

Legal rights granted to people who purchased properties from FoDDC

The conveyance (sometimes referred to as deeds) outlines the terms under which a property was sold. Those properties that were sold under the Right to Buy contain covenants (promises) and rights that both the purchaser and vendor agree to. These covenants are then transferred to the next owner when the property or land is sold.

When a property is purchased, the acquisition is carried out via a solicitor or a conveyancer. They check the conveyance to make sure the terms of the sale are reasonable and that the purchaser is aware of what they are buying.

Although each document is different as it is specific to a property / area, there are consistent clauses.

In the case of the pathway at Parkend Road some of these are:

- The right to use all drains, cables, wires and pipes that run across the property and neighbouring land or properties.
- To allow the Council (or their successor) and neighbours the right to clean and maintain the drains, cables, wires and pipes that run across the property, and to claim a fair contribution from all of those who have benefited from these works.
- To use the property under the same terms as when it was owned by the council (as a home and gardens).
- A right to use the property, any pathways, roadways and parking spaces as you would have been able to do when the property was owned by the Council.

Each conveyance contains Schedule 5. This is the section that allows Two Rivers Housing to claim a 'fair and proper proportion of cleansing, repairing and maintaining all things used in common'.

This schedule was tested in the grass cutting case in 2011. The judge found that Two Rivers Housing could only charge for items that had always been used 'in common', and could be proved 'had always been used in common'.

As the pathway is the only means of accessing the properties in this section of the road, Two Rivers can demonstrate that the pathway is used 'in common'. The pathway is defined in OS maps and includes two access ramps on the higher section to the north.

We have also sought additional advice from our solicitors, and this is attached.

The conveyances of each property are stored at the Land Registry and are publicly available to view online for £4 each.

Copy of legal advice sought by TRH

- 1 I see no reason why TRH cannot rely on clause 5 of the conveyance and on the FIFTH SCHEDULE to the relevant conveyances. I shall elaborate my reasoning here.
2. The intentions of the parties to each conveyance are clearly set out in the SECOND SCHEDULE of each conveyance. Therefore the rights and obligations follow in turn. The Freeholders s all use the main path surface as it is the only way people can enter and leave the properties.
3. Paragraph 1 of the FIFTH SCHEDULE stipulates that "all rights or privileges now used and enjoyed by the Property over the adjoining or neighbouring property or properties of the Council and by such adjoining or neighbouring property or properties over the Property or which had the Property and such adjoining or neighbouring property or properties been in separate ownership for more than forty years would have been easements quasi - easements or rights or privileges in the nature of easements shall continue to be so used and enjoyed by the owners or occupiers for the time being of the properties affected thereby such owners or occupiers contributing from time to time a fair and proper proportion of the cost of cleansing repairing and maintaining all things in common".
4. In the judgment of Two Rivers Housing v Harrison and Others we see the opposing arguments regarding s62 LPA 1925. In any event I consider these items to fall within the dictates of s62 LPA 1925 and see why they were rejected by the Court in the earlier action.
5. It would be reasonable to assume that the freeholders would have signed their conveyances or transfer documents in full knowledge that the conveyance contains clauses relating to service charges in respect of maintenance and repair of the pathways in Parkend Road. It is also reasonable to assume that all existing freeholders had the benefit of proper legal advice and entered into the agreement knowing that they had to pay.

Two Rivers Housing v Harrison & Others

- 1 Unlike the above case the use of the pathways in Parkend Road flow directly from occupation of the properties and is a right and privilege repeatedly exercised.
- 2 In light of the above and further to reading the judgement of Two Rivers Housing v Harrison & Others, I consider the freeholders liable to pay towards repairs to the pathways in Parkend Road subject to the LSVT deed of covenant stating otherwise.

Details of legal defence in grass cutting case

Ewan Paton QC – <http://www.guildhallchambers.co.uk/barristers/247/>

Rowbis Solicitors – Now part of <http://www.tayntons.co.uk/rowbis/>

Case handler – Tracey Ashford, now at Fleet Solicitors (Cheltenham office)

<http://www.fleetlaw.co.uk> ; email: TAshford@fleetlaw.co.uk .