



serle court

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Andrew Francis

Year of Call: 1977

"The restrictive covenant king." "He is the guru of rights of light." "He has thorough knowledge of the law, offers practical suggestions and deals with instructions very quickly."

Chambers & Partners, 2022

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Practice Overview

Andrew's practice has a very strong emphasis on real property law. He is recognised as a leading authority on the law of restrictive covenants affecting freehold land, and on the law of rights of light. He has been instructed in many of the major cases in these areas of law in the last three decades. He is the author, and also the co-author of textbooks on restrictive covenants, rights of light and private rights of way.

Areas of Expertise

Professional Negligence

Andrew's experience in his fields of business and property work allows him to examine, advise upon and conduct claims where professional negligence issues arise. The particular areas of his expertise in easements and covenant law lead him to being instructed where there may have been negligence by professional advisers, such as counsel, solicitors, surveyors and valuers.

Property

The main areas of Andrew's expertise in the law of real property are restrictive covenants affecting freehold land, rights of light, rights of way and other easements, boundaries and party walls. His publications (see below) on the first three topics demonstrate his very high degree of knowledge and experience in these three fields. These are very much "niche" areas of work in which he pre-eminent as a barrister. He was a member of the Law Commission's Advisory Board on the reform of the law of easements and covenants which led to the Report and draft Bill published in June 2011. He was also a member of the Law Commission's Advisory Board which examined the reform of rights of light and remedies for their breach, which led to the Report and draft Bill published in December 2014.

He has considerable and very recent experience both as an advisor and as an advocate in applications in the Upper Tribunal (Lands Chamber) to discharge or modify restrictive covenants under s. 84(1) Law of Property Act 1925. He also has experience where disputes over restrictive covenants require a single Judge to decide them under different jurisdictions under the "double hatting" procedure.

His work also includes advice and advocacy in registered land disputes, in the First-tier Tribunal, Property Chamber and in the County Court and the High Court and in the higher Courts on matters such as covenants, boundaries, easements, adverse possession and other title issues.

As much of his work is either non-contentious, or if contentious, the dispute settles, his expertise is often not in the public domain. Because of his long experience in covenant and rights of light cases, he has a comprehensive knowledge of City Centres (London, Leeds, Manchester etc.) and their buildings and other locations, such as residential estates, both as regards the present and their history in terms of development. This means that he can recognise locations where either he has worked before (often spotting potential conflicts of interest) or where Courts and Tribunals have decided cases affecting those locations in the past.

Specific areas of expertise in his property work.

As stated above, within the field of restrictive covenants affecting freehold land he has specific expertise in applications to discharge or modify such covenants in the Upper Tribunal (Lands Chamber) under s. 84(1) Law of Property Act 1925. In this work, he has long-standing and strong professional links with the expert surveyors, valuers and town planning consultants who may be expert witnesses in disputes. The same involvement applies in rights of

light matters where the rights of light surveyors are critical in assessing losses. In these and all his other cases, his key aim is to ensure good teamwork with the client and all those engaged on the client's behalf, whatever their role. He advises on the validity and enforceability of trading covenants within Chapters I and II of the Competition Act 1998 and under the principles relating to unlawful restraint of trade; see below.

When instructed in matters relating to restrictive covenants and other property rights and obligations such as rights of light, he works closely with the specialist Indemnity Insurance market, where he is asked to advise, and in contested claims, represent the insurer or the insured. In many other cases, he will advise insurers and brokers on the risk of claims before Indemnity Policies are issued. Finally, his advice is often used (on a non-reliance basis) by clients who are seeking indemnity insurance for covenants, rights of light and other risks to ensure that the development is marketable.

Decided Cases.

Kay v Cunningham & Nix [2023] UKUT (LC). Application to modify user covenant to allow limited use of historic mansion house in rural Derbyshire for bed and breakfast accommodation, with consideration of the effect of "nuisance and annoyance" covenant remaining unmodified as outside the Application.

