listed farmhouse and associated traditional barns, located on the southern edge of the town of Haslemere. In September 1996 it was acquired by Martin Grant Homes Ltd ("MGH") with a view to obtaining planning permission for residential development. An application for permission to build 300 residential units was refused.
8. On 23 October 1996 MGH transferred ("the transfer") the application land (called Barn
- 3) and the land shown on the plan above as Upper Barn (called Barns 1 and 2) to a Mr and Mrs Stephenson. The restriction was imposed by clause 6(e) of the transfer which stated: "6. The Transferees to the intent and so as to bind the Property and each and every part thereof into whosever hands the same may come and in order to benefit the Retained Land and each and every part thereof hereby covenant with the Transferor that the Transferees and the persons deriving title under them will at all times hereafter observe and perform the following covenants: ...
- (e) not to use Barn 3 other than as a private dwellinghouse in one residential occupation with garage and outbuildings to be used only in connection with the said private dwellinghouse ..."
9. Clause 6 applied the same restriction to Barns 1 and 2 and contained other covenants concerning boundaries, services and use of the access road.
10. The remainder of Sturt Farm passed through various ownerships until on 8 September 2003 Sturt Farm House and the access road were transferred to Mr Benedict Wibaud with the benefit of the restriction. Mr Wibaud transferred Sturt Farm House to the objector on 17 October 2003 but retained ownership of the access road.
11. The application land was acquired by the applicant on 18 December 2014, subject to the restriction.
12. On 30 March 2015 Waverley Borough Council granted planning permission for 135 dwellings on Sturt Farm, which was by then in the ownership of Marlin Limited ("Marlin"). A new access was to be created for the development through land adjacent to Sun Brow, which is shown on the plan above as two parcels now in the ownership of the applicant and the objector. Problems arose in designing the new access, so Marlin entered into negotiations with those using the original access road in order that an application could be made for a modified scheme using that access.

13. The negotiations that took place to facilitate a modified scheme included an agreement in 2017 between Marlin and Mr Wibaud (together “the Developer”), the objector and Mr Lawson (as “Guarantor”). Under the terms of the agreement, the objector agreed to withdraw her objection to the planning application for a modified scheme, and to procure that her sons did the same. The letters of withdrawal, to be approved by the Developer, were to express support for the scheme. In return, the Developer would transfer a small parcel of land behind Sturt Farm House to the objector (the land shown on the plan above as in her ownership) and provide a replacement garage or, at the objector’s election, pay her the sum of £45,000.
14. On 20 April 2018 planning permission was granted for a modified scheme of 132 dwellings, using the existing access road, which was to be upgraded.
15. On 16 April 2021 a number of transfers and releases took place, as envisaged in the 2017 negotiations, as follows:
 - a. A deed of release was executed by which the restriction over the applicant’s land was released by Marlin and Benedict Wibaud. Reference was made in the Background section of the deed to releases of the restriction to be made on the same date by MGH and by the objector. MGH executed a deed of release but the objector did not.
 - b. The small parcel of land behind Sturt Farm House was transferred to the objector, and she released the restriction over Upper Barn.
 - c. A strip of land required to widen the access road to Grasslands Close was transferred by the applicant to the developers Thakeham Partnership Limited (“Thakeham”).
 - d. Thakeham entered into a deed of easement with the applicant, granting various rights and surrendering rights reserved under the 1996 transfer.
 - e. The small parcel of land to the rear of the application land was transferred to the applicant.
16. The outcome of the various transfers and releases in April 2021 was that only the application land remained burdened by the restriction and only the objector as owner of Sturt Farm House held the benefit of it. The proposed development
17. In January 2023 an application for planning permission to provide six dwellings on the application land and land to the rear was refused. The proposed layout is shown below:
18. The planning officer’s report stated that “...the principle of six units at the site would be detrimental to the setting of the nearby listed buildings... With respect to the listed buildings...in this case the benefits would be the provision of 6 market units which officers consider would not outweigh the harm.”

