Residential
Property
TRIBUNAL SERVICE

Reference: LON/EMS/205/05

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993: SECTION 75 (Application for variation of Estate Management Scheme)

Inspection date:	**Tuesday 2 August 2005**
Hearing dates:	**Tuesday 2 August 2005 and Wednesday 3 August 2005**
Premises:	**Grange Estate, Ealing, London W13**
Applicant:	**Damian Teevan**
Represented by:	**Mr G Lidington of Counsel instructed by Elliots, Bond & Banbury Solicitors**
Appearance:	**Ms K Horn MA FRICS**
Respondent:	**Grange Residents Co Ltd**
Represented by:	**Ms E Haggerty of Counsel instructed by Brethertons Solicitors (Mrs S Calcott attending on 3 August)**
Appearances:	**Mr M R Lee MRICS Mr S L Harris FRICS FAAV**
Tribunal members:	**Mrs V T Barran BA (Oxon) Mr J S Sharma FRICS DipRating**

1. PRELIMINARY

1.1 By application dated 9 February 2005 made under section 75 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 93 Act") Mr Teevan sought approval from the Tribunal to vary an Estate Management Scheme (EMS).

1.2 Mr Teevan owns the freehold of 66 The Knoll, Ealing, London W13 9HY. This house is situated on the Grange Estate which was built by Wates Ltd in the 1960s. The style of this Estate was strongly influenced by the contemporary Span development, pioneered by the architect Eric Lyons. Number 66 The Knoll was sold on a long lease dated 17 December 1964. At a date unknown, a Lessee acquired the freehold under the enfranchisement provisions of the Leasehold Reform 1967 ("the 67 Act").

1.3 On 7 December 1970 the EMS was created by order of Mr Justice Goff (Chancery Division). This followed an application made under section 19(1) of the 1967 Act, whereupon a certificate was granted by the Minister of Housing and Local Government following a consultation exercise. The Order was registered in the Local Land Charges Register of the London Borough of Ealing on 30 December 1970 and the EMS was apparently amended on 23 January 1973 but the Tribunal was informed that the amendment has no relevance to this application.

1.4 On 12 July 1995 the Grange Estate together with adjoining properties was registered, again by the London Borough of Ealing, as the Grange and White Ledges Conservation area.

1.5 Mr Teevan was registered as freehold owner of no. 66 The Knoll on 19 November 2001.

1.6 Following his application to the Tribunal the parties were offered an oral pre trial review. However instead they sent in proposed agreed directions, which in the main were adopted by the Tribunal and incorporated in directions sent to the parties on 4 May 2005.

2. INSPECTION

2.1 The Tribunal carried out an external inspection of the property and the surrounding estate in the morning prior to the hearing. 66 The Knoll is situated in a cul de sac and is a tile hung three storey town house with an integral garage. It includes a room at 1st floor level spanning an arch way. The double garage doors were in poor condition and were slightly ajar and propped open by some bricks. Immediately inside the garage doors there is a window with a kitchen sink behind and black plastic drain pipe to the exterior. The house was otherwise in reasonable decorative condition. There was brick block paving in front of the garage doors, sufficient to allow two cars to be parked, but no cars were so parked at the time of inspection. The Tribunal

noted that, unlike the neighbouring properties, there were no trees/shrubs in front of number 66.

2.2 The Tribunal walked around some parts of the Grange Estate and was impressed by the very spacious and well maintained grounds. These included a lake with viewing area for wild life, and many mature and specimen trees. The Tribunal noted at least two separate garage areas, the one nearest to The Knoll comprising 14 lock up garages. Some houses had cars parked on the hard standing outside and other cars were parked in the roadways. The Tribunal noted that there flower pots in front of the garages of numbers 15 and 17 The Knoll. One or two houses showed peeling paintwork but In the main the standard of external decoration of the houses on the Estate was good and the standard of maintenance of the grounds was excellent.

3. THE LAW

3.1 Section 19 of the 1967 Act and chapter IV of the 1993 Act enable a common landlord to retain management powers, after enfranchisement by individual leaseholders, over an estate area, for the benefit of the owners and residents of the properties within that area. This is achieved by the creation of an Estate Management Scheme. No new application for creation of an EMS under the 1967 Act has been possible since 1976, but it is possible to *vary* such an EMS by virtue of section 19(6) of the 1967 Act.

