COVENT GARDEN:
A MODEL FOR PROTECTION OF SPECIAL CHARACTER?

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Is the planning system adequate to protect the special character of areas of particular and possibly unique architectural, historic and economic interest against unrestrained market forces? Fortunately for Covent Garden, in the centre of London, local amenity groups and the London Residuary Body agreed in 1988 that it was not. The result was the formation of the Covent Garden Area Trust and the creation of a unique ownership structure the effectiveness of which in preventing inappropriate development notwithstanding approval by the local planning authority has been more than adequately demonstrated over the 10 years of the Trust's life.

Both of the authors have been involved in providing legal advice to the Trust, one of them from its inception. Two events suggest that this is a good opportunity for the Trust's experience to be shared: the Trust's success last year in opposing at arbitration a major development which the Trust felt would have adverse consequences for Covent Garden's special character notwithstanding that consent had been granted by the City of Westminster, and the Trust's tenth anniversary. The authors feel that the general structure adopted to protect Covent Garden could be a model for the protection of other areas of special character from commercial exploitation in a manner nonetheless enabling the realisation of full commercial value. It is hoped that this descriptive analysis of the Trust may provide those responsible for areas of special (or potentially special) character with some technical ideas to give substance to their aspirations.

Introduction

Covent Garden is very well known and hugely popular. It is a great draw for visitors from within London, other parts of the United Kingdom and overseas. It is an area with historic character and a variety of unusual shops and activities: yet it was by no means always so and the area's present character and success cannot be taken for granted.

Covent Garden is widely perceived to be the desirable result of enlightened planning policy and possibly the leading example of policy-led urban regeneration. However, there is reason for concern that the planning system may be unable to protect the special character and success which it has successfully engendered. If the character of Covent Garden, with all its listed buildings and conservation area status were to depend solely on the planning system for protection from untrammelled commercial activity this article would be a draft obituary. Covent Garden would be the victim of its own success.

Fortunately the core areas of Covent Garden have an extra and unusual protection in the form of a trust charged with protecting the area's special character and with powers enabling it to exercise control over changes in the use of, and alterations to, key buildings. These powers have recently been challenged before an arbitrator and proven successful in protecting the special character of the area against well-funded development proposals which had achieved planning consent.

Why is the planning system insufficient to protect some areas of particular character? The obvious answer is that LPAs have broader responsibilities. Their areas of jurisdiction are larger and it is their duty to weigh in the balance many potentially conflicting interests. What is good policy for the area as a whole may be damaging to a particular part. This is particularly the case now that development control is more plan-based. LPAs cannot control changes of occupier or scale of operation within a single Use Class. There is also the point that although an LPA may well be sympathetic to the protection of a special area it has to be careful in dealing with applications because of the risk of appeal against a refusal (and the associated risk of having to pay the applicant's costs).

A body charged solely with the protection of the special character of a particular area is subject to far less constraints and is more locally focused. Land law provides the framework. Whilst some features of the structure adopted in Covent Garden may be unique, the law which underpins the Trust's powers is of long standing. Since at least a century before the Town and Country Planning Act 1947 the great London estates and other private landowners were protecting the amenity of their estates largely through retaining freeholds and imposing leasehold restrictive covenants.

Since the decision in Tulk v. Moxhay (1848) 2 Ph. 774 which saved Leicester Square Garden, landowners have also been able to dispose of freehold land subject to restrictive covenants enforceable against successors in title of the original buyer (very relevant in the age of leasehold enfranchisement legislation). The freehold restrictive covenant is the method adopted by the Duchy of Cornwall to set up and protect aesthetic values in the Poundbury development in Dorchester. The estates entitled to the benefit of restrictive covenants are not subject to public law, only to the law of contract. Consequently, covenants can be drawn so as to apply rigorous standards of control which the listed building control system would struggle to replicate.

