

A restrictive covenant is an agreement (often contained in a deed) between two parties whereby one of the parties agrees to restrict the use of its land for the benefit of another's land. The owner of such a benefit will be hereafter known as "the owner of a restrictive covenant."

The law of restrictive covenants is a complex area, so it is important to review the scope of a restrictive covenant as well as considering its validity and enforceability.

In practice, restrictive covenants are often problematic for universities seeking to redevelop land, as the land may be subject to various restrictions as to what, if anything, can be built upon it. If a developer decides to proceed with its development plans and restrictive covenants are present on the title the following options are available:

- Obtaining indemnity insurance to protect against the potential enforcement of the covenant by the owner of a restrictive covenant;
- Negotiating a release or variation of the restrictive covenant with the owner of the restrictive covenant;
- Applying to the Upper Tribunal (Lands Chamber) to remove or modify the covenant; or
- Applying to the court for a declaration as to whether the land is affected by a restriction, the true nature and extent of the restriction and whether it is enforceable.

It is usually the case that a developer will seek to engage with the owner of a restrictive covenant in the first instance to seek a release of the covenant to allow it to continue with a development. If negotiations are unsuccessful and the owner of a restrictive covenant decides to seek to enforce their rights, then this may have a devastating impact on a redevelopment scheme.

The risk for a developer is that the owner of a restrictive covenant can seek to bring a claim against it in damages in the event it continues with its development notwithstanding the presence of a restrictive covenant. Alternatively, the owner of a restrictive covenant can also seek to make an application for an injunction to stop action being taken. It is therefore important that universities obtain legal advice on restrictive covenants and the tactics of dealing with them as soon as possible in the development process.

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