

Restrictive Covenants and Vendor's Consent

Restrictive covenants in favour of and in the name of a previous owner (the 'Vendor', now deceased) of land were held by the High Court in *Churchill v Temple* [2010] All ER (D) 170 (Dec) not to be enforceable by the current owners of the land. The death of the Vendor meant that the covenant could not be enforced by a subsequent owner.

In this case, Churchill purchased property which was subject to restrictive covenants in favour of the Vendor contained in a 1967 conveyance of the property to Churchill's predecessor in title. The covenants included an obligation to obtain the consent of the Vendor to the construction of a dwelling or any structural alteration or addition.

The Vendor subsequently sold its property, which was later acquired by Temple. The Vendor is now deceased. Churchill wished to demolish the house currently on his property and replace it and so sought directions from the Court as to the validity of the restrictive covenants.

The Court held that the term "Vendor" in the restrictive covenant only included the original vendor and not his successors in title. Further, the original parties to the conveyance containing the covenants were assumed to have taken into account any reasonably foreseeable contingencies, having considered the position of the parties. In this case the Court took into account the amount of time that had passed and the fact that neither party to this dispute was a party to the original conveyance containing the restrictive covenants.

The Court held that the Vendor would have wished to preserve the value of his property but would not have intended an indefinite restriction. The restrictive covenant was therefore discharged by the death of the Vendor.

Each decision relating to covenants of this kind will depend on its own facts, but this case provides a welcome indication for owners of property subject to this type of covenant.

For further information please visit [Pitmans Real Estate](https://www.pitmans.com) website or contact our team direct.

Mark Holloway

Solicitor - Commercial Property

T: +44 (0)118 957 0352

E: mholloway@pitmans.com

Reading Offices:
47 Castle Street, Reading
Berkshire, RG1 7SR
T: +44 (0) 118 958 0224
F: +44 (0) 118 958 5097
DX 146420 Reading 21

The Anchorage
34 Bridge Street, Reading
Berkshire, RG1 2LU
T: +44 (0) 118 958 0224
F: +44 (0) 118 958 5097
DX 146420 Reading 21

London Office:
1 Crown Court
66 Cheapside
London, EC2V 6LR
T: +44 (0) 20 7634 4620
F: +44 (0) 20 7634 4621
DX 133108 Cheapside 2

www.pitmans.com