The authors believe that the Covent Garden model, or something very similar to it, could be applied to other historic town centre areas. For example, London Borough Market in Southwark is considered by many to be the 'next Covent Garden'. The authors would be interested to hear of bodies of this kind already in existence: one is the New Hampstead Garden Suburb Trust (see the article by Mervyn Miller in Planning, June 26, 1998).

Covent Garden is widely known and held out as an exemplar of successful urban regeneration. The intention of this article is to create a wider understanding of the mechanisms by which that regeneration was achieved and is currently being protected, and to encourage the creation of similar mechanisms in other places where the general planning law is likely to prove an inadequate protector.

Covent Garden Area Trust

The History of Covent Garden

The recent excavations by the Museum of London of the Royal Opera House site in Covent Garden have made an enormous contribution to knowledge and understanding of the Saxon settlement of Lundenwic. This Saxon settlement was what we might now term a green field development and a new town outside the old Roman City of London. Lundenwic provided the Saxons with an urban environment more suited to their way of living than the old Roman City. It was also more convenient for the Strand where they could beach their boats. The settlement was successful and prosperous; unfortunately, that very success contained the seeds of its demise, a theme which is in danger of being repeated. The settlement attracted Danish raiders, the raids intensifying until Lundenwic was abandoned and the Saxon settlement of London moved back, under the leadership, in particular, of Alfred the Great to the more easily defensible Roman City of London. The site of Lundenwic reverted to use as farmland.

In the Middle Ages the area belonged to Westminster Abbey and its present name is a corruption of 'Convent Garden'. The garden sold (at least in 1327) crops of apples, cherries and peas. In the mid sixteenth century during the post-reformation break-up of the religious estates, John Russell, First Earl of Bedford, became the owner. His new land holding stretched from St Martin's Lane to Drury Lane and from Long Acre to a line behind houses then existing in the Strand.

In 1631, the Fourth Earl brought in Inigo Jones to develop part of Covent Garden. Jones laid out the formal Italian style Piazza, based on the Place des Vosges in Paris. The Piazza was the first London square. Approached from what is now Wellington Street in the east, it led to the dramatic entrance to St Paul's Church. The south side of the Piazza bordered onto the back of the Fourth Earl's garden. The other sides were let to speculative builders for the construction of grand colonnaded terraced homes. Three other streets, James, King and Henrietta, with obvious Royal derivation, opened onto a new urban space with a sundial column marking its centre. The Portico of St Paul's Church on the west side of the Piazza and the arcaded building on the north side known as Bedford Chambers (actually a nineteenth century building after the Jones original) are the chief remaining reminders of Jones' Piazza.

The market flourished, mainly selling from stalls ranged against the garden wall. It was sufficiently well established by 1670 for Charles II to grant to the Fifth Earl (by Letters of Patent of May 12, 1670) the right to hold:

" ….. in a place in the Parish of St Paul, Covent Garden, commonly called 'The Piazza' a market for the buying and selling of all manner of fruit, flowers, roots, and herbs, whatsoever, together with all liberties and free customs, tolls, stallage, piccage and all other profits, advantages and emoluments whatsoever, to such market any way belonging, appertaining, arising, or corning, or with the same used, held, or enjoyed".
The market continued to grow to the extent that it required statutory regulation by Acts of Parliament in 1813 and 1829. In 1828 work started on a new market building designed by Charles Fowler with perimeter colonnade and lodges and looking very much as it does today, save that the two main aisles lacked cover. The roofs were added in 1875 and 1889. Florists and fruit shops lined the central avenue and the west terrace. In 1860

E. M. Barry's Floral Hall, a glass and ironwork structure, linked the Pizza to Bow Street, with a spacious dome-topped nave ending in two fan-shaped arcades. Intended as a flower market, it was used for foreign fruit from 1887, the flower dealers having preferred a location in the Piazza's south-east corner, where from 1860 they operated under canvas. In 1904 the Jubilee Market was built with two trading floors to provide special accommodation for foreign flowers.

