

REMINDER TO CHECK RIGHTS OF WAY AND COVENANTS

A recent case has raised an important reminder for conveyancers to ensure the rights of way and covenants are all clearly understood by buyers / occupiers / sellers prior to completion. Once completion has taken place, you are bound by any restrictive covenants applicable. Lack of knowledge of a covenant is not a defence to a breach of one as far as judges are concerned.

The recent case of *Mills v Partridge & Partridge* [2020] involved the defendants, a business, using a track of land and a field as a car park for which they were not permitted under covenants. The claimant successfully argued that the use of a right of way over a track and neighbouring field for non-agricultural purposes, amounted to a breach of covenant and trespass.

The case took over three years to conclude, resulted in the defendant business folding halfway through the proceedings, and resulted in the claimant's success. This demonstrates the severe consequences of failing to check or comply with covenants. In residential cases the disputes can result in the breakdown of relationships between neighbours as well as affecting the personal enjoyment of your land and adding the stress of a legal battle.

A restrictive covenant requires the occupier of the land which the covenant applies to, not to do the thing specified in the covenant. Examples include restricting the height or materials to extensions or preventing commercial use of a building. These restrictions are tied to the land and binds the landowners regardless as to whether the landowner is aware.

In circumstances where a covenant is enforced, compensation and injunctions are the most common remedies, but it is always preferable to avoid these situations. There are certain things that can be done to reduce/remove the risk of any breaches of covenants:

- a) Having a conversation and/negotiation with the neighbour can always be a good first step
- b) Ensure any new covenants are protected by the appropriate method
- c) Conduct land searches via the government website that allow a list to be drawn for £3.00
- d) Either party can release the covenantor from the burden
- e) Indemnity insurance where the covenant will still exist is an option but in limited circumstances.

If you have any concerns about a restrictive covenant applicable to land which you own, it is always sensible to seek legal advice before potentially acting in breach and risking significant costs and protracted proceedings being pursued against you.

Our specialist team, Complete Property Solutions, can provide advice as to restrictive covenants and their application to you / your property. If you wish to discuss with us further, please contact the team on 0800 015 0340 or send details to:

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For more information about how we can help you please contact: