



Law of Property Act 1925

1925 CHAPTER 20

PART II

CONTRACTS, CONVEYANCES AND OTHER INSTRUMENTS.

Covenants.

84 Power to discharge or modify restrictive covenants affecting land.

- (1) The Authority hereinafter defined shall (without prejudice to any concurrent jurisdiction of the court) have power from time to time, on the application of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction (subject or not to the payment by the applicant of compensation to any person suffering loss in consequence of the order) on being satisfied—
- (a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Authority may deem material, the restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land for public or private purposes without securing practical benefits to other persons, or, as the case may be, would unless modified so impede such user; or
 - (b) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified; or
 - (c) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction:

Provided that no compensation shall be payable in respect of the discharge or modification of a restriction by reason of any advantage thereby accruing to the owner of the land affected by the restriction, unless the person entitled to the benefit of the

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restriction also suffers loss in consequence of the discharge or modification, nor shall any compensation be payable in excess of such loss; but this provision shall not affect any right to compensation where the person claiming the compensation proves that by reason of the imposition of the restriction, the amount of the consideration paid for the acquisition of the land was reduced.

- (2) The court shall have power on the application of any person interested—
 - (a) To declare whether or not in any particular case any freehold 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.
- (3) The Authority shall, before making any order under this section, direct such enquiries, if any, to be made of any local authority, 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 of the restriction intended to be discharged, modified, or dealt with as, having regard to any enquiries notices or other proceedings previously made, given or taken, the Authority may think fit.
- (4) The Reference Committee mentioned in this section may make rules in relation to any applications to be made to the Authority under this section, and with the consent of the Treasury may prescribe the fees to be paid in connexion with any application to the Authority.
- (5) 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 notice or not, but any order made by the Authority shall, in accordance with rules of court, be subject to appeal to the court.
- (6) 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 or the Authority, and the court or the Authority may act on such evidence of that instrument as it may think sufficient.
- (7) This section applies to restrictions whether subsisting at the commencement of this Act or imposed thereafter, but this section does not apply where the restriction was imposed on the occasion of a disposition made gratuitously or for a nominal consideration for public purposes.
- (8) This section applies whether the land affected by the restrictions is registered or not, but, in the case of registered land, the Land Registrar shall give effect on the register to any order under this section when made.
- (9) Where any proceedings by action or otherwise are taken to enforce a restrictive covenant, any person against whom the proceedings are taken, may in such proceedings apply to the court for an order giving leave to apply to the Authority under this section, and staying the proceedings in the meantime.
- (10) In this section " the Authority " means such one or more of the Official Arbitrators appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, as may be selected by the Reference Committee under that Act.

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- (11) This section does not apply- to restrictions imposed by the Commissioners of Works under any statutory power for the protection of any Royal Park or Garden or to restrictions of a like character imposed upon the occasion of any enfranchisement effected before the commencement of this Act in any manor vested in His Majesty in right of the Crown or the Duchy of Lancaster, nor to restrictions created or imposed—
- (a) for Naval, Military or Air Force purposes,
 - (b) for civil aviation purposes under the powers of the Air Navigation Act, 1920.
- (12) Where a term of more than seventy years is created in land (whether before or after the commencement of this Act) this section shall, after the expiration of fifty years of the term, apply to restrictions affecting such leasehold land in like manner as it would have applied had the land been freehold:

Provided that this subsection shall not apply to mining leases.