Throughout all of this, Covent Garden remained in the ownership of the Bedford family. Towards the end of the nineteenth century however public opinion was against aristocratic control of services such as markets. The Bedford Estate were willing to hand over control, but both the Metropolitan Board of Works and the City of London Corporation declined to take it over. In 1913 a £2 million private option for sale was agreed, later taken over by a syndicate led by Sir Joseph Beecham, pill manufacturer and father of Sir Thomas. The holdings were managed by a company called Covent Garden Estate, which tried again to sell off the market in 1920 to the London County Council. Finally, it was by the Covent Market Act 1961, vested in the Covent Garden Market Authority. The Estate received compensation of £3,925,000.

The moving of the Market

As early as 1921 a Government Committee had decided that the buildings of Covent Garden were obsolete and unsuited to modem vehicular traffic. The new Authority decided to move, considered several sites and ultimately settled on Nine Elms in Battersea. The Authority's land in Covent Garden was acquired by the Greater London Council.

Many will recall John Betjeman's love of Covent Garden and his campaigning for its preservation from development. Astonishing as it now seems, the GLC proposed a comprehensive redevelopment of the area which would have involved sweeping away many of the buildings which are now so prized for their historic character. The plan suggested the construction of two great parallel spines of new development with a character route of conservation left in the middle as historic filling. Detailed proposals included an international conference centre for 4,000 delegates, a large hotel, new theatres, shops, restaurants, offices, housing, schools, a park and, most noticeably, roads. The new framework included a four-lane highway parallel to the Strand, a low level spine road in the north, the possibility of widening in Charing Cross Road and Shaftesbury Avenue, a link road through the middle of Coutts Bank to allow for the removal of traffic from Trafalgar Square and the safeguarding of land west of Kingsway for the possible doubling of its capacity.

The GLC's comprehensive development proposals were ultimately thwarted and radically reconsidered. A key event was the success of the bankers Coutts & Co. in obtaining planning permission on appeal for a redevelopment of the Nash building on the north side of the Strand opposite Charing Cross Station which made no provision for the link road which the GLC wanted to drive through the site to connect the Strand with their proposed new road along the line of Maiden Lane. Following their success Coutts turned the building into their headquarters with an innovative design by Frederick

Gibberd combining a central core of ultra-modernity with flanks and facades of conserved historic buildings.

The public inquiry into the Comprehensive Development Area plan itself opened in July 1971 and lasted for a year-and-a-half The result was one which might have been modelled on the judgment obtained by Portia in the Merchant of Venice; although the CDA plan was approved, the Secretary of State, Geoffrey Rippon, also created more than 250 listed buildings. As these were scattered throughout the area, affecting 42 different streets in the 96 acres of Covent Garden, it effectively ruled out the prospect of wholesale redevelopment of the area. Lord Rippon was later to say that the saving of Covent Garden was “almost the best thing I ever did”.

In the wake of these decisions, the Covent Garden Forum was set up in 1974. This consisted of 30 elected members representing all interest groups within the community. The GLC’s Covent Garden team liaised with the Forum to produce a comprehensive plan called the Covent Garden Action Area Plan, adopted by the GLC in 1978. While some of the GLC’s original objectives were retained, plans for tower blocks and new highways were dropped and conservation of the historic fabric and character of the area was favoured to be coupled with a mix of small-scale uses. The detailed proposals of the Action Area Plan are in effect the criteria against which the Covent Garden Area Trust exercises its special powers.

In implementing the Action Area Plan, the GLC was in a particularly strong position as both a planning authority and the major landowner. The Central Market building was renovated and carefully let to provide the character and mix of uses still there today. The flower market was converted into two museums for London Transport and the theatre. The outer properties (some subsequently acquired by the GLC for planning purposes) proved less easy to let but gradually retail tenants of quality arrived. In Floral Street, the Dance Centre and later Pineapple Dance in Langley Street set up a different form of the health business in former warehouses and added to Covent Garden’s growing reputation as people surged into the area for classes in fitness and dance. More people were regularly drawn into the area by the Jubilee Market, which opened in 1975 and over time established a role in the speciality street shopping scene.

