

PROPERTY LITIGATION ASSOCIATION
c/o Trowers & Hamlins
Sceptre Court, 40 Tower Hill, London, EC3N 4DX

Paul Davies
Law Commission
Conquest House
37 - 38 John Street
Theobald's Road
London WC1N 2BQ

Our ref: NYL

10 July 2008

Dear Mr Davies

Easements, Covenants and Profits a Prendre Consultation

I am writing on behalf of the Law Reform Committee of the Property Litigation Association (the **Association**) in response to the above consultation.

We are most grateful for being included in the consultation. For two reasons we do not propose to respond in full to the proposals at this stage. First, many of the Association's members' firms will already have submitted full responses in their own right. Secondly, whilst relevant to litigators, many of the issues raised in the consultation are not "litigation issues" as such and hence do not properly fall within the Association's remit.

For the moment we have some general observations and do wish to comment upon the areas of remedies and Court and Lands Tribunal applications:

- 1 We welcome the proposal to clarify the law in relation to both easements and covenants which is presently convoluted and, on occasion, illogical. Equally, we consider that the extensive consideration the Law Commission has given to this topic meets the concern that any attempt to clarify the law must not be ill considered or over-simplified.
- 2 In relation to the proposal at paragraph 16.28, we agree that the Court should have a discretion as to the remedy it awards where use of an easement is excessive. We note the intention that, for example, the Court should have the ability to award damages instead, say, of suspension or severance in circumstances where it is felt just and equitable to do so. We consider that there should be an attempt to define the circumstances which may be "just and equitable". This is in order to meet the dual concerns of providing certainty and preventing parties from assuming that they may be able to buy their way out of their "wrongs".
- 3 The consultation does not deal with interference with easements and how this should be characterised (e.g., as a nuisance?) and the appropriate remedies. We consider this ought to be given due consideration and be made consistent with the approach in relation to excessive user and breach of Land Obligations.

- 4 In relation to the proposal at paragraph 16.51 (remedies for breach of Land Obligations), we make a similar point to that in relation to remedies for excessive user of easements. Subject to that, we generally agree with the points made in the consultation (paragraphs
- 5 We agree with the proposal (paragraph 16.88) that the statutory jurisdiction to discharge or modify restrictions on land contained in section 84(1) of the Law of Property Act 1925 be extended to include easements, profits and Land Obligations.
- 6 We agree with the balance of the proposals in relation to the amendment of section 84 of the Law of Property Act 1925.
- 7 We believe that the Lands Tribunal should have a statutory jurisdiction to grant declaratory relief.

As indicated, we see our role in this consultation as focussed on proposed judicial applications, jurisdiction and remedies. In seeking to codify any new law in this area of this topic, we consider (unsurprisingly) the devil will be in the detail. With this in mind, we would be keen to be included in future consultation and on any precise drafting proposals in these areas.

Yours sincerely



Nicholas Levy

For and on behalf of the Law Reform Committee of the Property Litigation Association

cc Jacqui Joyce, Thomas Eggar

Keith Conway, Nabarro LLP

Direct dial: 020 7423 8146
Email: nlevy@towers.com