3.2 Section 19(6) of the 1967 Act (set out below at para 7.2) is referred to in section 75(1) of the 1993 Act, Clause 7 of the Grange Estate EMS provides:

> *All or any of the provisions of this Scheme (including the area thereof) may at any time be terminated or varied at the instance of the company or any lessee with the approval of the High Court*[1].

4. THE ISSUE

4.1 This application is to vary clause 4(xviii) of the EMS as follows

(Underlining shows proposed additions and striking-through shows proposed deletion)

> *"The Lessee will not at any time carry on or permit to be carried on any process manufacture profession trade or business whatsoever upon the premises or permit the Lessee's house and <u>any garage erected upon the premises</u> to be occupied or used in any manner other than as a single private residence ~~or permit any garage erected upon the premises to be used otherwise than for the purposes of garaging a single private meter vehicle~~ nor use the premises so that any nuisance*

[1] For the High Court now read Leasehold Valuation Tribunal, By section 75(1) of the 1993 Act jurisdiction was transferred from the High Court to a Leasehold Valuation Tribunal.

or annoyance can arise there from to the neighbourhood or to the Company or to the owners or occupiers of the houses flats or maisonettes on the Grange Estate Ealing and shall not without the prior approval of the Company erect affix or display any plate or board or notification of any kind indicating that any profession trade or business is carried on upon the premises or elsewhere. And also will not affix erect or display upon the premises any placard board poster sight advertisement notice or writing (except the name and number of the Lessee's house or a notice board of usual size employed by house agents to indicate that the premises are to be let or sold).
Provided that any Lessee who is a doctor dentist solicitor or accountant shall be permitted to see patients or clients at the premises in case of emergency or for occasional consultations but the premises shall not be sued as a surgery or office."

4.2 At the hearing, Mr Lidington, Counsel for Mr Teevan the Applicant, indicated that his client would be content to delete the word "*and*" before the words "any garage erected upon premises and to replace this with the two words "*together with*".

4.3 The sole issue for the Tribunal is whether or not to approve the proposed variation of the EMS (with or without the amendment).

5. PRELIMINARY ISSUES

5.1 At the start of the hearing Ms Haggerty, Counsel for the Respondent ("the Residents Company) raised a number of preliminary issues. **Firstly** she contended that the witness statement of Mr Teevan was submitted late and raised a new argument that there had been a number of relevant changes of circumstances since 1970. There had been no attempt to amend the application. In addition the skeleton argument of Mr Lidington had raised further changes of circumstances and the Residents Company had been caught "on the back foot".

5.2 Mr Lidington agreed that there had been some slippage in the timetable laid down by Directions but pointed out that some short extensions had been agreed between the parties. He acknowledged that the vast majority of Mr Teevan's statement dealt with legal points, but argued that it was right for Mr Teevan to be heard on factual evidence and that there was no prejudice to the Residents Company.

5.3 The Tribunal, whilst not welcoming late evidence, was persuaded by Mr Lidington's argument that Mr Teevan should be heard on his factual evidence and that to exclude this could prejudice him, particularly in the light of the Resident Company's contention that a change of circumstance was a pre-requisite to a successful application to vary an EMS. Ms Haggerty would have the opportunity to cross question him. Accordingly the Tribunal admitted only paragraphs 30 and 33 of Mr Teevan's statement (together with the introductory paragraphs).

5.4 **Secondly**, Ms Haggerty argued that the Resident's Company had not been allowed to see the instructions given to Mrs Horn, the expert witness for Mr Teevan. The Tribunal decided that this could be dealt with when Mrs Horn was called as a witness and in the event the letter of instruction was produced.

5.5 **Thirdly**, Ms Haggerty argued that if the Tribunal decided it did have jurisdiction, on which point she would make submissions later, then the Tribunal in deciding whether to vary the EMS would need to go back to the "initial tests". These were laid down in Section 19 of the 67 Act on an initial application to create an EMS. Section 19 provides that adequate notice should be given to interested persons, and in her view in this case those would be residents of the houses affected by the EMS, and arguably others such as local planning officers. She referred the Tribunal to a decision of a previous Leasehold Valuation Tribunal in the *Prudential Kensington Estate* (LON/EMS/199/99) where the importance of giving notice was fully aired. In effect Ms Haggery argued that if the Tribunal accepted jurisdiction, the present application should be treated as a fresh application and the detailed procedures for such an application under section 19 would have needed to have been followed. They had not been so followed and therefore she asked that the application be dismissed.