The GLC’s team was largely responsible for the Covent Garden we see today but after the Local Government Act 1985 the GLC ceased to exist. The Covent Garden Area Trust was formed by local amenity bodies and other interests with the intention of acquiring the GLC land holdings. The intention of the Trust was to continue the management policies set out in the Action Area Plan. In 1985 the Trust’s objectives were stated to be:

- to hold in trust, on behalf of all London rate payers, the GLC land holdings in Covent Garden
- to continue to implement the Action Area Plan in conjunction with Westminster City Council and the London Borough of Camden and with full public participation as directed by the Secretary of State for the Environment
- to continue to enhance and maintain the streetscape and individual listed buildings in Covent Garden.

Covent Garden Area Trust

The Trust was partially successful in achieving its objectives. The London Residuary Body ("LRB") was set up with a duty to dispose of GLC owned properties for the best price reasonably obtainable. Covent Garden was the "jewel in the crown" and the buyers were lining up. At the same time the LRB were under considerable pressure from local interests to find some way of ensuring the continuation of the former GLC's enlightened planning policies and it is fair to say that the LRB's officers (many of them ex-GLC including the former leader of the Covent Garden Team and current Trust Chairman Geoffrey Holland) were sympathetic. Three questions arose:

1. The precise definition of the controls to be applied.
2. What would be the legal structure which would make the controls enforceable?
3. Who would be responsible for the administration and enforcement of future controls?

The answer to each question required a balance to be struck between the LRB's duty and the interest of the public in the future planning of the area. Over-restrictive controls would alarm the market and reduce value. The creation of a body which might be perceived by the market as being "political" or controlled entirely by local interests would make potential purchasers uneasy. The obvious answer to the question of legal form was for the LRB to create a long leasehold interest in favour of the market purchaser but there were two objections to that. One was that the LRB was to cease to exist and could not continue to own the freehold. More importantly, investing institutions do not favour leasehold properties and generally will pay less for them even if the term of the lease is long and the lease is relatively unrestrictive.

The definition of future policy was perhaps the easiest problem to resolve. The "Special Covent Garden Purposes" referred to in more detail below were distilled from the Covent Garden Action Area Plan and were carefully and widely framed so as to define Covent Garden's essential character without laying down detailed rules for the use of the properties by the purchaser. The second question was answered by the formation of the Covent Garden Area Trust with a ruling council dominated by nominees from local authorities and other responsible public bodies. The (so far as the authors are aware unique) answer to the third question was the vesting in the Trust of a 150-year head leasehold interest and the grant back by the Trust to the LRB of an underlease for a similar term (less a nominal reversion). This enabled the LRB to market the freehold in conjunction with the under-leasehold interest. The underlease was the vehicle for the imposition of covenants restrictive, e.g. of user and alterations as well as the generation of income in the form of rent to cover the ongoing administration expenses of the Trust.

The scheme worked. Interest in the market was strong and the ultimately successful purchaser was Guardian Assurance Plc.

There were in fact five head leases and five underleases but for simplicity the singular will be adopted. The head lease reserved no rent save for "one posy of flowers and one red apple" and imposed no obligations on the Trust. The underlease reserved a modest rent and contained obligations on the part of the under-lessee designed to provide two forms of control: negative (the ability to restrain unsuitable alterations or changes of use) and positive (the ability to enforce standards of repair).

The covenants restricting use were specifically framed to enable the continuation of the former GLC's policies in relation to the Central Market Building and outlying blocks. To protect market value and to guard against abuse by the Trust the Trust's power to refuse consent for changes of use and alterations was limited by reference to two key definitions: "Speciality Shopping Centre" to define the overall use of the Central Market Building and the "Special Covent Garden Purposes". The "Special Covent Garden Purposes" were defined in two parts, aimed respectively at the conservation of the protected buildings and the protection of the special character in terms of the nature and manner of use. With the same factors in mind, provisions were included in the Trust's constitution providing a minimum quorum for the refusal of consents and in the underlease itself to "deem" the grant of consent in the event of the Trust failing to respond within a specified period.