19. A second application was made for five units, removing the house which would have been closest to Sturt Farm House, thereby increasing the separation distance of the closest house (on unburdened land) from 30m to 40m. Outline planning permission was granted on 21 July 2023 and reserved matters approval was received on 4 October 2024.
20. The layout of the five house development is shown below, with three small detached houses to be provided on the burdened land, following demolition of the existing garage building, and two large detached houses on the unburdened land behind. The approved landscape strategy included planting of trees and native hedgerow plants on the boundary to land behind Sturt Farm House in order to “create a strong visual boundary to the retained setting of Sturt Farm (House)”.
21. The applicant is prevented from implementing the planning permission to the extent that plots 1 to 3 will be on land subject to the restriction. On 6 June 2025 an application was made for discharge of the covenant and subsequently the application was amended to apply for modification in the alternative. Mr Lawson gave evidence that development of plots 4 and 5 could be delivered independently of the application land, but no indicative plans were provided to demonstrate how this might be achieved. Sturt Farm House
22. Sturt Farm House is a Grade II listed 18th century detached house of red brick and tile hung walls under a tiled roof. It has a floor area of 1,817 sq ft providing three reception rooms, an extended kitchen/breakfast room, WC and study on the ground floor, and four bedrooms with two bathrooms on the first floor. It sits within a mature garden with trees, and boundary hedges give privacy from the adjoining roads. A double garage faces out onto the access road. The land behind the house rises up quite steeply and the access road also slopes upward past the application land into the Grasslands Close development.
23. Sturt Farm House was advertised for sale in the summer of 2025 at a guide price of £1,300,000. Legal background
24. Section 84(1) of the Law of Property Act 1925 gives the Upper Tribunal power to discharge or modify any restriction on the use of freehold land on being satisfied of certain conditions. The conditions relied on by the applicant in this case are grounds (a), (aa) and (c).
25. Ground (a) of section 84(1) is satisfied where it is shown that by reason of changes in the character of the property or neighbourhood or other circumstances of the case that the Tribunal may deem material, the restriction ought to be deemed obsolete.
26. Condition (aa) of section 84(1) is satisfied where it is shown that the continued existence of the restriction would impede some reasonable use of the land for public or private purposes or that it would do so unless modified. By section 84(1A), in a case where condition (aa) is relied on, the Tribunal may discharge or modify the restriction if it is satisfied that, in impeding the suggested use, the restriction either secures “no practical benefits of substantial value or advantage” to the person with the benefit of the restriction, or that it is contrary to the public interest. The Tribunal must also be satisfied that money will provide

adequate compensation for the loss or disadvantage (if any) which that person will suffer from the discharge or modification.

27. In determining whether the requirements of sub-section (1A) are satisfied, and whether a restriction ought to be discharged or modified, the Tribunal is required by sub-section (1B) to take into account “the development plan and any declared or ascertainable pattern for the grant or refusal of planning permissions in the relevant areas, as well as the period at which and context in which the restriction was created or imposed and any other material circumstances.”
28. Where condition (c) is relied on, the Tribunal may discharge or modify a restriction if it is satisfied that doing so will not injure the persons entitled to the benefit of the restriction.
29. The Tribunal may direct the payment of compensation to any person entitled to the benefit of the restriction to make up for any loss or disadvantage suffered by that person as a result of the discharge or modification, or to make up for any effect which the restriction had, when it was imposed, in reducing the consideration then received for the land affected by it. If the applicant agrees, the Tribunal may also impose some additional restriction on the land at the same time as discharging the original restriction.
30. The application is for the covenant to be discharged under ground (a) because it has become obsolete. Alternatively, for it to be modified under ground (aa), because it impedes a reasonable use of the land and does not secure to the objector any practical benefits of substantial value or advantage, or is contrary to the public interest. The application was also made under ground (c) that no injury would be caused by discharge or modification. The objection
31. The objector’s case is that the restriction does not prevent reasonable use, because it permits residential use for one dwelling, whilst it secures to her practical benefits of substantial value or advantage in protecting the heritage setting of her house, in protecting her from overlooking and from increased noise, light, pollution and traffic as well as the activity of construction. She says that vibration from heavy traffic using the access road during the construction of Grasslands Close created damage to her house which required repairs to the pointing. However she accepts that there would be considerably less traffic involved in the construction of five houses.
32. The objector is also concerned that her lower lying property would be at increased risk of surface water flooding if the proposed development took place. Flooding had already been experienced in November 2025 when the estate drainage failed and caused surface water flooding to Sturt Road. At the hearing she acknowledged that her own house had not flooded during that event and that there had not been a repeat event since an attenuation system was installed by the developers of Grasslands Close.