5.6 Mr Lidington did not consider notice to have been necessary. Although the statutory provisions lacked clarity there were no such provisions either in section 19(6) of the 67 Act nor in Section 75 of the 93 Act, and the additional requirements with regard to notice could not be read into section 19(6). It would be draconian to strike out the application and in the alternative if the Tribunal considered notice to be essential it should consider adjournment.

5.7 As acknowledged by Mr Lidington the Tribunal agreed that the statutory provisions lacked clarity. The Tribunal however was persuaded by the existence of separate statutory provision with regard to variation (s.19(6)) later reinforced by s.75 of the '93 Act, neither of which envisaged notice as a prerequisite to variation. The Tribunal's own regulations[2] were also found to be of assistance. Paragraph 3 of Schedule 1 to the Regulations specifically mentions applications under chapter 4 of part I to the 1993 Act (EMS). Regulation 5 (i) provides that on receipt of an application such as the present one, the Tribunal **shall** send a copy of the application and documents accompanying it to each person named as a respondent. (It was common ground that this had been done). Additionally under Regulation 5(3) the Tribunal **may** give notice to any other person it considers appropriate.

5.8 In March 2005 the Tribunal had written to Brethertons, solicitors for the Respondents asking whether they acted for all the residents. They had replied that they acted on behalf of the Grange Residents Company Limited the Respondent, and had added:

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[2]Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 SI 2003 No. 2099 as amended

"each owner of the property on the Grange Estate is a share holder in that company. Appointed by those shareholder is a board of directors. The board of directors are appointed to act on behalf of the shareholders/property owners. However attached is a list of names and addresses of the current share holders/property owners who may individually be affected by this application."

The list was in fact sent later and copied to the solicitors for the Applicant.

5.9 The Tribunal took the view on balance that under the statutory scheme for variation it was not necessary to go back to the "initial test" procedures, including giving notice to all residents and interested parties. Those procedures were only essential when an initial application for an EMS was made. The Tribunal was aware that that such applications are no longer possible under the 1967 Act, and preferred Mr Lidington's argument that neither section 19(6) nor Section 75 contain provision for notice. The Tribunal however was concerned with the wider principle that the hearing should be a fair one, but relied firstly on the fact that Brethertons act for the company which comprised all the shareholders and secondly on the fact the that all the residents as well as owners/shareholders could submit comments on all aspects of the EMS to the Managing Agents, who acted as a conduit for passing on information to the Respondent. The Tribunal took the view that whilst arguably it could have been desirable to give notice to the Planning Department, they were not sufficiently affected by the application and that on balance, lack of notice to others than the Respondent was not fatal to the application which should be heard. The Tribunal gave its decision orally but stated as a caveat that if during the course of the hearing it emerged that any person who had not been put on notice of the application would be likely to be prejudiced, then it would be open to either party to request an adjournment. No such request was made.

5.10 Whilst the decision not to adjourn to give notice was taken on balance, the Tribunal had no hesitation in refusing the request for dismissal. The Tribunal's powers of dismissal are limited[3] in contrast to those of the Courts. The present application could not be described as vexatious, frivolous or an abuse of process and dismissal would be entirely inappropriate and draconian.

6. DOES THE TRIBUNAL HAVE JURISDICTION TO ENTERTAIN THE APPLICATION

6.1 Ms Haggerty raised this as a **fourth** preliminary issue. She had considered asking for a preliminary hearing, but had come to the conclusion that it could be dealt with at the start of the hearing itself. In the event the Tribunal heard the four witnesses on the first day in order to save both parties expenses and heard this issue on the second day.