Little need be said about the positive controls. The obligations of the tenant in relation to repair, maintenance and other similar matters have not needed to be enforced although their existence has enabled the Trust successfully to require action to be taken whenever necessary.

The regime in operation

The balance thus struck between private and public interests has in the main enabled the Trust and the commercial owners of Covent Garden to operate in harmony. The Trust has enjoyed a particularly close relationship with Guardian. The establishment early on of good lines of communication including a working party meeting at regular intervals has meant a perhaps surprisingly small element of confrontation. Procedures have been agreed in relation to the form and content of applications for consent and as applications are discussed in advance, they rarely reach the Council of the Trust in a form likely to meet rejection. On the few occasions when the clash of planning and commercial interests has made confrontation inevitable a resolution has been found without (with one exception) recourse to arbitration.

Guardian still retain ownership of the Central Market Building but have now disposed of the outlying blocks. The only arbitration in which the Trust has been involved to date was against the owners of one of these blocks. The owners wished to combine certain areas to create a massive A3 unit the scale of which was felt by the Trust to be inappropriate for Covent Garden. Westminster City Council granted consent notwithstanding the Trust's objection. The Trust in its capacity as landlord refused consent and the owners took the matter to arbitration. The Arbitrator's Award followed a five-day hearing and found in positive terms that the Trust's refusal of consent was reasonable in the context of the scheme. The Trust's costs in relation to the arbitration were paid by the owner. The Award demonstrates the effectiveness of the balance struck by those who framed the scheme in 1988. The matter having been resolved relations between the Trust and the owner remain good and constructive discussions are taking place as to an alternative future for the property in question which will meet the owner's commercial objectives whilst satisfying the "Special Covent Garden Purposes".

On the whole therefore, the regime has operated well. Smooth operation depends to a large extent on goodwill from the freeholders and lessees. The Trust is fortunate in that

such co-operation has generally been forthcoming. The Trust has actively sought to establish co-operative business-like relations with those obliged to seek its consent. The Trust has always been acutely aware that while a body such as the Trust may seek to regulate commercial activity and to channel it up to a point it cannot create it and the life and character of an area are a manifestation and product of such activity. Although commercial activities and their vitality, as regulated by the Trust, are the life of Covent Garden, commercial interests and activity can also threaten the Trust's objectives and indeed the very vitality of Covent Garden itself. A widely held anxiety is that Covent Garden is in danger of becoming a victim of its own success.

When the policies for the regeneration of Covent Garden were devised Covent Garden was conceived as an area accommodating a profusion of businesses of distinct and individual character, with catering and entertainment uses confined to identified parts of the area. Although investment from mainstream commercial entities might then have been very welcome it was certainly not forthcoming as the area was depressed and rundown. The sort of business that those responsible for planning Covent Garden's future wished to encourage did increasingly colonise the area. So successful was this policy that space in the area became effectively fully utilised and demand now far outstrips supply. Covent Garden, having been a very depressed area with no discernible profile and no particular "public", has become one of the most visited parts of London and a draw for tourists across the world. The result has been that property which previously was extremely unattractive to commercial interests has now become highly attractive, with shop rental levels in Covent Garden now reaching those of Knightsbridge. The area has thus become extremely attractive to multiple businesses and extremely expensive for small quirky businesses and for businesses serving the local resident community. As a result of the decline in businesses such as butchers, bakers and greengrocers serving the local community and the increase in businesses designed to cater to large numbers of visitors such as pubs, restaurants and large multiple stores the residents of Covent Garden feel under increasing pressure. There is therefore genuine reason for concern.

Earlier this year, in another experiment which has attracted interest elsewhere, the Trust published the "Environmental Study of Central Covent Garden". The Study was commissioned by the Trust with co-operation and financial support from English Heritage, Guardian Properties and the City of Westminster. The intention was to produce a set of coherent recommendations relating to the facades of the buildings in Covent Garden and the spaces around and between them. The Study is very detailed and achieves a set of design guidelines to include such matters as furniture, signage, shop fronts, planters, street furniture, etc. The Study is supported by technical plan proposals for each of the streets and spaces in the study area and display panels. The Study was launched at a press conference attended by the Chairman of English Heritage, Sir Jocelyn Stephens, and Councillor Alan Bradley, Chairman of the Environment and Planning Committee City of Westminster.

