

Answers to Queries re Freehold Covenant Relaxation

Background

Most property sales by Malton Estate included an agreement by the purchaser that they would ask the vendor for consent to alterations to the appearance or use of the building.

Significant Changes/New buildings/New uses

In some cases, mostly for change of use, a new building or development of a site where development was not contemplated at the time of the original sale, the requirement to obtain consent allows the Estate to share in the increase in value being created in return for that consent. In those cases, the owner should seek legal and valuation advice before negotiating figures with the Estate.

The justification for a share in the value created is that when the original sale was agreed the buyer only bought a restricted title to the property that allowed him to keep it as it is now. That was to protect the Estate's retained investment and the assumption is that the price was discounted as a result. If that restriction is to be lifted or varied the Seller will expect to share in the value created, having not been paid for that element of value in the first place. When the current owner purchased the property the buyer's solicitor should have made the effect of these restrictions clear to the buyer.

This is a complex area of law and the current owner should take his or her own advice because we are employed to advise the Estate and can only view the matter from the Estate's perspective.

Alterations

Where the change is just a modest extension or alteration that does not create significant value:-

- The Estate Company will consider the request for consent to the alterations on receipt of two copies of the drawings showing the alterations.
- The Estate's consent will be endorsed on both sets of the drawings and the owner will be sent one set to demonstrate to a purchaser the scope of the consent. The Estate will retain the other set of drawings for its records.
- The fee will be £300 plus VAT for routine applications. A cheque in the sum of £360 should be made payable to "Fitzwilliam Malton Estates". The fee may be more where extended correspondence is entered into and this will be advised where appropriate.

I am thinking of buying a property that used to be owned by the Estate. It has restrictive covenants on the title. Are they enforceable? How much would it cost to relax the covenant so that I can build a new house in the garden?

This is a very technical piece of law. The effect of the covenants depends on the exact wording of the covenant, the location/type of property and exactly what you want to do with it. We want to be helpful but there are two problems with giving you an answer.

1/ We will have to research the title and consider your proposals. This will take time and then, if you decide not to buy, the Estate will have incurred that cost/ been distracted from other work that would have been productive. When a property is on the market we can get many enquiries, all for different proposals, and we do not have the capacity to deal with them and most will be unproductive. For that reason, we have to say that we cannot deal with your enquiry until you have bought the property.

2/ We are employed to negotiate the best terms that we can for the Estate. Therefore we should not give advice to you. You should take advice from some-one looking after your interests.

So, if you want an idea of the effect/value of the covenants before you buy, you should ask a Solicitor to look at the title for you. Chartered Surveyors will advise you on the value attached to a covenant. The Chartered Surveyors in Malton will have dealt with Malton Estate Covenants and have evidence as to value on which to base your decision to offer for the property. When you have bought the property you can instruct them to negotiate terms on your behalf with Malton Estate for the relaxation of covenant that you require.

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