LPA 1925 s.84 and cynical breaches: Alexander Devine children's cancer trust v housing solutions Ltd

Article  (Accepted Version)


This version is available from Sussex Research Online: http://sro.sussex.ac.uk/id/eprint/99862/

This document is made available in accordance with publisher policies and may differ from the published version or from the version of record. If you wish to cite this item you are advised to consult the publisher’s version. Please see the URL above for details on accessing the published version.

Copyright and reuse:
Sussex Research Online is a digital repository of the research output of the University.

Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable, the material made available in SRO has been checked for eligibility before being made available.

Copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

http://sro.sussex.ac.uk
Case Comment

Section 84 LPA 1925 and cynical breaches

*Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd* [2020] UKSC 45, [2020] 1 WLR 4783

Introduction

*Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd* is the first case concerning s84 of the Law of Property Act 1925 (‘s84’) to come before the House of Lords or Supreme Court. s84 gives the Upper Tribunal a power to discharge or modify a restrictive covenant if one of the given grounds is made out. Discharge or modification of covenants is often pivotal for land development. This case turns on the interpretation of the contrary to public interest requirement within the ground as set out in s84(1)(aa), (1A)(b) and the relevance of the conduct of the developer in deciding whether the modification or discharge can be made. The case adopts the term ‘cynical breach’ to describe the conduct of an applicant who has deliberately committed a breach of a restrictive covenant to prioritise profit.

The facts

Alexander Devine Children’s Cancer Trust (‘the Trust’) run a hospice on their land close to Maidenhead. The land was donated to the Trust in March 2012 by Barty Smith for the purpose of constructing a hospice with a garden for terminally ill children and their carers. Planning permission had been given in 2011 but the Trust did not raise sufficient funds to start building until September 2015. Meanwhile Millgate built on land adjacent to the hospice known as the Exchange House site. The affordable housing on this site was later transferred to Housing Solutions. Some of these affordable housing units overlook the hospice grounds and are in breach of restrictive covenants benefitting the hospice and other neighbouring land. These units were built on land previously owned by the Smith family. In 1972 Barty’s father, John Smith, had sold that land to a neighbouring owner (‘SSPC’). Covenants were entered into for the benefit of the owners for the time being of the remaining land owned by John Smith within a three quarters of a mile vicinity. This included the land the hospice was later built on. These covenants provided that there should be ‘[n]o building, structure or other erection of whatsoever nature’ on the land and that the land

---

1 *Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd* [2020] UKSC, [2020] 1 WLR 4783
should ‘not be used for any purposes whatsoever other than as a open space for the parking of motor cars.’ There was also an overage provision that expired in 1994. This burdened land, together with the other land already owned by SSPC, made up the Exchange House site that Millgate acquired in 2013. Millgate was aware of the restrictive covenants. In March 2014 Millgate received planning permission for 23 affordable homes on the site. The building of these homes was a condition of planning permission for other commercial development in the locality. 13 of these affordable homes were to be built on the part of the land burdened by the 1972 covenants. Millgate began work in July 2014 without taking steps to address the issue of the restrictive covenants.

When Barty Smith flew over the site in a light aircraft in August 2014 he noticed Millgate’s development. Barty Smith immediately objected to Millgate. He drew attention to the benefit of the covenants that he and the Trust held and the impact the development would have on the hospice which was to be built. Millgate continued to build and completed the residential units on 10 July 2015. These units are visible from the hospice and the upper floors of the two storey buildings overlook the hospice gardens. On 20 July 2015 Millgate applied for modification of the covenants under s84 to permit the development of the very homes that they had just finished building. These 13 affordable homes were subsequently transferred to Housing Solutions with indemnity provisions should the covenants be enforced.

