

“ Plain speaking legal advice ”

**Even recently imposed
Restrictive Covenants
can be removed**

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Most property owners will be familiar with the concept of the restrictive covenant – a limitation on the use of their property. But when one is imposed by a local authority which later grants planning permission that seems to contradict the covenant, you can potentially use the law to remove the restriction.

Though developments up and down the land are currently threatened or have come to a halt because of the credit crunch, the tide will undoubtedly turn again because the demand for new housing will only keep growing – and is one of the Government’s key priorities.

In a recent case land in County Durham was subject to a covenant that restricted its use to a vehicle depot and an associated residential property. Though he had unsuccessfully applied for removal of the restriction on the use of the house, five years later the owner was granted outline planning permission for residential development of the land. He then applied to the Lands Tribunal to discharge the covenant under the Law of Property Act 1925.

Section 84(1) provides various reasons to discharge a covenant, including that the covenant impedes some reasonable use of the land. To succeed on this ground, the tribunal must be satisfied that the restriction does not secure to the beneficiary of it ‘any practical benefits of substantial value or advantage’ (or is contrary to public policy).

Though the council argued that imposing restrictive covenants as a landowner and granting planning permission as a planning authority are two entirely separate systems of control, the tribunal refused to make such a clear distinction. It decided that the grant of planning permission was clear evidence that the practical benefits secured by the restriction were not of substantial advantage to the council.

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This finding also fed into another of the grounds for discharging the covenant – that no injury would be caused by such an action.

It's worth knowing that there are two other grounds for discharging a covenant – that it is obsolete and that those with the benefit of the covenant have given their agreement, either expressly or implied by their acts or omissions, to the discharge or modification.

The value of this decision is in showing that, in some cases, a local authority cannot have its cake and eat it.

Property owners should not see the existence of a restrictive covenant as an immovable bar to property use. They should be exploring whether the law can be used to their advantage to remove this restriction.

Re Alisha House [2008] EWLands LP_83_2005

If you would like to discuss these issues with our Property team then please contact Andrew Annette on 01267 686222 or email Andrew.annette@herrington-carmichael.com.

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