

## **Act Swiftly to Prevent Unwanted Development**

One common way of preventing unwanted infill development (for example, where houses are built with gardens of sufficient size to allow the creation of another dwelling) is to place a restrictive covenant on land when it is first developed.

In a recent case the owners of a property, which was subject to a covenant to the effect that the land surrounding it could only be used as a garden, bought an adjacent property where there was no such restriction. However, access to the land surrounding the adjacent house could only be gained over their garden. The couple then applied for and obtained planning permission to build a house on the non-covenanted plot. Despite legal threats by a neighbour to obtain an injunction, none was sought and the house was built, with a drive which ran through the garden of the couple's existing house.

The neighbour then applied for an injunction to stop the drive from being used for access to the new house. The case went to the Court of Appeal and the action failed. The court tests applied in such cases are that where the injury to the plaintiff's legal right is small and is capable of being compensated for by payment of a small amount of money, the granting of an injunction would be oppressive.

In this case, things might have been different if the neighbour had opposed the original planning permission and made an early application for an injunction to stop the access to the site before building work commenced.

If you are faced with the threat of undesirable development in your area, take advice as soon as possible.