In July 2020 when the case reached the Supreme Court the affordable housing units were providing homes for tenants and the hospice had been built and was fully operating. Both land uses were of significant benefit to the local community. On one side there was a charity seeking to keep the benefit of a covenant so that terminally ill children ‘can fully enjoy, in privacy, the use of the grounds’; on the other side was a company wishing to see units of affordable housing ‘not go to waste’ even though they were built in breach of restrictive covenants.²

**Judgments of the lower courts**

In 2016 the Upper Tribunal held that covenant should be modified under the ground set out in s84(1)(aa), (1A)(b) allowing the housing to be occupied and used. S84(1)(aa), (1A) (b)

---

provides for modification or discharge where the continued existence of a covenant is impeding or would impede ‘some reasonable user of the land for public or private purposes’ and in doing so ‘is contrary to the public interest’. Under s84(1A)(b) the Upper Tribunal needs to be satisfied that money will be ‘adequate compensation’ for any ‘loss or disadvantage’ from the discharge or modification. In this case both parties agreed that the affordable housing was a ‘reasonable user of the land’. It was held that whilst the covenant did provide practical benefits of substantial value or advantage to the hospice, the public interest point was more important. Modification was conditional upon compensation of £150,00 being paid to cover the cost of screening the housing to reduce the impact on the hospice and provide for loss of amenity. The Upper Tribunal described Millgate’s conduct as ‘highhanded and opportunistic’ but decided that their conduct and ‘all other factors in the case’ were outweighed by the public interest of using the housing. They said it would ‘be an unconscionable waste of resources for those houses to continue to remain empty’.

The Trust appealed to the Court of Appeal on four grounds. These were that the Upper Tribunal had erred in law by (1) applying Lawrence v Fen Tigers Ltd by analogy, (2) ignoring Millgate’s conduct at the jurisdictional stage (whilst the building of the units was regarded as highly relevant), (3) ignoring Millgate’s ability to satisfy planning obligations through other means and (4) not taking proper account of Millgate’s conduct at the discretionary stage. The Trust succeeded on all four grounds. The Court of Appeal overturned the decision of the Upper Tribunal and exercised its power to remake the decision.

The application for modification of the covenant under s84 was refused. The Upper Tribunal was found to have erred in law on each of the four grounds of appeal and across both the jurisdictional and discretionary stages of their decision making. The Court of Appeal said that discharging or modifying covenants under s84 was ‘not something Parliament intended should occur lightly or without very good reason.’ A developer could try to negotiate a release or apply under s84, but it was ‘contrary to the public interest’ for these processes to be ‘circumvented’ by a

3 Millgate Developments Ltd v Smith [2016] UKUT 515 (LC) at [105]
4 Millgate Developments Ltd v Smith [2016] UKUT 515 (LC) at [120]
5 Lawrence v Fen Tigers Ltd [2014] UKSC 13, [2014] 1 AC 822
7 Alexander Devine Children’s Cancer Trust v Millgate Developments Ltd [2018] EWCA Civ 2679 at [47]
developer building first and applying second and ‘in effect daring the tribunal’ to rule in such a way that the buildings might have to be removed.\(^8\)

Housing Solutions, the new owners of the affordable housing units, appealed to the Supreme Court arguing that the Court of Appeal was wrong as a matter of law on all four grounds of appeal. The houses remained occupied and no application for an injunction or damages in lieu was made pending the outcome of the appeal.

**Supreme Court Judgment**

Lord Burrows began by defining Millgate’s behaviour in ‘deliberately’ breaching the covenant ‘with a view to making a profit from so doing’ as a ‘cynical breach’. \(^9\) The judgment focused on the second and fourth grounds of appeal, considering the jurisdictional and discretionary stages of the Upper Tribunal’s decision in turn.

On the second ground of appeal, on jurisdiction, it was held that the Upper Tribunal had not erred in law by ignoring the cynical breach whilst regarding the existence of the built houses as highly relevant. The jurisdictional grounds under s84 aim to recognise covenants that ‘unreasonably fetter a preferable use of land’. \(^10\) The manner of the breach and the conduct of Millgate were held to be ‘irrelevant’ to this jurisdictional stage. S84 (1)(aa) and (1A)(b) were said to require a ‘narrow reading’ and a focus on what the land is or is going to be used for. The correct question to be asked is ‘whether the impediment of that use by the continuation of the restrictive covenant is contrary to the public interest’. \(^11\) It is incorrect to ask a wider question of ‘whether in all the circumstances of the case it would be contrary to public interest’ to keep the restrictive covenant. \(^12\) On this basis the Upper Tribunal had not made an error in law by deciding it would be ‘contrary to public interest’ for the housing units to be left unused. This was a case with a genuine conflict between the hospice land use protected by the covenant and waste of the affordable housing land use. The conduct of applicants was held not to be relevant at this jurisdictional stage and was only to be considered at the later discretionary stage. This approach showed consistency with the