Collins v Howell. [2022] UKUT 72 (LC). This was an Application to modify a restrictive covenant under s. 84(1)(aa) Law of Property Act 1925, to enable a manège (sand school for horse riders) to be built on a field in rural Devon. The Application was refused because the manège would interfere with the Objectors' enjoyment of their view over the field. This was also a case where the County Court Claim made by the Objectors for an injunction, which was stayed pending the determination of the s. 84(1) Application, was heard at the same time as the hearing of the latter under the "double hatting" procedure. This is an important case not only as an example of the effective use of the latter procedure, but also because it shows that even in rural areas, restrictive covenants have as much potential importance as in built-up areas, suburbs and high-class estates.

Moskofian v Foster & Ors. [2021] UKUT 214 (LC). The application to modify a restrictive covenant over land at Ealing, West London, under s. 84(1)(aa) Law of Property Act 1925, allowed on terms as to payment of compensation to the Objectors and to regulate one aspect of the implementation of the proposed development.

Father's Field Developments Ltd. v Namulas Pension Trustees Ltd. [2021] UKUT 169 (LC). The application to modify a restrictive covenant over land at Earls Colne, Essex, under s. 84(1)(aa) Law of Property Act 1925, allowed without the payment of any compensation to the Objector. The Tribunal rejected the Objector's case that compensation under this jurisdiction could be awarded on the "negotiating damages" or "release fee" basis under s. 84(1)(i) of that Act and it found that the evidence did not support compensation based on s. 84(1)(ii) thereof. That was so, even where the parties to the application were the original covenanting parties, the covenant was only 20 years old and it was a qualified one.

The Incorporated Trustees of the Congregation of the Holy Spirit and the Immaculate Heart of Mary (British Province) v Antill & Anor. [2020] EWHC 3466 (Ch) (High Court. Business and Property Courts of England and Wales.) Declarations as to the non-enforceability of restrictive covenants affecting freehold land in Bromley imposed before and after the commencement of Law of Property Act 1925.

Briant v Baldacchino [2020]. (Upper Tribunal (Lands Chamber)). The application to modify restrictive covenant over land at Wimborne, Dorset, was refused where the importance of the effect of different planning consents on the application land and their impact on the objector's property was stressed.

Heaney v Kirkby [2018] [2019]. (Leeds Business and Property Court. D.J. Claire Jackson and Barling J.). Court striking out the Claimant's claim based on tortious conspiracy and other allegations as an abuse of the process of the Court. This claim is related to the decision in *Kirkby v Heaney* (below).

Hancock v Scott & Ors. [2019] UKUT (LC). The application under s. 84(1) Law of Property Act 1925 in Upper Tribunal

(Lands Chamber) to modify covenants over land near Caversham, Reading, to allow new houses to be built was allowed. The decision contains an important discussion in the Tribunal's decision on certain aspects of the grounds for applications under s. 84(1) and on the meaning of "the neighbourhood" under s. 84(1)(a) and on costs.

Thomas Pocklington Trust v Aikman & Ors. [2018] UKUT 256 (LC). Successful application under s. 84(1) Law of Property Act 1925 in the Upper Tribunal (Lands Chamber) to modify covenants over land at Northwood, Middlesex, to enable development for flats on the cleared application land.

Lamble v Butacci. [2018] UKUT 175 (LC). Successful application under s. 84(1) Law of Property Act 1925 in the Upper Tribunal (Lands Chamber) to modify covenants over land near Woking to enable development for a new replacement house and garage within curtilage of private land in Surrey Green Belt.

Re Theodossiades' Application [2017] UKUT 461 (LC). Successful application under s. 84(1) Law of Property Act 1925 in the Upper Tribunal (Lands Chamber) to modify covenants over land at Elstree to enable development for flats after the demolition of the existing house.

Re Waggott's Application [2017] UKUT 108 (LC). Successful application in the Upper Tribunal (Lands Chamber) to discharge restrictive covenant to allow change of use of building in Wantage from offices to residential, despite opposition from adjoining Chinese Take-Away Restaurant owner concerned over complaints about smells and noise from his restaurant from the future residential occupiers.

