

**Excerpts from a Letter from solicitor TGBaynes to Mr and Mrs Lee dated 7<sup>th</sup> April 2011:**

(iv) So far as Mr & Mrs Fossey (who are not committee members) are concerned, they were aware that their title contained restrictive covenants, and assumed that your clients' title contained the same covenants, but, in common with the understanding of the objectors generally, hoped that this would be of use in resisting planning, and were not aware that they had any right to enforce the covenants against your clients.

(v) In October 2010 Andrew Reid and Graham Agnew (an active Association member) decided to investigate the covenant question a little further. They accordingly arranged to meet a barrister they knew who is also a local resident and member of the Association (and is counsel now acting) on 10 October to ask him whether there was any prospect at all of such covenants still being enforceable, given that High View Estates were or were thought to be defunct. Mr Reid was pleasantly surprised (he has described this to us as a real "eye-opener") to be told by the barrister on that occasion that they could be enforceable by other residents, whose properties might enjoy the benefit of them. Mr Reid e-mailed Mr Branchini with this news on the same day, and steps were then taken to obtain the relevant land registry titles. Mr Agnew mentioned to Mrs Fossey the

possibility that she might be entitled to enforce the covenants a day or two before the 11 November planning meeting, and Mr Reid mentioned this possibility to Dr Mohamedali as they left the meeting. This came as unexpected and encouraging news to each of the three owners of nos. 3, 7 & 10. Mr Agnew then had a meeting with the three owners shortly after that to discuss the possibility further. They thereafter instructed my firm and counsel to advise in relation to enforcing the covenants. Following investigations, advice, the taking of instructions, and consideration of various matters by all concerned, including in particular the question whether the owners of nos 7 & 10 could enforce the covenants, as well as costs implications generally, and allowing for absences during the holiday season, our letter of 4 January 2011 then followed.

Paragraph 5

(1) As appears from what we have said, Mr & Mrs Fossey had no idea that they might be able to enforce the covenants against your clients until just before the 11 November planning meeting.

(2) Mr & Mrs Fossey joined in the considerable and vociferous objections to planning permission made by the Association and the individual objectors. They wrote two letters of objection to Lewisham Council Planning Department (on 18 March and 2 September 2010), raising strongly-worded objections, which your clients would have seen, and assisted in circulating the petition. Your clients would have been in no doubt that our clients were vigorously objecting to the nursery business, albeit that they were doing so through the only route which they were then aware was available to them.

**And then later in the letter:**

(3) We had also concluded prior to receipt of your letter that, at present, we do not have sufficient evidence of the scheme of development which we continue to suspect in fact existed.

(4) Accordingly, counsel's instructions were to settle the proceedings on behalf of Mr & Mrs Fossey only, which is what he has done. Members of the Tewkesbury Lodge Estate Residents' Association ("the Association") will continue to research this matter and, if they discover sufficient evidence of the existence of a scheme, Mr and Mrs Fossey and the owners of Nos. 7 & 10 will apply for the latter to be added to the proceedings if thought necessary and appropriate.

(5) Accordingly, we agree with you that for the time being our clients, whom we represent in the intended proceedings, will be Mr & Mrs Fossey only. However, we are happy to confirm that we have to date taken instructions through the Association and from Dr Mohamedali and Mr Branchini, and we anticipate that they will maintain a keen interest in the proceedings. They are all as keen as Mr & Mrs Fossey that your clients' business should cease.

**And later, an excerpt about the Chartered Surveyor hired by TLERA:**

(5) This is reinforced by the fact that the Association and objecting residents, including Mr & Mrs Fossey, received firm advice from Anthony Keen, the surveyor who acted for them in objecting to the planning permission, that on planning criteria the application should be refused. Suffice it to

**Excerpt from another Letter from solicitor TGBaynes to Mr and Mrs Lee dated 31st January 2012 about the Lands Chamber application.**

We write this letter on behalf of Mr and Mrs Fossey both in relation to the Central London County Court action and as potential objectors to the Lands Chamber Application. In addition, Mr Reid has consulted us on your letter to him of 17th January on behalf of TLERA and we are instructed by Mr Reid for the limited purposes of responding to that letter.