[3] Regulation 11 ibid

6.2 Firstly Ms Haggerty argued that it was clear from the wording of section 19(6) of the 67 Act, that in order to establish that there should be a variation of EMS, a change of circumstances must be shown:

> *"A scheme under this section may make different provision for different parts of the area, and* ***shall include provision for terminating or varying all or any of the provisions of the scheme, or excluding part of the area, if a change of circumstances makes it appropriate, or for enabling it to be done by or with the approval of the High Court".*** *(added emphasis in bold)*

She interpreted the comma after "part of the area" to mean that a change of circumstances is a pre-requisite. To allow otherwise flies in the face of EMS schemes and leads to uncertainty. If any individual, unhappy with the EMS, applies for a variation, that would be lead to a "rolling review" which could not have been intention of Parliament. By contrast if there is a change of circumstances then this would be the trigger by which a variation of an EMS could be sought.

6.3 Mr Lidington disagreed. On his natural reading of section 19(6) a change of circumstances is only required if the variation is to exclude part of the area. If Parliament had required a change of circumstance as a pre-requisite to an application to vary, it would have put the sub clause ("if a change of circumstances makes it appropriate") at the beginning of the section thereby qualifying the entirety of the words following. Furthermore he contended that where there is a degree of ambiguity, it is necessary to construe the Act as a whole. It is plain that section 19 makes a deliberate distinction between a change of circumstances and other modification to an EMS in the initial steps. Section 19(4) provides for exclusion of areas whereas other variations are covered under sub section 19(5). In his view this deliberate distinction is carried through into section 19(6). Mr Lidington referred to a decision by an earlier Leasehold Valuation Tribunal on the *Smiths Charity/Welcome Trust: South Kensington Estate* (LON/EMS/201/97). The 1967 Act gives the original framers of an EMS discretion to provide for a process of variation. In the *Smiths Charity* case there was a threshold provision, whereby an application for variation of the scheme had to be supported by not less than 15% of the freehold owners of enfranchised properties. It would even be possible for an EMS to exclude former lessees or residents from making an application for variation.

6.4 Furthermore Mr Lidington stated that in the *Smiths Charity* case no change of circumstances had been demonstrated, although the application was in the end unopposed.

6.5 Finally Mr Lidington submitted that section 19(6) of 67 Act must be construed, under section 3 of the Human Rights Act 1998, as compatible with the Convention Rights of Mr Teevan.

6.6 The Tribunal determined, on balance, that the wording of section 19(6) did not require an Applicant to prove that there had been a change of

circumstance as a pre-requisite to a successful application to vary an EMS. The Tribunal was persuaded by the arguments of Mr Lidington, summarised above, not only with regard to the reading of s19(6) on its own, but also the necessity to construe s19(6) in the light of the whole of section 19. The Tribunal accepted that the exclusion of part of an area from an EMS is subject to special treatment in the initial application because it is of potentially far reaching effect. The Tribunal could envisage possible grounds for varying an EMS where there had been no changes in the circumstances. One such possibility was simply when all residents desired a change. (Ms Haggerty admitted this would be possible and proper see below). In such a scenario they should not be denied the right to make an application to vary, given that they would need to establish the merits of such an application to the satisfaction of a Leasehold Valuation Tribunal. As with its decision on the preliminary issue of notice, the Tribunal considered that there is a more onerous statutory process envisaged in an application for the creation of an EMS, distinct from the much simpler statutory process envisaged for variation.

6.7 Additionally the Tribunal placed weight on the fact that this EMS allows for variation at clause 7, without limiting the grounds that clause had no doubt been subject to judicial scrutiny by Mr Justice Goff.

7. CAN THE TRIBUNAL AMEND AN EMS AGAINST THE WISHES OF THE RESPONDENT?

7.1 Ms Haggerty argued a final jurisdictional point: that it would not be proper for the Tribunal to impose on the Residents Company matters with which it was not content. The situation would be different if the Residents Company had not objected to Mr Teevan's proposed amendment. She contended that when an initial EMS was created the Court had a very limited jurisdiction and could either approve the scheme as submitted (or with amendments agreed by applicant/landlord), or approve the scheme with an area excluded, or decline to approve the scheme. An applicant/landlord had to satisfy itself that it could meet its obligations as laid down in the EMS. The scheme had to be workable.

7.2 Mr Lidington questioned whether the Respondent could always have a veto. He referred again to section 19(6) whereby a scheme **shall** include a provision for variation, **or** provide for approval by the Court/Tribunal. If Parliament had intended the application to vary to be treated as an original application it would have said so. Section 19(11) provides generally for a new scheme to be approved only on the application of the then landlord. Section 19(6) makes no such provision. If the initial process had to be adhered to then the Minister would be required to grant a new certificate whenever variation was sought.

