

Upper Tribunal Lands Chamber procedure flowchart

For applications to discharge or modify restrictive covenants affecting land

The procedure flowchart on the following pages is designed to assist both applicants and objectors by giving an overview of the process the Tribunal follows in respect of applications made to it to discharge or modify restrictions affecting land. It is not a substitute for consulting the legislation relating to your case, the Rules, Practice Directions and Practice Statement, or from taking professional advice from a solicitor.

Depending upon the exact nature of the case the Tribunal may either direct that additional steps be taken or that certain steps be omitted.

For your guidance

- The Tribunal's Rules, Practice Directions, Practice Statement, forms, information about the fees it charges and its recent decisions are available on the Tribunal's website, www.gov.uk/appeal-upper-tribunal-lands
- The Tribunal's staff can answer questions about the Tribunal's processes but they cannot give you legal advice nor can they advise you on what is best for your case. If you are in doubt you should seek independent legal advice.
- Once commenced, proceedings must be disposed of with all reasonable speed. The Tribunal will hear the case as soon as it can, but the parties must also do what is required of them within the timescales set. The Tribunal will allow a short stay of proceedings where the parties agree to seek Alternative Dispute Resolution, such as mediation, but it will not normally delay the progress of a case simply to allow negotiations to continue.

- If you cannot comply with a step or direction within the timescale set you may apply to the Tribunal for an extension of time. Extensions will be granted only where the applicant shows good reason. All applications during the course of the case, including applications for extensions of time, must be accompanied by the Tribunal's fee of £110 made payable to 'HM Courts and Tribunals Service'. They must also set out fully the reasons for the application and you must confirm that a copy of it has been sent to the other party.
- Unless otherwise directed (either by the rules or by a specific direction) a party sending a document to the Tribunal should send one copy only.

Getting the case started

Step 1

The applicant contacts the Tribunal which sends the applicant the application form, explanatory leaflet and procedure flowchart.

Alternatively, the applicant can download the form and documents from the Tribunal's website.

Step 4

A Registrar approves the publicity notice and gives directions for service of the notice. The directions given will depend upon the circumstances of the case. Service may be directed to be carried out by a newspaper advertisement, a site notice, by posting or a combination of any of the three methods. Alternatively, where it is appropriate to do so, the Tribunal may direct the applicant to serve a copy of the application itself upon the owner(s) of the land with the benefit of the restriction.

Step 7

If no objections are made to the application, go to page 7. if an objection to the application is made, go to page 4.

The claimant is given one month to respond.

Step 2

The applicant sends the application, its supporting documents and the lodging fee to the Tribunal.

The fee is £880

Step 5

The applicant serves the publicity notice or application in accordance with the service directions given. Step 3

The Tribunal acknowledges the application and gives it a case number. The applicant will also be sent a publicity notice pro- forma for completion and return to the Tribunal for approval by a Registrar.

Step 6

The applicant files a certificate of compliance with the service directions.

The certificate must be sent to the Tribunal no earlier than 28 days after service of the publicity notice(s) or application.

where objections are made

Step 8

Objector sends to the Tribunal and the applicant Notice of objection to the application and their statement of case. The objection may be made by using the objection form (available from the Tribunal's office or on the Tribunal's website) or by letter.

Notice of objection must be sent and received within one month of service of the publicity notices/site notice/ newspaper advertisement. See Rule 34(2) for guidance on what a Notice of objection must contain. See Practice Direction 6.1 and 6.4 for guidance on statements of cases.

Step 11

The applicant must inform the Tribunal within 14 days of receipt of the objector's evidence whether or not the applicant accepts the objector's entitlement to object.

If the applicant does not admit the objector's entitlement to object go to Step 12.

If the applicant admits the objector's entitlement to object go to Step 14.

Step 14

The Tribunal will direct the parties to send to each other and to the Tribunal their statements of cases within a period of time specified, or direct that the application and the notice of objection shall stand as the party's statement of case.

Step 9

The applicant must, within 14 days of receiving a Notice of objection, send to the Tribunal and the objector notice stating whether or not the applicant accepts that the objector is entitled to the benefit of the restriction subject of the application and why.