Kirkby v Heaney [2016] (Court of Appeal.) Court of Appeal upholding decision of the Upper Tribunal (TCC) ([2015] UKUT 178 (TCC)) on principles applicable to claims to adverse possession of land and s. 9(5) Land Registration Act 2002 and on certain aspect of appeals from the First-Tier Tribunal to the Upper Tribunal (TCC) in Land Registration cases.

Scott v Winter [2015] (Newcastle Upon Tyne County Court: Business list.) Decision applying the principles set out by the Supreme Court in *Lawrence v Fen Tigers* (2014) in a claim seeking a mandatory injunction to pull down property built in breach of a restrictive covenant.

Kirkby v Heaney [2013] (Chancery Division, Leeds) Decision refusing permission to appeal from the Adjudicator to Her Majesty's Land Registry considering jurisdiction as between resolution of disputes by the Adjudicator (now the First Tier Tribunal) under Land Registration Act 2002 and proceedings for the same relief in the High Court.

Re George Wimpey Bristol Limited's Application [2011] UKUT 91 (LC). Successful application to the Upper Tribunal (Lands Chamber) to modify covenants on land at Prestbury, Gloucestershire, under s. 84(1) Law of Property Act 1925. Conduct of the Objector considered under the issue of discretion.

HXRUK II (CHC) Ltd v Heaney (Re Cloth Hall Court) [2010] (High Court, Leeds). Injunction and damages for interference with rights of light.

Re Walker's Application [2010] UKUT 16 (LC). Application to modify restrictive covenants under s. 84(1)(aa) Law of Property Act 1925 at Hadley Common successfully resisted by the Objectors.

Southwark Roman Catholic Diocesan Corporation v South London Church Fund [2009] EWHC 3368 (Ch). Declaration as to restrictive covenants where issues over annexation of the benefit arose.

RHJ Ltd v Patten (Holdings) Ltd [2008] Ch 34 (Court of Appeal). Rights of light and interpretation of terms in a lease as a "consent" under s. 3 Prescription Act 1832.

Competition Law and State Subsidies

The interface between restrictive covenants over land in England and Wales which restrict competition and the Competition Act 2008 requires Andrew's advice to be sought on such covenants. These covenants may be void under the relevant law now in force since 6th April 2011. His advice is regularly sought where the validity of covenants restrictive of trading in shopping centres and out of town "super store" sites is being considered. His consideration of the ECJ decision in *Groupeement des cartes bancaires* (September 2014) as applicable to land agreements potentially within Chapter I Competition Act 1998 has been published in the European Law Reporter (2014 no. 12). Competition law and the effect of that law on land covenants in England and Wales will not be changed to any real extent post BREXIT. Chapter 21 in current (5th) edition of Andrew's book on restrictive covenants (see below under publications) deals with this aspect of land law.

Chancery

Within this heading Andrew advises upon and is the advocate in the hearing of disputes referred to above. His long experience at the Bar means that his knowledge of some aspects of property law, such as unregistered conveyancing, settlements and trusts of land (eg. under the Settled Land Act 1925) and other arcane issues which can still arise, is invaluable.

Recommendations

Real Estate (*Who's Who Legal, 2020-2024*)
Private Client: Trusts and Probate (*The Legal 500 2022*)
Property Litigation (*The Legal 500 2024*)
Real Estate Litigation (*Chambers & Partners 2024*)

Quotes

"A superb advocate and the amount of work he does is phenomenal." (Chambers & Partners, 2024)

"Andrew is strong on rights of light and restrictive covenants." (Chambers & Partners, 2024)

"The restrictive covenant king." "He is the guru of rights of light." "He has thorough knowledge of the law, offers practical suggestions and deals with instructions very quickly." (Chambers & Partners, 2022)

"Very helpful, good with clients and very easy to pick up the phone and have a chat to." "As well as being hugely knowledgeable, he was responsive and delivered commercial advice." (Chambers & Partners, 2021)