7.3 Again the Tribunal preferred Mr Lidington's argument and was also again persuaded by the existence of clause 7 in EMS, which provided for an application to vary to be made by "any lessee". (It is worth noting that a lessee is widely defined in the EMS as a person from time to time occupying or interested in the premises.) The process laid down by clause 7 of the EMS

requires an application to a Tribunal under section 19(6) and that cannot simply be a rubber stamping of a joint application. The fact that section 19(6) provides for a Leasehold Valuation Tribunal to approve a variation, implies a judicial process. It is a system whereby an unmeritorious proposed variation would not succeed. Clause 7 was part of the EMS approved by Mr Justice Goff, and, put simply, appears to make fair provision for either party to make an application to vary.

8. THE SUBSTANTIVE CASE

8.1 In his application to vary the EMS Mr Teevan summarised the grounds as:

(a) that on a literal construction of Clause 4(xviii) the current Scheme is unduly restrictive of the usage of garages attached to the properties subject to the Scheme and ought to be varied; and/or

(b) that on a literal construction of Clause 4(xviii) the said restrictions on the usage of the garage fall outside of the statutory purpose of the Act set out in s19(1): "to maintain adequate standards of appearance and amenity and regulate development in the area"; and/or

(c) that the proposed amended Clause 4(xviii) is consistent with the aforesaid statutory scheme and provides no or alternatively no substantive diminution in the maintenance of adequate standards of appearance and amenity and regulation of development in the area.... and/or

(d) the proposed amended (as opposed to the current) Clause 4(xviii) provides a scheme which is consistent with my Article 8 and Protocol 1 Article 1 rights under the European Convention of Human Rights and Schedule 1 of the Human Rights Act 1998.

8.2 The Tribunal would like to record its thanks to Mr Teevan who gave evidence on his own behalf, to Mr Lee who gave evidence as Managing Agent to the Residents Company and to Ms Horn and Mr Harris who both give evidence as surveyors acting as expert witnesses. All four witnesses were questioned on their evidence, not only by Counsel, but also by the Tribunal.

8.3 Mr Teevan explained that between October 2004 and March 2005 he had made a number of alterations to his property including converting the integral garage to a kitchen. He considered that although he had changed the use of the interior of the garage, this in no way affected the external appearance . In his view there had been a number of relevant changes of circumstances since 1970 including:

i. the fact that the garages were designed and built for smaller vehicles than commonly owned today. His garage is approximately 8 by 18 ft. His Isuzu Trooper is 6ft wide plus wing mirrors and 15ft by 9 long, so that if he were to park this vehicle in the garage he would not be able to

open the doors to get out. His partner who owned a Renault Clio (a small car) would encounter similar problems.

ii. the number of households with a car and the number of households with more than one car has increased considerably since 1970. Statistics prepared by the Office for National Statistics show that there were 10 times as many cars licensed in 1998 as in the 1950s, that 7 out of 10 households had at least one car since 1998 and the proportion of households with more than one car had grown from 2% in 1961 to 28% in 1998.

iii. the Human Rights Act 1998 has been brought into force.

iv. since April 1999, only in limited circumstances can an EMS be created.

8.4 Mr Teevan explained that although the EMS scheme prevented parking on the roads of the Estate, people do. He had been made aware of the EMS scheme by his solicitors acting on his purchase and he had also received a welcome letter from the Chairman explaining the scheme of the Residents Company, approximately a week after he had completed his purchase. Mr Teevan was unable to give an answer when asked what purpose was served by the new window in the kitchen wall behind the garage doors. He said it was not for light, because there were patio windows at the back of the kitchen. The garage doors were not opened and he had told his current tenants not to open them. He had converted the hard standing at the front of the property so that it could accommodate two cars, in ignorance of the covenants in the EMS. He was uncertain whether he had applied for Conservation Area Consent from the Planning Department at Ealing, but he had employed an architect.