In planning terms, Covent Garden is about as highly protected as it is possible to be, comprising Conservation Areas and packed with listed buildings. Both Westminster City Council and Camden Council are fully aware of the importance and character of the area. As planning authorities however their powers to control the commercial pressures which threaten the special character of the area are, as we have seen, limited. In

planning terms it is for example impossible to distinguish between an outlet of a large, national, multiple shop which is present in every High Street in the country and a unique business serving a specialist market as both are shops within Class Al of the Use Classes Order 1987 and in planning terms the change from one business to another is not material, and does not even require planning consent. A multiple business is likely to be able to pay a considerably higher rent than a speciality business, something which obviously commends the multiple business to landlords and landowners wishing to sell their properties. There are a great many such multiples in a position to enter Covent Garden and Covent Garden is an extremely tempting location for them. The problem is that their very presence is destructive of the character which attracted them to Covent Garden in the first place. As volumes of visitors to the area increase the “experience” of visiting Covent Garden becomes less attractive too a large part of its present constituency. At the same tine pressure on infrastructure such as tube stations grows to an alarming extent.

The Trust’s land interest is confined to the core properties in Covent Garden. It does, however, have an influential role outside its area of ownership. In its Memorandum of Association, the “Covent Garden Area” is defined to mean the area of Central London bounded by Kingsway, Aldwych, High Holborn, Shaftesbury Avenue, Charing Cross Road and the Strand. Although the Trust does not exercise direct control outside the core area it has gained a substantial degree of influence and (although not a formal consultee) is consulted by the LPAs on all key planning applications.

The Trust has not, however, always been able to influence the two London Boroughs in the exercise of their development control powers. In the case of future bodies modelled on the Trust it would be worth trying to establish the body as a formal consultee. In an appropriate case it might even be possible for a body to be given powers of direction, as English Heritage has with regard to certain listed buildings, but that would require legislation. There can be little doubt though that if the Trust regime of controls extended over a wider area of Covent Garden the character of that area would be more secure and more likely to survive and spread from its enlarged “heartland” into the surrounding areas.

Funding

Clearly, if a body such as the Trust is to be able to function effectively it needs income. In the case of the Trust, the under-leases granted to the commercial investors reserved rents which are linked to the Retail Prices Index. This is obviously going to be a sensitive issue as any rent payable under the underlease will in theory reduce the value of the total “package” of interests to the buyer. In the case of a substantial area such as Covent Garden however it was relatively easy to achieve a balance and to reserve a rent sufficient to cover the Trust’s running expenses without having any serious impact on market value.

Other forms of funding may be available depending on the circumstances. Traders in Covent Garden are able to be members of the Covent Garden Area Trust on paying a small subscription. Where local traders or residents are strongly in favour of the controls sought to be imposed they may be prepared to contribute on a more substantial basis

possibly via deeds of covenant. Grant making charitable institutions whose objects include the preservation of the built environment may be prepared to make grants for specific objectives. In appropriate circumstances a degree of local authority funding may be available.

Constitution

A body formed to discharge similar functions to the Trust could be constituted in a number of ways. The Trust was set up as a company limited by guarantee which in most cases will be best. Given sensible exercise of controls (and as to one particular issue see below, p. 1119) it is unlikely that any question of personal liability could arise but it has to be borne in mind that the trustees are likely to be unpaid volunteers and incorporation provides the protection of limited liability. The articles of association of a limited company also provide a convenient place to entrench whatever special provisions as to the operation of the body may be required to reassure the commercial market.