"A highly regarded junior." (The Legal 500, 2021)

"Andrew is absolutely authoritative in his expertise and experience in the law and practice of land covenants and real property generally." (The Legal 500, 2021)

"He has a real grasp of property law and the technical aspects of real property disputes." "His strengths are his depth of knowledge coupled with his ability to get points across very well." "He is very precise and measured." (Chambers & Partners, 2020)

"Highly recommended, particularly in the fields of restrictive covenants, rights of light and land ownership disputes."
(Chambers & Partners, 2019)

Publications

Articles

- ["Where planning law meets restrictive covenants"](#). New Law Journal, February 2024.
- "Two recent cases on restrictive covenants." Law Society Gazette, November 2023.
- ["A good man always knows his limitations."](#) Three recent judgments on limitations of claims, New Law Journal, September 2023.
- ["All the world's a stage."](#) Private nuisance cases and knotweed, New Law Journal, May 2023.
- ["The meaning of words. What do they mean?"](#) Law Society Gazette, April 2023.
- ["The nuisance next door."](#) Fearn v Board of Trustees of the Tate Gallery and the Supreme Court's judgment, New Law Journal, February 2023
- ["Property experts: the key to victory?"](#), New Law Journal, April 2022.
- ["Bath Rugby win at home,"](#) New Law Journal, February 2022.
- ["What is it worth"](#), New Law Journal, October 2021.
- ["Avoiding the Stigma of Cynical Breach. What can we learn from the Supreme Court's judgment in *Alexander Devine Children's Cancer Trust v Housing Solutions Ltd.*?"](#) (New Law Journal) (November 2020)
- ["Compare & Contrast: three lessons from the courts on covenants"](#) – (New Law Journal) (June 2020)
- ["Trouble with rights of light"](#) - (New Law Journal) (April 2020)
- ["Seeing the light through the trees"](#) - (New Law Journal) (May 2019)
- "The impact of the Morris-Garner and another v One Step' (Support) Ltd" - (*Estates Gazette*) (May 2019), a joint article with Emma Humphreys from Charles Russell Speechlys Law

Books

- 'Restrictive Covenants and Freehold Land - a Practitioner's Guide' (LexisNexis) (5th Edn., 2020). New 6th Edition planned for early 2025.
- 'Rights of Light - The Modern Law' (LexisNexis) (3rd Edn., January 2015) (with Stephen Bickford-Smith and Tom Weekes). New 4th Edn., with Tom Weeks KC and Christopher Stoner KC, due summer 2024.
- 'Private Rights of Way' (Jordans) (1st Edn., 2012) (Andrew Francis and three Co-Authors).
- Until February 2024, 'Inheritance Act Claims' (LexisNexis) (Looseleaf: updated twice-yearly) with Miranda Allardice, Keith Gordon and Charles Holbech.

Notes

Specialist in Rights of Light, Restrictive Covenants, Party Walls, boundaries, easements, registered land, adverse possession, contracts for the sale of land and land development agreements to secure clawback, or overage.

He advises upon and conducts litigation in all such matters in the High Court, the County Court, the Upper Tribunal (Lands Chamber) the First-tier Tribunal, Property Chamber and in the appellate courts, such as the Court of Appeal and Supreme Court.

Authorised by the Bar Standards Board to accept instructions under the Public Access rules.

In the Press

See under "Articles" above.

Education & Qualifications

Oxford University (Keble College) 1973-1976. First Class Honours in Jurisprudence 1976. M.A. (1998).

Memberships

Chancery Bar Association

Property Bar Association

Pyramus & Thisbe Club Society

Former member of Ministry of Defence Research Ethics Committee

Appointed to the Independent Scientific and Technical Advice Register (ISTA) (Ministry of Defence)

Former member of Law Commission's Advisory Board on Rights of Light Remedies Reform

A Master of the Bench of Lincoln's Inn

Associate Tenant at Trinity Chambers, Leeds.
