

Restrictive covenants – too restrictive?



A large development with the benefit of planning permission is unable to go ahead after the Upper Tribunal (Lands Chamber) refused to modify or discharge restrictive covenants under grounds (aa) and (c) of Section 84(1) of the Law of Property Act 1925 [*Quantum (Barrowsfield) Ltd v Bell & Ors* [2023] UKUT 2 (LC)].

Section 84 of the Law of Property Act 1925

Section 84 of the LPA 1925 allows the discharge and / or modification of a restrictive covenant on the following grounds:

- (a): The restriction is obsolete due to a change in the character of the property or neighbourhood or other material circumstance.
- (aa): The covenant impedes a reasonable use of the land and does not bring any practical benefits of substantial value or advantage to the person benefitting from the covenant, or the covenant is contrary to the public interest.
- (b): Those with the benefit have agreed to discharge or modify the restriction.
- (c): The proposed discharge or modification would not injure persons with the benefit of it.

How restrictive covenants impacted the case of *Quantum (Barrowsfield) Ltd v Bell & Ors* [2023] UKUT 2 (LC)

In the above case, the modification of covenants imposed in 1963 and 1993 was sought to enable the applicant to build a block of 33 flats 4/5 five storeys high with parking for 26 cars, cycle storage for 64 cycles and communal



amenities on the rooftop. The restrictive covenants, which restricted the construction of more than one 'private dwelling house' and subjected parts of the land to be used 'for the occupation of one household only' would have been breached if the development went ahead, hence the application to the Tribunal.

However, although the Tribunal found that the proposed development was a reasonable use of land, it also decided that the restrictive covenants conferred practical benefits of substantial value and advantage to two of the objectors' properties, including protecting the view of the building from the objectors' gardens and houses and preventing overlooking by parts of the proposed development. The Tribunal held that the proposed development would be overbearing and would transform the outlook from two of the objecting properties.

The importance of restrictive covenants in real estate

Restrictive covenants are just one of the many hurdles that developers need to consider when reviewing the acquisition of sites and obtaining expert advice, from lawyers, surveyors and other experts is essential to the successful implementation of a proposed development. We provide expert legal advice on all aspects and stages of a proposed development including the impact of restrictive covenants. To discuss this further please do not hesitate to contact a member of our [property disputes team](#).



[Clare Greig](#)

Senior Associate