---

\(^8\) *Alexander Devine Children’s Cancer Trust v Millgate Developments Ltd* [2018] EWCA Civ 2679 at [64]


\(^10\) *Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd* [2020] UKSC 45, [2020] 1 WLR 4783 at [45]


\(^12\) *Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd* [2020] UKSC 45, [2020] 1 WLR 4783 at [42]
other jurisdictional grounds under s84 and would be appropriate in s84 applications given the range of behaviour from applicants that might need to be considered.¹³

On the fourth ground of appeal the Supreme Court agreed that the Upper Tribunal had erred in law in the exercise of its discretion by failing properly to take account of Millgate’s cynical conduct. However, the reasoning given for this decision was different to that of the Court of Appeal. Lord Burrows said he resisted the temptation to recognise as a matter of principle that a cynical breach such as this one ‘outweighs’ modifying or discharging the covenant in the ‘public interest’.¹⁴ Instead, he focused on two omitted factors that the Upper Tribunal should have taken account of. Both were factors creating circumstances where it is ‘especially important’ to deter cynical breaches.¹⁵ First, Millgate could have avoided the whole issue by ordering their development in a different way at the start. Millgate could have submitted a plan for the houses on that portion of their land that was not subject to the restrictive covenant and used the encumbered land for associated parking. It was a cynical breach that created needless land use conflict. Second, Millgate could have made an application under s84 at the start. By not doing that and instead breaching the covenant first, they significantly improved their position under the contrary to public interest ground. In the context of this second omitted factor, the Supreme Court said it was ‘especially important’ to deter a cynical breach which will otherwise be directly rewarded through ‘transforming’ the chances of success at the earlier jurisdictional stage.¹⁶

Lord Burrows went on to consider the first and third grounds. He disagreed with the Court of Appeal’s finding that the Upper Tribunal had erred in law in applying Lawrence v Fen Tigers Ltd by analogy.¹⁷ Lawrence v Fen Tigers Ltd¹⁸ concerned noise and the tort of nuisance and said that public interest should be taken account of when deciding whether an injunction should be granted. Lord Burrows did not regard the Upper Tribunal as relying upon Lord Sumption’s wider points about restricting injunctions where planning permission had been granted for use. The third ground of appeal, that the Upper Tribunal had ignored

---

¹⁵ Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd [2020] UKSC 45, [2020] 1 WLR 4783 at [57]
the option of Millgate making alternative provision for the affordable housing through payment to the local council, was also dismissed.

The Supreme Court dismissed Housing Solution’s appeal and found that the Upper Tribunal had erred in law by failing to take the two omitted factors into account at the discretionary stage. The power to re-make the decision under the Tribunals, Courts and Enforcement Act 2007 was exercised and the Supreme Court refused the s84 application for modification.¹⁹

Commentary

*Alexander Devine v Housing Solutions Ltd*²⁰ is a landmark judgment for applications to modify and discharge covenants under s84. This is the first time that the House of Lords or Supreme Court has considered a s84 case. It is the first leading judgment that Lord Burrows has delivered in a property law case since he joined the Supreme Court in June 2020. This is of great interest because Lord Burrows is the first Justice of the Supreme Court to be appointed direct from academia. Lord Burrows brings 20 years of part-time judicial experience and significant time at the Law Commission, but above all he has been a leading academic and highly influential in the development of private law. His 2013 paper for the Judicial College, ‘Judgment-writing: An academic perspective’,²¹ discussed what legal academics look for in a good judgment. It centred on clarity, coherency and conciseness. Professor Burrows observed that the ‘target audience’ for judgment writing is very wide and ‘a judgment must strive to get the balance right between those involved in the litigation and those not involved.’²²