8.5 Ms Horn had made two inspections of the Estate in July 2005. She found the external appearance of number 66 The Knoll to be in keeping with the rest of the Estate. The double garage doors had been retained but were in fairly poor decorative condition, with rusted lower hinges. The garage doors were ajar and she was of the opinion that it would be better if the doors were eased and the hinges adjusted so they shut properly. With the garage doors shut there was no loss of visual amenity or architectural homogeneity. The integral garage is small (2.18 by 2.17 metres) and suitable for a small car but difficult for a large Mercedes or other similar vehicle, as the door opening space would be restricted. In her written report she concluded that the conversion of the integral garage to a kitchen within this development was not fatal to the integrity of the architectural concept, providing the garage doors were retained and maintained to better order.

8.6 She agreed that the grounds maintenance was of a high standard, but she had seen several houses not in good decorative order and a few glaringly not so. Photographic evidence showed some instances of peeling paint, replacement of windows in thicker UPVC, slight differences to original Crittal windows, poor treatment of roof verge, the use of UPVC instead of white

painted timber and two front doors not in keeping with the original. She had also seen evidence of windows not opening/closing efficiently and a garage that did not appear to be used for car parking, because there were flower pots in front. In her opinion garages are not so important or valuable that they must not be lost. In her opinion parking on this estate was not an issue.

8.7 Unaware at first that Mr Teevan had removed trees and shrubs in order to create the enlarged forecourt, Ms Horn, on being questioned by Ms Haggerty, admitted that if all residents did the same the estate would look very different, especially if big trees were removed. Mr Teevan's conversion of the garage was reasonable, but that it was done in ignorance of the EMS was perhaps undesirable.

9. THE RESPONSE

9.1 In his written report, Mr Lee gave an interesting history of the Estate and explained the current management. In his opinion, which he stated is shared by the directors of the Residents Company, the EMS has worked well over the years and both residents and those in the surrounding area have benefited from this. In his view the EMS has generated an almost old fashioned sense of community. The communal grounds are well maintained and the estate is generally preserved to a higher standard than would be the case if there were no EMS.

9.2 He had spoken to each of the directors regarding the application to vary, and they had advised him that there was real concern that altering the EMS could disrupt an estate that is running well and properly. There was particular fear that allowing conversions of the garages will lead to the sub division of units. Parking around the estate already causes great debate, with parking spaces at a premium. If the EMS is amended it is feared that others may seek to ignore the EMS and then either seek to amend it later or simply ignore it and wait and see what the Respondent does. The directors believe that the amendment could have real and significant impact on the standard of appearance and amenity of the development. Attached to Mr Lee's witness statement was a photograph showing 66 The Knoll in an Estate Agents advertisement prior to Mr Teevan's purchase. The Tribunal noted the photo showed medium size trees and shrubs to the right of the front door.

9.3 In giving evidence to the Tribunal, Mr Lee stated that parking can be difficult on the estate and he considered the fact that Mr Teevan had provided a second off street parking place, albeit in breach of EMS, pointed to pressure on parking. In his view if one space had been sufficient then Mr Teevan would not have created another. Secure parking is of value because it prevents vandalism. He thought that a few garages may be used other than as garages but this is the first time one had been converted into a kitchen. Mr Lee stated that the Residents Company took action whenever they were made aware of breaches of covenants in the EMS. He accepted that some parts of the Estate were in poor condition. He did not consider cars parked in roads outside the cul-de-sac constituted a breach of covenants in the EMS. He had inspected No. 66 twice and had seen the garage doors ajar four

inches or so. The storage of domestic chattels prevents a garage from being used for parking, which causes overspill parking and consequent problems to the Estate. He had not encountered any support for the variation of the EMS and all the directors were in opposition. Residents were aware of Mr Teevan's conversion, and this had been discussed at the AGM in November 2004 and all supported the EMS in its current form. If the variation were to be granted there will be a significant impact on parking and general amenity and it would become difficult to enforce other covenants. Mr Lee described this as "the thin edge of the wedge".

9.4 Mr Harris had also inspected the Estate which he found to be maintained to a high standard with most of the houses in good decorative order externally and with flower borders weed free. There was no litter. He was of the opinion that the EMS, which preserves the integral garage as a garage, is beneficial to the residents of the Grange Estate. This was partly because of the need to preserve the uniform appearance of the dwellings and to ensure compliance with the Conservation Area designation, but equally because of the need to ensure that there is adequate off street parking. Conversion of garages to residential accommodation loses car parking space and/or storage area for bicycles or other paraphernalia. From advertisements of properties for sale locally, it is evident that garaging is at a premium.

