
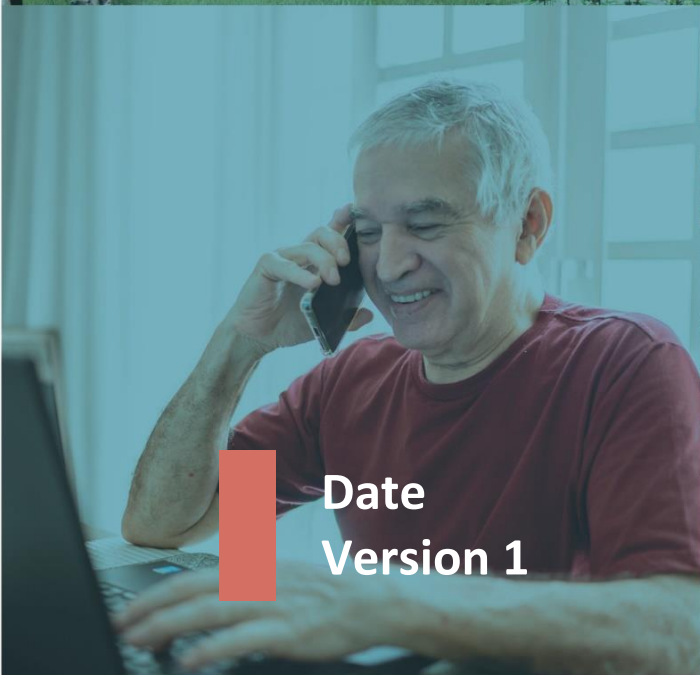




Release of Restrictive Covenants Policy.



Corporate Property
Strategy 2024-2029



Date
Version 1

1. Introduction

Please note that this policy only applies to housing properties and specifically where a property has been sold under the Right to Buy scheme.

If you have bought a property under the Right to Buy scheme (RTB) or bought a property that was previously owned by the Council, there may be legal restrictions on what you can do with your property – these are called restrictive covenants. Covenants are a promise to do or not to do something on or to land or property. These restrictive covenants stay with the land and as such the responsibility of complying with the covenants is passed from one owner to another.

Owners must seek approval from the Council if they want to do anything to the property which would otherwise breach a covenant specified within the conveyance. If a covenant attached to a property is breached the Council can take action to make sure the owner complies with the restrictions within the covenant.

Depending on the restriction, the Council may choose to issue a letter consenting to the request on that particular instance. It may also be possible to negotiate the permanent release or variation of a restrictive covenant by deed, although these circumstances are more limited.

2. Our Commitments

The Council's Property and Development Team will lead on considering requests from home owners to consent, modify or discharge restrictive covenants on their properties which have been imposed by MKCC or its predecessor authorities.

We will:

- Consider requests fairly within the due diligence framework set out in this policy.
- Set out our charges and timescales transparently at the start of transactions.
- Keep you informed throughout the process.

3. Legislative Framework

The 'Right to Buy' scheme was introduced by the Housing Act 1980 and amended by the Housing Act 1985. Under part 5 of the Housing Act 1985, secure tenants were permitted to buy the homes they rented from their local authority landlord or where they have a preserved Right to Buy. These Acts set out what restrictive covenants the Council can or cannot place on a property when it is sold and how and when the Council can charge for

varying or removing these restrictions later on. Most former council homes in Milton Keynes sold by the Council have been done so under the Right to Buy Scheme.

The RTB Scheme was further amended by the Housing Act 2014 but does not change how and when restrictive covenants are placed on properties.

There are a small number of homes sold by the Council prior to the Right to Buy scheme. Our predecessor authority, Milton Keynes District Council and the former rural and urban district councils which made up the current MKCC area, used their powers to dispose of housing in s.104 of the Housing Act 1957. Different rules apply to properties sold under this legislation. Additionally, the Council may sometimes use its General Powers to dispose of residential properties on the open market when a property is vacant. The Housing Acts do not apply to these disposals.

The 1985 Act also places further restrictions under s157 in areas designated as "Rural". There are no areas within the Milton Keynes Council boundaries which hold this designation.

4. Examples of Restrictions

Some examples of the types of restriction that might be included on the title include, but are not limited to:

- Restricting the use of a property to a single private residence, or for one family.
- Not allowing a business to be operated from a property.
- Requiring permission from the Council to alter or develop the property or the land it sits on.
- Not erecting any structures in the garden (for example, sheds or conservatories).

5. Process

The Council charges an administration fee and reasonable legal costs to applicants. The administration fee is payable whether or not the matter proceeds to completion.

Charges vary depending on the type of request. Applicants should complete the [online application form](#) where you will be asked for:

- Your personal details.
- The address of your property.
- A copy of the conveyance or title setting out the restriction.

- The changes you wish to make to your property, with an option to upload plans and drawings, if applicable.
- Details of any planning consent you have applied for or have been granted.

There are generally two types of covenant related request:

- To obtain approval to carry out work;
- To vary or remove a covenant or part of a covenant to permit the proposed use, known as a Deed of Variation.

Due Diligence

In order to ensure requests are dealt with consistently, a two-stage test will be applied to requests:

1. Is the restrictive covenant still relevant?

- have there been any changes to the character of the neighbourhood or changes to use of adjacent buildings?
- Is the covenant still capable of being adhered to?
- Is it contrary to the public interest?

If the covenant is relevant, the Council will not grant its consent.

2. If the covenant is no longer relevant, then

- Would its continued existence impede some reasonable use of the land for public or private purposes?
- Have the persons entitled to the benefit of the covenant have agreed, either expressly or by implication by their acts and omissions, to the discharge or modification sought?
- Will discharging or modifying the covenant injure the persons entitled to the benefit of the covenant?

If the covenant is not relevant, and tests above are satisfied, then the Council will grant its consent or release.

Generally, if planning consent has been granted then it is difficult to argue that the covenant is still relevant, and if it is, any discharge or modification of the covenant is unlikely to cause harm.

6. Charges

The Council can charge its administration and legal fees for considering requests and for providing a deed of release or letter of consent. These are set out in the Council's published list of fees and charges which are reviewed annually.

Apart from charging administration and legal fees, the Council is unable to charge a premium for covenants imposed under the Housing Act 1985 (Right to Buy). This is because the RTB scheme to enable tenants exercising the right to buy to enjoy the ordinary fruits or advantages of home ownership, including a rise in the value of their property whether that is because of the benefits of a later acquired planning permission or otherwise.

The Council may charge a premium to release covenants imposed under the Housing Act 1957. We will inform you if the covenant was imposed under this Act and how we will calculate the premium when we deal with your request, so you can decide whether you wish to proceed or not.

7. Timescales

We will aim to give you a decision within 4 weeks of your application, or to tell you if we need more time. We will advise whether we will give you a letter of approval to carry out works and will aim to provide this within a further 7 days.

Approval letters are generally given for small scale works, e.g. erection of a shed or conservatory. We may wish to grant you, or your solicitor may ask, for a deed of variation to remove the covenant. This is more common where you're likely to sell part of the affected land, for example building a dwelling in the garden. A Deed of Variation will take us longer to do, and we will advise you of the timescales to complete the work.

8. Breaches of Covenant

We may be notified about a breach of covenant from members of the public, councillors or officers of the Council. Where a breach has been committed, there are two ways forward:

- Regularisation of the breach through a retrospective application to release or consent to the covenant.
- Enforcement action to require the owner to rectify the breach.



Milton Keynes
City Council