

DGR Law News and Articles

Restrictive Covenants

If you are thinking about building an Extension to your Home, don't forget about Restrictive Covenants.

As well as complying with Planning and Building Regulations obligations, you should also consider whether a Restrictive Covenant prohibits alterations to your property.

What is a Restrictive Covenant?

Covenants can be found in the title to your property. They are rules attaching to the land, which the property owner must observe. A restrictive covenant is prohibitive in nature, requiring that the property owner refrains from carrying out a certain act. As it attaches to the land itself, the restrictive covenant is passed on from owner to owner.

Restrictive covenants are historic in nature. Prior to planning legislation, restrictive covenants were imposed by wealthy landowners selling off parts of their land, in order to retain some control over the land's development, with a view to preserving the nature or value of it. Effectively, covenants are a form of private planning control.

Types of Restrictive Covenant

The wording of the covenant itself may be final; a typical Restrictive Covenant could read along the lines of: *"not to make any structural alteration or addition to the exterior of any existing building or structure"*. Alternatively, it may include words like: *"not without consent"*, so that an Extension may be permitted, but only with the prior consent of a named party.

Restrictive Covenants requiring Consent

If consent is required, the Restrictive Covenant may or may not include words stating that *"such consent may not be unreasonably withheld"*. In cases where there is no such requirement of reasonableness, the case of *Rickman –v- Brudenell-Bruce, Earl of Cardigan (2005)* decided that it may, nevertheless, be possible to imply a term requiring that the withholding of the consent must be reasonable, if it can be shown that this was the intention of the original parties. Each case will be considered on its own facts.

Why Should I Comply with the Restrictive Covenant?

If you went ahead with building your Extension in breach of a Restrictive Covenant, the party entitled to enforce the covenant could apply for an Injunction preventing the building work continuing, or, where the Extension had already been built, requiring its removal. They would also be entitled to damages and their legal costs.

How Can I still Build my Extension?

If you are already in breach of a Restrictive Covenant, or the party entitled to enforce the covenant is refusing to give their consent, you could apply to the Lands Tribunal to discharge or modify the covenant. To succeed, you must be able to satisfy the Lands Tribunal on one of the following grounds:

1. That changes in the character of the property, or neighbourhood itself, has effectively made the covenant obsolete.
2. That the covenant provides no practical benefit, of a substantial value, to the party entitled to enforce the covenant.
3. That the party who is entitled to enforce the covenant has agreed to its discharge or modification.
4. That there is no detriment to the party entitled to enforce the covenant if it were discharged or modified.

If the Lands Tribunal decides that the covenant be discharged or modified, compensation may be awarded to the party who is no longer able to enforce the covenant.

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