9.5 To vary the EMS as requested would lead to erosion of the standard of appearance and conversion of front lawns to hard surface parking area. The loss of amenity and appearance ultimately this would lead to diminished values of properties on the Estate. Mr Harris considered it was reasonable and necessary to impose the obligations in the EMS on freeholders. He was in agreement with Ms Horn that if the garage doors were kept shut **and** if the front gardens were kept laid out there would be no lose of amenity. However the principle of prevention of erosion of car parking spaces remains. Mr Harris mentioned that it was odd to put windows behind garage doors if you are going to keep the doors closed. Secure lock up garages are an asset and assumed greater importance in 2005 than in 1970s because of the higher crime rate. Removal of the trees/shrubs of the front of No. 66 does diminish the amenity of the Estate. At present the landscaping enhances the feeling of privacy and seclusion.

10. DECISION

10.1 The Tribunal must be clear that there is only one issue to be decided. That involves whether to allow a change of use of garages. As currently permitted by the EMS a garage cannot be used otherwise than for "*the purposes of garaging a single private motor vehicle*". In proposed variation Mr Teevan asks that these words be removed and that instead the house and (or together with) any garage ... be occupied or used only as a single private residence. The application proposed a variation of one clause of the EMS and the Tribunal is not asked to approve any variation to other clauses, such as the clause requiring shrubs and trees to be preserved.

10.2 The Tribunal agreed with Mr Lidington that in the absence of any test set down by the statutory scheme for variation of an EMS, the correct approach is to adopt the requirements for the initial approval of an EMS and to determine whether the EMS as amended meets these requirements and then whether the scheme should be amended as proposed.

10.3 Section 19(1) of the 1967 Act provides that a Minister may grant a certificate approving an EMS if:

> *"it is likely to be in the general interest that the landlord should retain powers of management ..... in order to maintain adequate standards of appearance and amenity and regulate redevelopment in the area".*

Section 19(3) requires the Minister and the High Court when initially approving an EMS to:

> "*have regard primarily to the benefit likely to result from the scheme to the area as a whole (including houses likely to be acquired from the landlord under this Part of this Act), and the extent to which it is reasonable to impose, for the benefit of the area, obligations on tenants so acquiring their freeholds; but regard may also be had to the past development and present character of the area and to architectural or historical considerations, to neighbouring areas and to the circumstances generally".*

10.4 The Tribunal agrees that in default of any other guidance this should be the guiding principle for its decision whether or not to vary this EMS. The Tribunal preferred the evidence of Mr Harris and Mr Lee, especially regard to loss of the amenity. The Tribunal was not looking at one property but at the whole of the Grange Estate. To allow garages to be used for residential purposes would mean that they could not be used for parking cars. Occupiers of the properties on the Estate would consequently park their cars either on their forecourts or on the nearby roads. Mr Harris and Mr Lee had considered parking in the area to be at a premium and Mr Teevan had provided statistical evidence of the increased number of cars.

10.5 The loss of amenity that could occasioned by such a conversion was starkly demonstrated by the circumstances in this case. Mr Teevan had considered it necessary to provide additional parking once his garage could no longer house a car. He had therefore dug up the trees and shrubs at the front of his property and block paved the front area to compensate for the loss of parking space in his garage. In the opinion of the Tribunal to agree to the variation suggested would be likely to lead to a serious compromise of the EMS from an amenity perspective. This is probably the most important of the criteria envisaged by section 19(1).

10.6 The Tribunal accepted Ms Horn's view that if the garage doors are kept shut, then conversion of a garage to residential premises is unlikely to affect the standard of appearance of the exterior of a houses on the estate. However, the Tribunal could see nothing in the clause offered by Mr Teevan

to suggest that the garage doors could or should be kept shut. It is the view of the expert Tribunal that conversion of a garage to residential use, particularly to a kitchen, could be subject to Conservation Area consent and might be subject to planning consent and would definitely require approval under the Building Regulations. Even if the local authority was minded to grant such approvals, a number of requirements would be imposed including for drainage, ventilation, insulation and structural integration. Such requirements are unlikely to be met behind closed garage doors.