This judgment does provide clear guidance to practitioners, developers, insurers, students and academics considering the law surrounding s84 applications in the future. It also provides timely warnings for those in the audience who are contemplating breaking restrictive covenants without addressing the consequences first. Following cases such as *Driscoll v Church Commissioners for England*,²³ this judgment recognises a two-stage process

---

¹⁹ S14(2)(b)(ii) and (4) Tribunals, Courts and Enforcement Act 2007
²³ Driscoll v Church Commissioners for England [1957] 1 QB 330
to an application. At the first stage the applicant must satisfy one or more of the jurisdictional grounds set out under s84. This opens the way to the second stage where the Upper Tribunal has the power to modify or discharge the covenant at their discretion.

The jurisdictional ground in this case, s84(1)(aa), (1A)(b), is known as a ‘very difficult ground’ to succeed on.\textsuperscript{24} The few successful cases which there have been under this contrary to the public interest ground have stood out in terms of the scale of public need. For example, in Re Lloyd and Lloyd’s Application\textsuperscript{25} there was an acute need for property to be used a community care home in the locality. The application for modification might also have been successful in Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd\textsuperscript{26} were it not for the circumstances of the breach.

A cynical breach

The central issue of the case is the relevance of Millgate’s conduct. For land law students this case will be forever known as the ‘cynical breach case’. Knowing breach of restrictive covenants is by no means a new issue. In George Wimpey Bristol Ltd v Gloucestershire Housing Association\textsuperscript{27} the Lands Chamber was critical of ‘deliberate flouting’ of binding covenants. In Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd\textsuperscript{28} we have a new definition. Lord Burrows describes cynical breach as a ‘useful shorthand description’ of the developer’s conduct ‘in deliberately committing a breach of the restrictive covenant with a view to making profit from doing so.’\textsuperscript{29} The Upper Tribunal described Millgate’s actions as ‘high-handed and opportunistic conduct’. The author finds the new term helpful as it conveys both the deliberate and calculated nature of the breach. It will be useful in other restrictive covenant contexts. The source of the term is also of interest for remedies. Lord Burrows cites commentators in the context of breach of contract and as a specific example Professor Peter Birk’s article ‘Restitutionary Damages for Breach of Contract: Snepp and the Fusion of Law and Equity’.\textsuperscript{30} The article asks ‘[s]uppose someone sees that by

\textsuperscript{24} A. Francis, Restrictive Covenants and Freehold Land, A Practitioner’s Guide (5th edn, LexisNexis 2019) 16.193
\textsuperscript{25} Re Lloyd and Lloyd’s Application (1993) 66 P & CR 112
\textsuperscript{26} Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd [2020] UKSC 45, [2020] 1 WLR 4783
\textsuperscript{27} George Wimpey Bristol Ltd v Gloucestershire Housing Association Ltd [2011] UKUT 91 (LC)
\textsuperscript{28} Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd [2020] UKSC 45, [2020] 1 WLR 4783
\textsuperscript{29} Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd [2020] UKSC 45, [2020] 1 WLR 4783 at [36]
breaking his contract he can make a substantial profit: then, calculating that his likely gains will far outweigh any loss for which he might have to compensate his victim, he cynically decides to throw his contract over. In that strong case (and without prejudice to any other), can the victim claim the contract breaker’s profits?\textsuperscript{31}

In \textit{Alexander Devine v Housing Solutions Ltd}\textsuperscript{32} the refusal of the s84 application leaves the homes still occupied but in continued breach of covenant. The parties must try to find a way forward taking into account the cynical breach. In the concluding paragraph of the judgment in this case, Lord Burrows noted that none of what had been said was ‘determinative’ of how the courts would respond to a request for a prohibitory injunction against occupation or a mandatory injunction for demolition.\textsuperscript{33} Counsel for the respondent had argued that a refusal of the s84 application would leave open the possibility of monetary remedies including beyond conventional compensatory damages. Lord Burrows observed that this argument included the suggestion that given the conduct of the applicant and difficulty of assessing loss this ‘might include an account of profits’ (\textit{Attorney General v Blake}\textsuperscript{34}) ‘as well as negotiating damages’ (\textit{Morris-Garner v One Step (Support) Ltd}\textsuperscript{35}). Lord Burrows said that he ‘made no comment on that suggestion’ but concluded it would only be ‘realistic’ to see the decision as strengthening the hand of the Trust with respect to any financial settlement.\textsuperscript{36} However the case concludes, breaching the covenants will have been an avoidable and expensive mistake and the case must serve as an immediate warning to other developers.

