

This document provides a brief outline of Section 29 covenants and St John's College policy for their release, to assist existing owners and their potential purchasers of properties subject to such covenants.

Background to Section 29 covenants

St John's College, in common with other Colleges and the University of Cambridge, owned areas of land in Cambridge that provided a reservoir of land to meet future operational needs. Some of that land was let on long ground leases for residential development, with the College retaining the freehold reversionary interest.

The passage of the Leasehold Reform Act 1967 (the 'Act') gave leasehold tenants of houses under long residential leases, the right to acquire the freehold of the property (and in some cases a right to extend the lease) through 'enfranchisement'. In order to strike a balance between public and private interests, the Act reserved to public authorities such as University bodies (which includes the College), Local Authorities and New Town Commissions, the right to future development of the land banks they had accumulated, and provided that as part of the enfranchisement process the freeholder would be entitled to include within the conveyance of the freehold to the tenant, a covenant under Section 29 of the Act.

Section 29, which is headed 'Reservation of future right to develop', provides for the imposition of 'such covenants on the part of the tenant restricting the carrying out of development or clearing the land as are necessary to reserve the land for possible development by the authority'. The Act, through this mechanism, provides that development rights should remain with the landlord. Section 29 further gives a right to the authority, and a University Body through the Secretary of State, to compulsorily acquire an enfranchised property if it is needed for development for the purposes (other than investment purposes) of that body.

In the case of a compulsory acquisition, the price payable for the property is market value as assessed under the rules of the Land Compensation Act 1961. However, no account is taken of an increase in value attributable to the carrying out of development in contravention of a section 29 covenant.

College approach to Section 29 covenants

The College's approach to considering the release of Section 29 covenants is set out below (with the term 'College' including steps handled by the College's agents on its behalf). As can be seen from the description below, the College can only properly respond to a specific proposal as each case will need to be assessed on its own merits. This policy will not apply in relation to any other covenants which affect the property and which may restrict what an owner proposes to do to the property or how it is to be used.

Following an initial approach from an owner, the College assesses whether, and to what extent, the owner's proposed development ("the Works") would otherwise contravene the Section 29 covenant included in the transfer of the freehold. For this assessment, the College needs to be provided with a description and plans for the Works.

If the Works would otherwise contravene the Section 29 covenant, the College assesses whether the Works may be prejudicial to properties of the College, the University or another College in the area. If the College has no such concerns about the Works, then the College would take the following steps:

1. The College would offer to enter into an agreement by deed which would provide that while the College does not consent to the Works it will not seek to take enforcement action under the 1967 Act in respect of the Works so that should the property be acquired by the College under the Act in the future, any increase in the value of the property arising from the Works would be ignored in calculating any compensation payable. No premium would be charged for that agreement and the owner could therefore carry out the Works at no cost other than the payment of all the College's professional fees. This is the College's preferred approach.
2. If the owner does not wish to enter into such an agreement as described under 1 above, the College would determine a compensation payment for an agreement by deed releasing or varying the Section 29 covenant to allow the Works, reflecting the increase in value to the property arising from the development. This compensation payment is intended to compensate the College from having to pay, on a subsequent acquisition, an increased price reflecting the increased value.

The compensation payment would be calculated by assessing the increase to value arising from the Works and then discounting this by a deferment rate over the timescale on which the property might be acquired, with a maximum deferment period of 50 years. The current deferment rate used by the College (which may be revised from time to time) is 4.75%.

In the specific case where the Works involve the sub-division of a plot and the erection of a new dwelling, the policy of the College would be to deal with the matter on a case by case basis.

In considering agreements relating to Section 29 covenants, the College will require that all its costs of processing the request and preparing appropriate documentation are met and an undertaking in respect of these costs will be required at the outset. These costs include the time input of the College's internal surveyor staff and fees and disbursements of its property agents and, if appointed, its solicitors.

Further information and steps

An owner of a property subject to a Section 29 covenant, who is considering carrying out work which might contravene a Section 29 covenant is in the first instance advised to review the wording of the covenant in the conveyance of the property on enfranchisement and if appropriate, to obtain professional advice. If this review confirms that the section 29 covenant applies to the proposed work, the owner is advised to contact the College's agent for Section 29 covenant matters providing a description and plans of the proposed work, distinguishing between works which would contravene the covenant and other works. It is suggested that applicants should contact the College's agent as soon as the nature of the works to be carried out are clear, to avoid any delays.

The College's agent for Section 29 matters is Mrs Kate Procter, Carter Jonas LLP, One Station Square, Cambridge, CB1 2GA. Phone: 01223 368771, email: Kate.Procter@carterjonas.co.uk

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