10.6 The Tribunal did not find the argument put forward by the Applicant of evidence in some houses of breaches of the EMS to be relevant. The Tribunal accepted that there was some evidence of minor breaches but in the main accepted the Respondent's evidence that it was taking steps to remedy these and to enforce the covenants of the EMS. This Tribunal is not required to determine whether or not there have been breaches of covenants by residents or by Mr Teevan. That question will be decided elsewhere. This Tribunal is merely concerned with whether or not to agree to the proposed variation.

10.7 Similarly the Tribunal is not required to rule on whether the current EMS is unduly restrictive. It was approved by the Minister following substantial consultation and was then subject to judicial scrutiny which resulted in the order of Mr Justice Goff. Whilst accepting that the current clause does restrict the use of the garage to a single private motor vehicle the Tribunal does not accept that the proposed variation necessarily "*removes this palpable obscenity*". The proposed variation, for example, does not suggest that garages not converted to residential use could be used as a garage for a single private motor vehicle and "*ancillary storage or bicycles*". The Tribunal was additionally persuaded by Mrs Haggerty's proposition that Mr Teevan is not (in reality) unhappy with the literal construction of clause 4(xviii) of the EMS. What he wants is not to be able to store bicycles or paraphernalia, but to convert the garage to residential use and this is redevelopment of a type the EMS was designed to regulate. Nor does the Tribunal agree that the present clause is unduly restrictive having heard evidence from the witnesses as to the small size of the garage at No. 16.

10.8 At the end of the hearing, both Counsel wished to make submissions on Human Rights points but the time allocated had been exceeded, so the Tribunal invited them to communicate with each other and exchange submissions and submit brief closing statements. Very substantial closing statements and responses to each others submissions on Human Rights together with numerous cited cases were received. Whist this might be appropriate and welcome in the Court of Appeal this Tribunal can only take a broad brush approach to the issues raised on Human Rights. The Tribunal has accepted jurisdiction and therefore the arguments put forward by Mr Lidington in that regard have not been considered in depth. He won his case.

10.9 With regard to the substantive case, the Tribunal accepts Mr Lidington's argument that the Tribunal has a duty to ensure that Convention Rights are considered even in litigation between private parties, and that Article 6 (Right

to a Fair Trial is engaged). Furthermore the Tribunal accepts that the EMS is a scheme of local law, perhaps not equivalent to planning restrictions, but certainly an extra layer of planning restrictions, albeit enforced by a private rather than a public body. The Tribunal however, whilst again not making a determination as to whether Article 1 of Protocol 1 is engaged, considered Ms Haggerty's argument (a) that the property was purchased subject to the existing EMS and (b) that any interference is justified as being "*in the general interest*" to be persuasive. In addition the Tribunal is of the view that the restrictions on the use of his garage are in the interest of others than Mr Teevan. Such restrictions are in the interest of the wider community, arguably including occupants of houses in adjoining areas, not just owners/occupants of houses on the Grange Estate. The EMS does exist and it is noteworthy that section 19(1) of the 1967 Act requires consideration of whether it is "*likely to be in the general interest that the Landlord should retain powers of management .....*". Section 19(5) provides that the High Court should approve a scheme if it appears "*to be fair and practicable and not to give the Landlord a degree of control out of proportion to that previously exercised by him or to that acquired for the purposes of the scheme*". Thus the statutory scheme might be perhaps be regarded as a precursor to the concept of proportionality envisaged by the Human Rights Act.

10.10 The Tribunal recognises that the EMS could interfere with Mr Teevan's private and family life under Article 8, and possibly even with his right of peaceful enjoyment under Article 1 of the First Protocol. However these rights are not absolute but are qualified and the rights of the other owners and occupiers on the estate need to be weighed. The evidence gleaned from its own inspection and from the three surveyor witnesses convinced the Tribunal that the variation proposed could lead to a marked diminution of the present special character of the Grange Estate. The Tribunal is satisfied that a fair balance has been struck and that the refusal to approve the suggested amendment will not have a disproportionate effect on Mr Teevan's use of his house.

11. SUMMARY OF THE DECISION

11.1 The Tribunal determines that it does have jurisdiction to hear this application.

11.2 The Tribunal declines to approve the variation of the Estate Management Scheme that is sought by the Applicant.

Chairman 

Date: 13 September 2005