



Landlord and Tenant (War Damage) Act (Northern Ireland) 1941

1941 CHAPTER 9

MISCELLANEOUS

26 Powers of court as to restrictive covenants in certain cases.

- (1) Where the buildings comprised in a ground lease or a multiple lease (whether made before or after the passing of this Act) have been rendered unfit by war damage, and the interest created by the lease is affected by any restriction arising under covenant or otherwise as to the user of the land comprised therein or the buildings thereon, the following provisions of this section shall have effect.
- (2) The court shall have power, on the application of any person interested, by order wholly or partially to discharge or modify any such restriction as aforesaid (subject to the payment by the applicant of compensation to any person suffering loss in consequence of the order) on being satisfied that the proposed discharge or modification is desirable in order to permit the economical use or development of the land comprised in the lease, or is otherwise desirable in the national interest.
- (3) Where any restriction affecting the interest created by the lease is wholly or partially discharged or modified on any of the grounds specified in the last foregoing subsection, the powers of the court may be exercised on any of those grounds in relation to any similar restriction affecting the freehold or other interest out of which the interest created by the lease is derived.
- (4) The court shall have power on the application of any person interested—
 - (a) to declare whether or not in any particular case any land is affected by a restriction imposed by any instrument; or
 - (b) to declare what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed and whether the same is enforceable and, if so, by whom.
- (5) The court shall, before making any order under this section, direct such inquiries, if any, to be made, and such notices, if any, whether by way of advertisement or otherwise, to be given to such of the persons who appear to be entitled to the benefit

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of the restriction intended to be discharged, modified or dealt with as, having regard to any inquiries, notices or other proceedings previously made, given or taken, the court may think fit.

- (6) Any order made under this section shall be binding on all persons, whether ascertained or of full age or capacity or not, then entitled or thereafter capable of becoming entitled to the benefit of any restriction which is thereby discharged, modified or dealt with, and whether such persons are parties to the proceedings or have been served with notices or not.
- (7) An order may be made under this section notwithstanding that any instrument which is alleged to impose the restriction intended to be discharged, modified or dealt with, may not have been produced to the court, and the court may act on such evidence of that instrument as it may think sufficient.
- (8) This section applies to restrictions whether subsisting at the passing of this Act or imposed thereafter, but does not apply where the restriction was imposed on the occasion of a disposition made gratuitously or for a nominal consideration for public purposes.
- (9) An order under this section shall, in so far as it relates to land the ownership of which is registered under the Local Registration of Title (Ireland) Act, 1891^{F1}, be registered upon production thereof in the proper office for the registration of titles.
- (10) Where any proceedings by action or otherwise are taken in any court to enforce a restrictive covenant, any person against whom the proceedings are taken may, in such proceedings, apply to that court for an order giving leave to make an application under this section and staying the proceedings in the meantime.

F1 1970 c.18 (NI)

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