

“ Plain speaking legal advice ”

Business & Property Dispute
- Land Owners

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This publication is written as a general guide only. It is not intended to contain definitive legal advice, which should be sought as appropriate in relation to a particular matter.

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If land is part of your business activity or you have the opportunity to make a profit from it, you will also want to protect it. Problem areas are likely to be:

1. Squatters

New Age Travellers, opportunists, call them what you will. If they decide to occupy your land or property without your permission, you will need to act quickly. Even as trespassers (a civil wrong not a criminal act) you will have to get a Court Order to get them off. The process can be relatively speedy and depending on the availability of a Judge you can generally have applied to the Court, served the papers, got your Order to leave forthwith and served that within 7-10 days.

2. Boundary Disputes

Ownership of fences, hedges and arguments as to exactly where the boundary lies are fraught with difficulty not to mention expense. You may be able to take a commercial view quite quickly and assuming a bit of commonsense on both sides a resolution can be reached without Court action.

If the disputed land is vital for your business activity or maximising its development potential etc, you may need to take more forceful action. Mediation is a valuable tool on trying to resolve issues but sometimes Court proceedings are necessary, even if for no other reason than to enable the other party to recognise you are serious and they need to re-consider their options.

3. Restrictive Covenants

To start with you need to understand what the covenant is actually preventing, whether it still applies to your land and who might be entitled to enforce it. Only parties who have the benefit of the covenant can object. The mere fact the deeds say you cannot build more than one house, does not entitle a neighbouring land owner to raise restrictive covenant claims. They have to have the benefit of the covenant as identified from their deeds.

You can be expressly released from the covenant by the party having the benefit. This is fine if this involves only one or two people and they don't want large sums of money for the privilege.

If the covenant is regarded as defunct and there is difficulty in identifying who might have the benefit of it, there is the possibility of an application to the Court for a declaration to that effect.

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Trying to do something with your land or property which is in breach of restrictive covenants is inherently risky. There is always the possibility of insuring against the risk of being sued because of the breach and we deal with the specialist insurers for many of our development clients.

If insurance is not available and you cannot reach a deal with the objecting parties, then short of carrying out the act and hoping the objectors are not going to apply to the Court for an injunction, an application to the Lands Tribunal may be the only option.

A claim can be made to the Lands Tribunal to modify or discharge a covenant providing you can show one of four conditions apply.

- All relevant parties are agreed that the covenant should be discharged or modified
- The covenant is obsolete
- The covenant restricts the reasonable use of the land, conveys no practical benefit of a substantial value or advantage on those entitled to the benefit of it and the loss of the covenant can be compensated in money
- No injury will be caused to those entitled to the benefit of the covenant by reason of its discharge or modification

The Lands Tribunal jurisdiction is discretionary – in other words there is no right to have an order. As a consequence it is often advisable to seek a modification rather than an outright discharge.

Generally speaking the most common approach is to show that the area has changed significantly from when the restriction was first imposed so that it is no longer relevant. If there have been previous breaches of the covenant that have gone unchallenged, that will assist greatly.

The Lands Tribunal assesses what compensation should be payable if it does permit a discharge or modification. There is no hard and fast formula but the Tribunal will often try and assess whether removing the covenant has an adverse effect on the value of the objectors land and what sort of price might be fairly asked for a release. That inevitably leads to the question of what profit you will make if you get the discharge or modification.

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