

Discharge and Modification of Restrictive Covenants

1. How applications arise

Under Section 84 of the Law of Property Act 1925 a person interested in freehold land affected by any restriction, arising under a covenant or otherwise, as to its use or building upon it may apply to the Lands Tribunal to have the restriction discharged or modified. The Tribunal may discharge or modify the restriction if it is satisfied that one or more of the grounds set out in the section are made out; and, if it orders the discharge or modification of the restriction, the Tribunal may award compensation to any person entitled to the benefit of the restriction.

2. The application

An application to discharge or modify a restriction must contain the information set out in the Lands Tribunal Rules 1996, including an identification of the land to which it relates and the grounds upon which discharge or modification is sought. It must also identify the land which and any person who, to the applicant's knowledge or belief, has the benefit of the restriction.

3. Publication of notices

On receiving the application the Registrar must determine what notices of the application are to be given to persons who appear to be entitled to the benefit of the restriction. He then directs the applicant to give personal notices to such of those persons as can be identified by name and address, and notice by advertisement in respect of all others. The notices set out the substance of the application and require persons who claim to be entitled to the benefit of the restriction and who object to the application to give notice to the Registrar of their objection.

4. Notice of objection and admission of objectors

Notice of objection and any claim for compensation must be given in writing to the Registrar within 28 days of the notice of the application. The objector is required to state the basis upon which he/she claims to be entitled to the benefit of the restriction and the grounds of the objection. The applicant may then apply to the Tribunal for directions as to the persons who are or are not to be admitted to oppose the application.

5. Unopposed applications

In the case of applications to which no objection has been made, or in respect of which no one has been admitted to oppose the application, the Tribunal may, with the consent of the applicant, determine the application without a hearing. The majority of unopposed applications are dealt with in this way.

6. Opposed applications

Where objections have been made and not withdrawn, an oral hearing will usually be held in order to determine the application (see **Procedure**).