The Covent Garden Area Trust is a registered charity. This has obvious advantages in terms of tax exemptions and fund raising. In addition, however, registration as a charity tends to give credibility and further reassure market purchasers as it involves submitting to the jurisdiction of the Charity Commission. Provision can be made for certain provisions in the company's articles of association not to be capable of change without Charity Commission approval. The Commission's jurisdiction can often be very helpful, e.g. the Commission has power to resolve a whole range of issues by the making of directions and this can often avoid applications to the Court.

Legal problems

The Trust is to some extent in the same position as other landlords in relation to the various forms of statutory interference with the enforcement of obligations against tenants. These statutory provisions have not proved to be a problem. The principal limitation in relation to positive obligations is the prohibition by the Leasehold Property Repairs Act 1938 of the enforcement of repairing obligations during the currency of a lease without the leave of the Court. The Court will grant leave only if one of a number of specific grounds is satisfied or if there are "special circumstances which in the opinion of the Court render it just and equitable that leave should be given". It is interesting to speculate as to the relevance here of the Trust's role as protector of the public interest in relation to Covent Garden. Given that the underleasehold interest was (with the full understanding of both landlord and tenant) created to make obligations enforceable it is felt that a court is likely to be sympathetic to the landlord and to grant leave at any rate where the breach is a serious one.

There is a more important concern in relation to restrictive covenants. Section 84(1) of the Law of Property Act 1925 gives the Lands Tribunal jurisdiction to discharge or modify restrictive covenants on freehold land. Section 84(11) applies this jurisdiction to leasehold land where the original term is more than 40 years and 25 years have expired. In theory, it would be open to the underlessee after 25 years of the underlease term to apply to the Lands Tribunal for the discharge or modification of any of the covenants

contained in the underlease including the covenant restricting use. It is not thought however that there is much chance of an application succeeding, for three reasons:

1. It seems unlikely that any application for discharge or modification would be able to establish one of the grounds set out in section 84(1). Grounds (b) and (c) could hardly apply. It is unlikely that the Trust is going to allow sufficient change in the character of the neighbourhood for a case to be made under Ground (a). The most likely ground for an application is Ground (aa) "that …the continued existence" of the restriction "would impede some reasonable user of the land for public or private purposes…" To succeed on that ground however the Lands Tribunal must be satisfied that the restriction either "does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage" or "is contrary to the public interest". It would seem unlikely that an applicant could satisfy the Tribunal on either ground given the constitution and functions of the Trust.
2. Even if the applicant does prove his case the Tribunal has a discretion: Driscoll v. Church Commissioners for England [1957] 1 Q.B. 330. It is submitted that the Tribunal would take a great deal of persuasion to exercise its discretion in order to discharge or modify a restriction imposed and enforceable in the circumstances applicable here.
3. The Tribunal will take into account considerations of public interest. Cases where this has been a factor are St Albans Investments Limited's application (1958) 9 P. & C.R. 536 (where the restrictions had been created in order to protect the view from Richmond Hill and the Tribunal said that even if it had found the case proved it would have felt difficulty in exercising the discretion favourably to the application); Brett (1965) 17 P. & CR. 49 (where restrictive covenants were imposed on the sale of land by the Crawley Development Corporation and where the Tribunal came to a similar decision); Mansfield District Council (1976) 33 P. & CR. 141 (which concerned restrictive covenants imposed by the Mansfield Improvement Commissioners in 1876); and Barry (1980) 41 P. & CR. 383 (where the restrictions were imposed by the Commission for the New Towns).
4. The courts have recognised that a leasehold restriction is different in kind from a freehold one and the burden on the person proposing its discharge or modification accordingly greater: Ridley v. Taylor [1965] 1 W.L.R. 611 where Hannan L.J. said: *"It seems to me that it should be more difficult to persuade the Court to exercise its discretion in leasehold than in freehold cases. In the latter the Court is relaxing in favour of the freeholder's own land restrictions entered into for the benefit of persons owning other land. In the former the land in question is the property of the covenantee who is prima facie entitled to preserve the character of his reversion."*