33. It is the objector's view that the purpose of the restriction was to protect the heritage setting of her property and the historic farm group for a period of 80 years, described in the transfer as "the perpetuity period". She produced in evidence a signed statement from Mr Anthony Stephenson, who was one of the two purchasers of the application land and Upper Barn in 1996 when the restriction was imposed. He stated his understanding that the restrictions were imposed "to protect the historic farm setting for a period of 80 years". The objector subsequently accepted at the hearing that the perpetuity period was only referred to in clauses 3 and 4 of the transfer, which concerned rights to create access onto the access road and to connect to services within the access road. The restriction was not limited to 80 years and was intended to regulate the use of the application land indefinitely.
34. The objector acknowledged that she had already released the restriction over Upper Barn, as part of the 2017 negotiations, but said that had been unintentional and the result of a drafting error by her solicitor, although other no evidence was produced in support of this contention. However, she was not concerned because Upper Barn remains protected by listed status.
35. The objector's primary case is that the harm she will suffer if the restriction is discharged or modified to allow the proposed development could not be compensated by money. She reserved the right to seek compensation but did not propose any figure and did not adduce any expert evidence. Expert evidence
36. Mr Highwood was instructed to provide an expert report for the applicant. He inspected the application land and the objector's property on 12 January 2026, taking photographs from all windows in the objector's property with views towards the proposed development. In his expert report Mr Highwood reviewed the extensive history of Sturt Farm and the various planning applications, which provided a helpful context for this application. He addressed the objector's concerns and stated his opinion of the benefits secured to the objector by the restriction.
37. Mr Highwood concluded that the proposed development of three houses on the application land would not impact the amenity, privacy or value of the objector's property. The main building on the application land is Sturt Farm Barn, which is on higher ground than the objector's property and would screen from her view the proposed development beyond it. The possible exception would be visibility from one bedroom of a roofline at 50m distance, against the background of the development at Grasslands Close. Insofar as relevant, the proposed development of two larger houses on the applicant's non-burdened land would sit at a sufficient distance from the objector's house that they would not disturb her enjoyment of it.
38. Following a comparative valuation exercise Mr Highwood placed a market value on the objector's property of £1,150,000. In his opinion, a prospective purchaser would be more concerned with traffic from the development of 132 dwellings using the access road than with the development proposed by the applicant. He concluded that the proposed

development would cause no additional loss of value resulting from noise, light, pollution or traffic. Should the Tribunal disagree, in his opinion the range of appropriate compensation would be between 1% and 5% of the market value, that is between £11,500 and £57,500.

39. The objector had made reference to surface water flooding of the access road caused by the new development and was concerned that this would be exacerbated by further development. Mr Highwood noted that the earlier problems of flooding caused during construction of the new development had been resolved to the satisfaction of the planning authority and that the applicant's proposed development would also need to satisfy the planning authority on surface water management under the reserved matters. Submissions for the applicant Ground (a) - Obsolescence
40. Ms Helmore submitted that the restriction should be considered obsolete because its original purpose was not to preserve the historic setting of the buildings but to maintain control of the access road to facilitate and protect future development opportunities at Sturt Farm. When the restriction was imposed in October 1996 MGH had just been refused planning permission to develop the whole of Sturt Farm. Sturt Farm Barn and Upper Barn were transferred away in anticipation of their conversion to residential use, but it had been essential to retain control of the access road to preserve the possibility of future development on the retained land. This was achieved by imposing a suite of terms in clauses 3 to 6 of the transfer, which included a limit on the number of connections to the access road and services, and preserved rights for the transferor to connect to those services and to make up the road to adoption standards. The objector had acknowledged during the hearing that development and change had been envisaged when the restriction was imposed and that the restriction made no mention of the historic setting of her house. Moreover, it imposed no restrictions on how the application land could be developed, which might have been expected if there had been concern over the setting.
41. Ms Helmore submitted further that the character of the neighbourhood had altered materially since the restriction was imposed. In 1996 the access road was no more than a farm track to grazing land which served Sturt Farm House and the barns sold off for residential conversion. By the date of the application a 132 unit residential scheme had been developed on the land, the original access from Sturt Road had been widened and the track had been made up to adoptable highway standard to serve that development. Moreover, by entering into an agreement to support the development the objector had facilitated the changes which altered the character of the neighbourhood from rural to edge of town suburban. She had received financial benefit for doing so, by the transfer to her of additional land and a sum of £45,000 (instead of a new garage). Ms Helmore submitted that this is a material circumstance which the Tribunal should take into account.
42. In conclusion on ground (a) Ms Helmore submitted that the original purpose of the restriction had been achieved and it had therefore become obsolete so the Tribunal should discharge it. Ground (aa) – Practical benefits of substantial advantage or value

