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Yorkshire's Legal People

COMPLETE PROPERTY SOLUTIONS

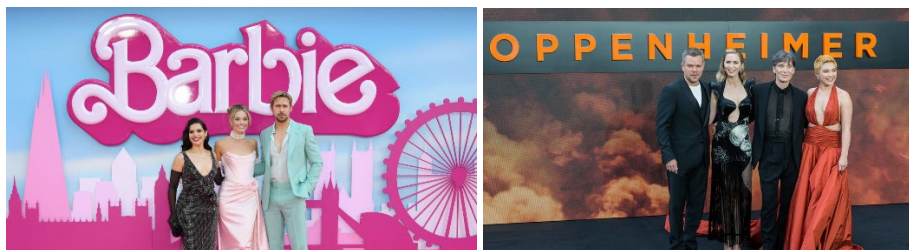
Restrictive Covenants - Barbenheimer, Busybodies, Builders, and the Upper Tribunal (Lands Chamber).

You are a young first-time buyer and buy an old property to revamp to sell on in the future. You want to change the external look of the property or change the fence panels in the garden. It is your property, you can do as you please; or can you? 6 months later, you receive a knock on the door from your neighbour bringing to your attention a 'restrictive covenant' on your property's title which does not allow you to change the externals or change the garden fence. Suddenly your project comes to a halt and have no idea where to turn.

Subject to exceptions, these are called 'restrictive covenants' and are noted on the Land Registry Official Copies but some may refer to an archived document. It is ultimately a contract between 2 landowners. Some agreed between two neighbours over 100 years ago. An article earlier this month discussed that much property has changed hands and many have sold off parts of their land to raise some quick funds to help with the cost of living. Even in 2024, the seller can transfer part of their land and agree during the transaction with the new buyer to not use their new land in a certain way. This then binds future buyers.

Any lay person may think what has a covenant that was agreed 100 years ago, got to do with me or why has the seller made me buy the house with it on. The story behind why it does, is why blockbuster movies have the space to have lavish red carpet events at Leicester Square.

Leicester Square, London



Leicester Square in London has created a spectacle for film premieres, including both Barbie and Oppenheimer. Millions will have seen the famous red carpet and is one of the very few open spaces in that area of London. Many people will not know that the reason why the square is what it is today, is because of a busybody and a builder.

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

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Charles Tulk owed a few properties in the area and owned part of the square that was a picturesque garden. In 1808, he sold part of his land which included the garden. He sold it on the basis that the garden would be maintained and no buildings to be erected on it. Agreeing a restrictive covenant. Over the next few decades, the garden changed hands many times. It became known as a 'neglected and dirty place' as nobody bothered to maintain it. In 1841 nearly 40 years later, a builder called Edward Moxhay - who now owned the gardens - began cutting trees down. Mr Tulk walked past and to his horror saw this destruction, and immediately lodged an application for an injunction to prevent Mr Moxhay from carrying on. Mr Moxhay disputed on the basis that this contract on the land had nothing to do with him and the restriction had been agreed 40 years ago. The public no longer used the garden because it was 'a disgrace to the neighbourhood'. The Master of the Rolls made an order in favour of Mr Tulk and prevented Mr Moxhay from using it in anyway inconsistent with using it as an open garden with no buildings to be erected on it. It is thanks to Mr Tulk meddling in someone else's business that a restrictive covenant 'runs with the land' and is the reason why Leicester Square still stands today.

Mr Tulk and Mr Moxhay both died shortly after, but their legacy that a restrictive covenant binds future purchasers still lives on 200 years later and can be the subject of neighbour disputes and problems with the sale of property.

Modification or Discharge?

There are numerous remedies to enforce against someone in breach of a restrictive covenant. Some landowners may note a drop in interest should potential buyers be furnished with knowledge of the covenant if they want to buy it but are prohibited from doing something with it. It may be possible to negotiate the release or variation of the covenant.

It may also be possible to take out indemnity insurance to cover the possibility of a knock on the door by another Mr Tulk.

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If none of these are possible then an application can be made to the Upper Tribunal (Lands Chamber). The Tribunal has jurisdiction over disputes relating to land but specifically restrictive covenants. It acts as an arbitrator and the process that applicants must follow is niche as it falls out of the usual Civil Litigation procedure.

The Upper Tribunal can discharge or modify the restriction if satisfied that one of the following grounds applies:

- The covenant is obsolete.
- The covenant impedes some reasonable use of the land.
- If both parties agree to modify or discharge.
- Where no injury will be caused.

It is important to know that the Tribunal has a wide discretion and, in some cases, even if no objections are received, the Tribunal can still prevent a total discharge if they consider the covenant adds positive value. The main thing is that there are solutions despite it being an alien process.


How can Chadwick Lawrence help?

Legal advice from the outset is important. Neighbours do not usually like to receive solicitors' letters but having professional representation can make negotiations cost efficient and if required can navigate the specialist process within the Tribunal. Once the process is complete, correct registration at Land Registry can ensure no disputes can arise in the future.

As many will agree, the geography of Yorkshire is unique. We have the urbanised west and the rural north. Land has changed over many years and old-fashioned restrictive covenants can be common with those willing to enforce them. As Yorkshire's Legal People, we have offices in all regions and can understand from a local perspective what that means for parties involved. Something that is important during negotiations.

Should you have a problematic covenant, then Complete Property Solutions can help from cradle to grave and you can contact olivernewton@chadlaw.co.uk for an initial consultation.

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