

# Claim Case Study: Securing protection against an unknown freeholder



**By obtaining a known risk policy, a property developer was able to mitigate the risk of building on land where the freeholder was unknown and protect his interests when the freeholder subsequently came forward.**

## **What was the background to the claim?**

The insured was a relatively new property developer looking to build a number of luxury apartments, including penthouses, on land for which the freeholder was unknown.

Restrictive covenants in the lease stipulated that “no other erections or buildings should be erected or built on the land...” As the insured wasn’t able to seek the consent of the freeholder, they obtained a known risk policy to mitigate this risk.

After the development was completed and the flats were being sold, the insured received a letter from an estate management company claiming to be the freeholder. It threatened forfeiture proceedings unless retrospective consent for the development was obtained. Investigations proved that the company was indeed the freeholder. The insured was, therefore, concerned about the forfeit of the lease and the possible impact of the claim on the sales of the flats.

## **How did First Title approach the situation?**

First Title instructed panel solicitors to enter into negotiations with the freeholder to obtain retrospective consent for the development. This was a ‘hypothetical negotiation’ based on a percentage of the insured’s estimated net development profit (NDP).

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First Title looked at what fee would have been agreed had the insured been able to seek consent at the time they purchased the land. Case law showed that this cannot be a figure so high that it would have prevented or deterred the development from proceeding.

The insured provided First Title with the relevant financial information to show what they would have agreed at the time of purchase. Working closely with the panel solicitors, First Title was able to negotiate a release fee that represented nearly 10% of the NDP. Although this was still a fairly high release figure, the starting point in case law is one third of the NDP (Stokes<sup>1</sup> case), so obtaining a reduction to 10% was a positive result.

## **What was the outcome?**

During negotiations, the insured was concerned about the sales of the flats. First Title assisted by providing a letter on headed paper that the insured could provide to prospective purchasers to assure them that, while there was an on-going claim against the policy, First Title had accepted this and was obtaining retrospective consent for the development.

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*1. Stokes v Cambridge Corporation (1961) 13 P & CR 77*