43. In the alternative to ground (a) Ms Helmore submitted that the proposed use of the application land is a reasonable use of that land, by reason of having planning permission, and is a use which is impeded by the restriction. She relied on the evidence of Mr Highwood to submit that the restriction does not secure to the objector any practical benefits of value of advantage so the Tribunal could discharge or modify it without compensation. If the Tribunal disagreed and considered that there are practical benefits, so that harm would be caused by discharge or modification, then money would be adequate compensation - at most between 1% and 5% of the value of the objector's property. Ground (c) – No injury
44. Ms Helmore's primary case was that discharge or modification of the restriction would cause no injury to the objector. Discussion
45. My site inspection was useful in helping me understand the perspectives of both the applicant and the objector. The objector's property is a very nice Grade II listed farmhouse set in a mature garden which, despite the nearby development, retains a secluded feel. I understand why the objector feels that the historic setting of her house is important and to be preserved. This was considered by the planning officer whose report recommended refusal of the applicant's proposed six-house development. The subsequent planning officer's report, which recommended grant of permission for the five-house application, concluded that the development would result in low harm to the setting, subject to a landscaped buffer being retained to the listed building (Sturt Farm House). I have seen the approved landscape strategy plan and seen on site how it would be implemented to achieve that aim.
46. It is important to note that the aim of the landscape strategy is to provide a buffer between the objector's house and the proposed development of plots 4 and 5 on the unburdened land. A buffer between her house and the proposed development of plots 1 to 3 on the application land is already provided by Sturt Farm Barn.
47. It is clear to me from the evidence and my site visit that the proposed development of three small houses on the application land is a reasonable use which is impeded by the restriction but will have no impact on the objector's enjoyment of her property. The only visibility of it from her house will be a view from one upstairs window of a roof ridge 50 meters away, against a background of the existing development in Grasslands Close. There will be no overlooking from the new houses and no identifiable new noise. Any additional traffic movements on the access road will be insignificant in the context of the existing traffic from Grasslands Close.
48. I saw on site how the new surface water attenuation system at Grasslands Close has been designed to prevent a future flooding event and I note that condition 8 of the applicant's planning permission requires a surface water drainage scheme to be approved before development commences.

49. Prevention of temporary disturbance during construction is not a practical benefit secured by the restriction.
50. I conclude that the objector's concerns are all unfounded and that discharge or modification to permit the development would cause no injury to her. The application is therefore made out under grounds (aa) and (c).
51. Moreover, I consider that a strong case has been made on behalf of the applicant that the restriction ought to be deemed obsolete under ground (a). The restriction was imposed by a transfer from a housebuilder following a recent refusal of planning permission over the retained land. The purpose was clearly to preserve opportunities for future development by retaining control of the access road, and services in it, including control of the number of properties having access to them. Development of the retained land has now been completed so the original purpose has been fulfilled. That development has given rise to a very significant change in the character of the neighbourhood. I accept Ms Helmore's submission that the part played by the objector in accepting remuneration to facilitate the development is a material circumstance of this case, and supports the exercise of the Tribunal's discretion in favour of the application. The Tribunal's discretion
52. S.84(1B) requires the Tribunal to take into account the development plan and any declared or ascertainable pattern for the grant or refusal of planning permissions in the relevant area. I am satisfied that the evidence of planning permissions granted by Waverley Borough Council at Sturt Farm establishes a pattern in support of discharge or modification to permit development of three houses on the application land.
53. The Tribunal is also required to take into account the period at which and context in which the restriction was created or imposed and any other material circumstances. The restriction was imposed in October 1996, over 29 years ago, following refusal of an application to develop 300 houses on Sturt Farm. That context is highly relevant to consideration of the restriction as obsolete now that Sturt Farm has been developed.

Determination

54. I am satisfied that the restriction ought to be deemed obsolete and will make an order that it shall be discharged under ground (a) without compensation. Mrs D Martin TD MRICS FAAV 21 April 2026 Right of appeal Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and

state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ukut/lc/2026/139>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/duncan-grossart-v-vikki-ames-2026>

Prepared on 28 October 2026 · Esheria