

## Residential Property - Restrictive Covenants

### Inside this issue:

Restrictive Covenants - what are they and why do they matter?

### 1-2 What are they?

When buying a house or some land many people are surprised to learn that what they are buying is subject to one or more Restrictive Covenants.

Basically they are promises between property owners to do, or not to do something on or to the property which may restrict the way the property may be used and developed.

A Restrictive Covenant is just that then – Restrictive. For example a Restrictive Covenant is sometimes imposed by a seller on the land belonging to a property being sold to prevent the buyer from using the land in such a way that the seller feels could be damaging to the land which the seller has retained. In this way the seller retains some control over what happens with the land that has been sold.

A Restrictive Covenant is also known as an incumbrance that is attached to the land. It may have an expiry date or it may state that some of the covenants are not to expire and consequently, you should be aware of the effect it may have on your use of the property and on your conveyancing transaction. The land owner can put whatever restrictive covenants they want on the land they are selling to you, but they have to be reasonable and capable of being adhered to.

Common examples include:

- an agreement not to cause a nuisance to your neighbours;
- not to erect any buildings or any kind of structure on the land or to use the land to run a business without the express permission of the seller.

Restrictive covenants can actually cover a broad range of issues but one of the most

frequently broken is in making alterations to an existing property without obtaining consent from the appropriate third party which is often the original builder.

### How Do I Know If My Property is Affected By Restrictive Covenants?

On many occasions people buy a property and have not been made aware by their Conveyancer that Restrictive Covenants affect it.

This is why it pays to have one of our experienced Conveyancers thoroughly check out the deeds to the property on your behalf as part of the buying process as any covenants will be contained within them. Ignorance is no excuse where the law is concerned.

By signing the title deeds, which you will have been required to do before you complete your purchase, you are confirming that you have read, understood and signed an agreement to all of the terms within them. Therefore, it could well be that, for example, you might be required to take down a house extension which you have had built without covenant approval if the person with the benefit of the covenant enforces it against you whether or not you were aware of it.

At Leeds Day our Conveyancers will advise you on whether there are any Restrictive Covenants affecting the property and provide you with a copy of them and will explain that you will have a liability for breach of them and what consents you will require to comply with the terms of the covenant.

### Do I Still Need Covenant Approval if I Get Planning Permission?

One of the key things to remember is that planning permission from your local



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authority and building regulation approval are completely separate from covenant consent and must be applied for separately from the local authority direct.

Even if you obtain planning permission and building regulation from the Council you will still be in breach of the Restrictive Covenant if you do not seek the required consent from the individual or company who has the benefit of it.

### Breaching a Restrictive Covenant

If you think you have breached a restrictive covenant, you need to employ the services of a professional conveyancing lawyer.

The enforcing of covenants is an extremely complex matter and a good conveyancer may spot that the restrictive covenants which appear within the deeds or legal title of a property have been incorrectly drawn up or may discover that the correct procedures have not been followed.

In essence, there are sometimes legal ways in which a conveyancer can prove that the covenant is not enforceable.

Sometimes a way around the problem is to take out indemnity insurance although the insurance company may impose specific requirements which must be met such as no dispute being currently in effect or the breach has continued for several years. Indemnity Insurance is now widely available at competitive premiums and the benefit of the policy can be passed to successors in title.

Other solutions can include contacting the original developer who imposed the covenant to see if they are willing to grant what is termed 'retrospective consent'. However, in this case, you'll almost certainly have to pay a fee with no guarantee that they will agree or even where they will agree to lift the covenant, they might also seek compensation from you from breaching the covenant in the

first instance.

It is also possible to make an application to the Lands Tribunal to modify or discharge Restrictive Covenants where the original purpose of the covenant has over time become inappropriate however this solution may not be quick or cheap to pursue.

### Conclusion

Often it's only when problems or disputes arise between neighbours that the whole issue of restrictive covenants springs to light. Whether it's boundaries that are the issue or other plans a person might have for the land, the best way to get the matter resolved is to speak to an expert who will try and resolve the matter.

**Our Conveyancing team at Leeds Day is here to help!**

### Contacts

For further information, please contact your usual Leeds Day contact or

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