Section 19 of the Landlord and Tenant Act 1927 implies certain provisos into restrictions on improvements and user. There are slight differences between the implied proviso in relation to improvements (section 19(2)) and that in relation to user (section 19(3)). In the case of section 19(2) (which will apply to alterations if they amount to improvements) the effect is that a covenant against the making of improvements without licence or consent will be subject to a proviso that licence or consent is not to be unreasonably withheld. Section 19(3) deals slightly differently with covenants against alteration of user without licence or consent. In the case of these covenants there is no implied proviso that consent will not be unreasonably withheld: the proviso is that no consideration can

be required for the grant of consent, i.e. consent must be granted gratuitously or withheld.

The provisions of the 1927 Act are probably of little relevance as in order to make the scheme acceptable to the market any covenant restricting use in particular will almost certainly be subject to an express provision that consent will not be unreasonably withheld. Concern may be felt by volunteer trustees as to potential liability in the event of a tribunal holding that the body has acted unreasonably. Reference was made at p. 1117 above to the benefits of limited liability: it is beyond the scope of this article to discuss the circumstances in which the directors of a company could be held personally liable for the company's actions. The key issue however is whether any liability could arise in the first place and the answer will depend on precisely how the documents (and the underlease in particular) are drafted. The general rule is that neither section 19 of the 1927 Act nor an express proviso that consent will not be unreasonably withheld will (save in the case of covenants not to assign or underlet which are subject to the provisions of the Landlord and Tenant Act 1988) give the tenant a right to damages for an arbitrary or unreasonable refusal of consent. The tenant's remedy is simply to do what he proposes to do without waiting for the consent or to apply to the court for a declaration.

The other factor here will be the way in which the scheme provides for the resolution of disputes between landlord and tenant. If no provision is made then as mentioned above a tenant could go to the court for a declaration that the landlord is withholding consent unreasonably. In the case of Covent Garden however the underlease provides that any dispute should go to arbitration. This is generally thought to be the most appropriate form of dispute resolution for disputes of this kind and many of the disadvantages of arbitration in terms of delay and cost will hopefully not apply following the Arbitration Act 1996.

Setting up other bodies like the Covent Garden Area Trust

If people, and authorities, are anxious to emulate Covent Garden (and it seems that many do look to Covent Garden as a prime example of what can be achieved in terms of regeneration) consideration must be given to putting in place the sort of regime of control which exists in Covent Garden.

There is no particular difficulty where the land concerned is already in public ownership. Where it is not, compulsory purchase powers can be used although clearly this could impose an enormous financial burden even where the property is run down and depressed. The extent to which an LPA will ultimately suffer a loss however depends on the impact in market terms of the imposition prior to sale of a body such as the Covent Garden Area Trust. In principle, the imposition of additional controls of any kind is going to some extent to reduce the attraction and investment value of the property affected. This may be the cost of an initiative such as Covent Garden. In practice, much may depend upon the state of the property market at the relevant time and attractiveness of the particular area. Those concerned with Covent Garden certainly believe that the price obtained on the sale by the LRB was a full one, i.e. was not reduced by the existence of the leasehold structure or knowledge of the powers of the Trust. There is no getting

away from the fact that the Covent Garden experiment has been extremely successful not only in regeneration and policy terms but also when assessed by commercial property criteria.

Conclusion

If areas of distinctive character with definite but well hidden potential are to be successfully developed and regenerated local input is essential. That input can only effectively be channelled through a vehicle in which local interests have a stake and an involvement in its day-to-day running. The Covent Garden Area Trust provides a model of such a body. In the event that the right policies are devised and implemented then the processes of implementation must be overseen by a body with powers to ensure that the policy objectives are adhered to. It may well be that planning authorities are not equipped to perform that role. Those responsible for the regeneration of derelict and decayed areas, whether at local or central level, could do a great deal worse than to become acquainted not only with the generality of the Covent Garden example but also with its technicalities. For those who do wish to explore such structures further the Covent Garden Area Trust and its advisers are willing to assist with information and advice.