If the applicant does not accept the objector, go to Step 10.

If the applicant accepts the objector, go to Step 14. Any objector to whom the applicant does not send notice shall be admitted to oppose the application; also go to Step 14.

Step 10

The objector must send to the Tribunal and the applicant copies of their evidence (for example, deeds and documents) proving entitlement to the benefit of the covenant.

The objector must send the evidence so that it is received within 14 days of receipt of the applicant's notice.

Step 12

The Tribunal will arrange and hold a hearing at which the objector's entitlement to object is determined. If the Tribunal decides the objector is entitled, go to Step 14. If the Tribunal decides the objector is not entitled, the objection is struck out: go to Step 13

The applicant must pay the hearing fee of £550.

Step 15

The parties send to the Tribunal and exchange their statements of cases, where directed, within the period of time specified

Step 13

An objector who has not been admitted by the Tribunal may apply to the court for a declaration as to whom, if anyone is entitled to enforce the restriction. The Tribunal will stay the case until the objector's application has been determined by the court.

The objector must make such application within 14 days of the Tribunal's decision.

where objections are made

Step 16

The Tribunal directs the parties to send to the Tribunal and to exchange with each other the reports of any expert witnesses, and their own and the witness statements of other witnesses they intend to rely on.

The parties are usually given two months to send in and exchange their reports and witness statements.

Step 17

The parties send in and exchange their witness statements and experts' reports (if they are calling any).

Step 18

The Tribunal sends the applicant and the objector listing questionnaires asking about their availability dates for the final hearing, a time estimate for it and their preferred venue.

The parties will be asked to reply within 14 days.

Step 19

The parties reply to the listing questionnaires and the Tribunal fixes the final hearing. If a party does not reply in good time, the hearing could be fixed on a date and at a venue which may be inconvenient to them.

Step 20

The final hearing is fixed and takes place. The Tribunal's decision is normally reserved, that is, it is not given at the conclusion of the hearing.

The applicant must pay the final hearing fee of £1,100.

Step 21

The Tribunal sends a copy of its written decision to all the parties. The parties are invited to send in written submissions as to who should bear the costs of the proceedings.

Costs submissions must be sent to the Tribunal within 14 days of their being requested.

Step 22

The Tribunal considers the submissions received and makes a decision on the costs of the proceedings. It is incorporated as an addendum to the main decision and sent to the parties. The decision takes effect from this point. Step 23

If the application is granted a final order is drawn up by the Tribunal and sent to the applicant. If compensation is awarded to an objector it must be paid first. The applicant lodges the order with Her Majesty's Land Registry.

The applicant must pay the Tribunal's fee of £220 for the final order.

Step 24

If no costs order is made the matter ends here.

where objections are made

Step 25

If a costs order is made, the parties must first try to agree those costs between themselves, but if they can't agree them they can ask the Registrar to assess what amount should be paid by way of the Detailed Assessment of costs procedure.

Step 26

The parties will be sent a detailed assessment of costs procedure flowchart if a costs order is made, or a copy of it may be downloaded from the Tribunal's website.

No objections and determination without a hearing

Step A

If no objections are made to the application, the Tribunal will ask the applicant if they wish the application to be determined without a hearing.

Step B

If the applicant says yes, the Tribunal will determine the application without a hearing: but if the Tribunal feels it needs further information it will request it before the application is determined. Now go to Step G.

The applicant must pay the determination fee of £275

Step C

If the applicant says no, the applicant is directed to file their evidence in support of the application.

Step D

The Tribunal sends a listing questionnaire to the applicant asking about their availability dates, time estimate for the hearing and preferred venue.

Step E

On receipt of the answers to the questionnaire the Tribunal fixes the hearing of the application.

Step F

The hearing of the application takes place.

Step G

If the application is granted, a final order is drawn up by the Tribunal and sent to the applicant. The applicant lodges it with Her Majesty's Land Registry. If the application is refused, an order recording the decision is sent to the applicant.

The applicant must pay the Tribunal's fee of £220 for the final order.