\textbf{The relevance of cynical conduct to the outcome of a s84 application}

The narrow approach of the Supreme Court to the jurisdictional stage should make it easier to satisfy contrary to public interest ground in the future. In the Court of Appeal Sales LJ emphasised protection of and respect for ‘contractual rights with property characteristics’ stating that he did ‘not consider Parliament intended that s84 should operate so as to allow those rights to be deliberately ignored by an applicant, with it being left as a purely

\begin{itemize}
\item \textsuperscript{31} P. Birks, ‘Restitutionary Damages for Breach of Contract: Snepp and the Fusion of Law and Equity’ [1987] LMCLQ 421 at 421
\item \textsuperscript{32} \textit{Alexander Devine v Children’s Cancer Trust v Housing Solutions Ltd} [2020] UKSC 45, [2020] 1 WLR 4783
\item \textsuperscript{33} \textit{Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd} [2020] UKSC 45, [2020] 1 WLR 4783 at [78]
\item \textsuperscript{34} \textit{Attorney General v Blake} [2001] 1 AC 268
\item \textsuperscript{35} \textit{Morris-Garner v One Step (Support) Ltd} [2018] UKSC 20, [2019] AC 649
\item \textsuperscript{36} \textit{Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd} [2020] UKSC 45, [2020] 1 WLR 4783 at [78]
\end{itemize}
discretionary matter for the Upper Tribunal to decide whether to override them.  

By preferring to confine issues of conduct to the discretionary stage, the Supreme Court allow the earlier jurisdictional stage to become a simpler one. The new approach makes no difference to the outcome of this case as the application fails anyway at the discretionary stage. Going forward this lowering of the bar at the jurisdictional stage must advantage a party seeking to modify or discharge a covenant on this contrary to public interest ground.

The Supreme Court also accepted that the Upper Tribunal was correct in saying in Re Green Masjid and Madrasah Trustees that once a jurisdictional ground had been satisfied ‘the discretion to refuse an application should be ‘cautiously exercised’. In Re Green Masjid and Madrasah Trustees a covenant was modified to allow use of the property as a mosque and madrasah. There had been ‘sustained and wilful breach’ of the use covenant prior to the application. The adjudicator said the discretion should not be used as ‘effectively, a punishment’ unless conduct was shown to be ‘egregious and unconscionable’. In this case the adjudicator did not believe the conduct was ‘so brazen’ that it justified refusal. The fact that the applicants were charity trustees, using the property for religious purposes (for which there was a significant unmet demand) and were not making a profit out of their actions were mitigating factors.

As the jurisdictional stage is not to take account of conduct, and discretion to refuse is to be ‘cautiously exercised’, this raises the question of when will conduct will be so reprehensible that it should prevent modification or discharge at the discretionary stage? How bad will be too bad? The Court of Appeal focussed on overall principle. The Supreme Court chose to take a narrower approach again. As before, this choice made no difference in this case, but it will offer less protection to restrictive covenants than that of the Court of Appeal in the future. Lord Burrows said he resisted the temptation to follow the Court of Appeal and recognise a principle that a cynical breach ‘outweighs what would otherwise be the public interest in discharging or modifying the covenant’. He resisted because quite correctly he

