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HOME HELP

Can a restrictive covenant be ignored? How do you stop squirrels driving you nuts? Ask our team

Q What is the point of a restrictive covenant if it can be totally ignored? I live in a cul-de-sac of six houses. Attached to all the deeds is a covenant that states: "At no time hereafter shall any garage or outhouse erected within the curtilage of any house on the said land be converted for use or be used as a house or residential unit." But the council has just granted planning permission for a garage to be converted to a home, even though four of the houses in the cul-de-sac objected, quoting the above covenant. How can we enforce it?

Bernard Solca, via email

A Restrictive covenants prohibiting development, as found in some title deeds, are one way of retaining a neighbourhood's character, but enforcement is not simple.

Even if your neighbour gets planning permission, you may be able to stop the development if you can show that your land is "benefited" by the covenant; that the covenant intended that

subsequent owners of your land (ie, you) could enforce it; and that its effect is attached as a burden to your neighbour's plot for all time. Sometimes, the way the original buyer made the agreement with the selling builder can be relevant

to how it might be enforced. You may also have to interpret the meaning of specific words in the documents (in this case "curtilage") to make sure it applies to your case.

Alternatively, you could hope that the covenant attached to the deeds of all six houses indicates the existence of a "building scheme". This is a system of binding agreements between neighbours in which each can enforce the terms against the other, as opposed to one landowner being the only person who can enforce the covenant that they imposed on several buyers.

To qualify as a scheme, there must have been a common seller of plots comprised in a defined area, one who was bound to create a scheme of common covenants on sale of the first plot, with a clear intention expressed

that these are mutually enforceable between plots.

A developer could try to get round your enforcement by asking the Lands Chamber of the Upper Tribunal to modify or discharge a covenant that has a restriction on building or use that is obsolete or impedes a reasonable use of land. The tribunal is not likely to interfere with a building scheme, so you could hire a solicitor to review the title deeds and advise on whether your cul-de-sac falls within this definition.

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