---

37 Alexander Devine Children’s Cancer Trust v Millgate Developments Ltd [2018] EWCA Civ 2679 at [66]
38 Re Green Masjid and Madrasah Trustees [2013] UKUT 355 (LC)
39 Re Green Masjid and Madrasah Trustees [2013] UKUT 335 (LC) para 129
40 Re Green Masjid and Madrasah Trustees [2013] UKUT 335 (LC)
41 Re Green Masjid and Madrasah Trustees [2013] UKUT 355 (LC) para 128
42 Re Green Masjid and Madrasah Trustees [2013] UKUT 355 (LC) para 129
saw a need to avoid fettering the Upper Tribunal’s discretion going forward. This leaves s84 applications in a place where the Upper Tribunal must have regard to the conduct of the applicant at the discretionary stage on the facts of a case. It is important for them to deter cynical breaches but there is no overall absolute principle that cynical breach overrides public interest in all situations. There will be some circumstances which clearly overstep the mark where it will be especially important to deter cynical breaches. This will include where, as in this case, the cynical breach creates an avoidable land-use conflict and where the applicant has transformed their chances of success under public interest ground. Inevitably there will be other especially important circumstances too. This is a realistic approach given the range of circumstances and conduct the Upper Tribunal are asked to consider. There is another clear warning for developers from the Supreme Court in this context. The Upper Tribunal must pay more than ‘lip-service’ to deterring developers from ignoring covenants and completing developments in the face of opposition before applying under s84.44

Planning and reform

Sometimes genuine misunderstandings over the relationship between planning and restrictive covenants are behind disputed s84 applications. Planning permission is common but s84 applications are not and landowners may not realise they need to address both planning permission and covenants. Sometimes these risks are dealt with by insurance.45 The impact of planning permission on an argument that a covenant is impeding a reasonable use contrary to public interest was discussed in this case but left open. There was no need to consider further because the Upper Tribunal found that the old gold standard from Re Collins’ Application46 of the interest being ‘so important and immediate as to justify the serious interference with private rights and the sanctity of contract’ was satisfied.47

46 Re Collins’ Application (1975) 30 P&CR 527
Lord Burrows referred to paras 7.3 ad 7.4 of the 2011 Law Commission Report, *Making Land Work: Easements, Covenants and Profits a prendre*\(^{48}\) to show the role of s84 in ensuring land does not become too fettered with obligations. The same Report identified difficulties in using s84 in practice. It also made significant proposals for the future of covenants including the introduction of a new land obligation, reordering of s84 and extension of s84 jurisdiction to new land obligations. There is no reference to wider reform of s84 or covenants in this case. When the House of Lords considered positive covenants in 1994 in *Rhone v Stephens*\(^{49}\) reform, including the previous Law Commission’s recommendations, were referred to.\(^{50}\) *Alexander Devine Children’s Cancer Trusts v Housing Solutions Ltd*\(^{51}\) does not have the same degree of relevance to reform as *Rhone v Stephens*\(^{52}\). However, the silence on the reform issue, together with the time passed since the 2011 Report and the promise of the draft bill in 2017, suggests that change is not currently to be expected. This is disappointing.

**Conclusions**

In the past developers may have considered the jurisdictional grounds under s84 and been tempted to make assumptions about the opportunities s84 offers. This case is an excellent reminder that even where an applicant can meet one or more of the jurisdictional grounds, and many of them are much harder to meet than first appears, this gives the Upper Tribunal a power to modify or discharge. This is discretionary and not automatic. This case introduces a new definition of a cynical breach which is relevant at the second discretionary stage. Cynical breaches are to be deterred. Where an applicant has committed a cynical breach of covenant by deliberately breaching the covenant with a view to making a profit from doing so and then applies for modification or discharge, they may find that the discretion is not exercised in their favour. Cynical breaches will certainly stand in the applicant’s way where the conduct results in a land use conflict which could have been avoided or has acted to materially favour the applicant under the contrary to public interest ground. If a party needs


\(^{49}\) *Rhone v Stephens* [1994] 2 AC 310

\(^{50}\) *Rhone v Stephens* [1994] 2 AC 310 at [321]

\(^{51}\) *Alexander Devine Children’s Cancer Trust v Housing Solutions Ltd* [2020] UKSC 45, [2020] 1 WLR 4783

\(^{52}\) *Rhone v Stephens* [1994] 2 AC 310
modification or discharge of a restrictive covenant to allow development, they must take steps to address the issue at the outset prior to starting any work on site.

Teresa Sutton, University of Sussex