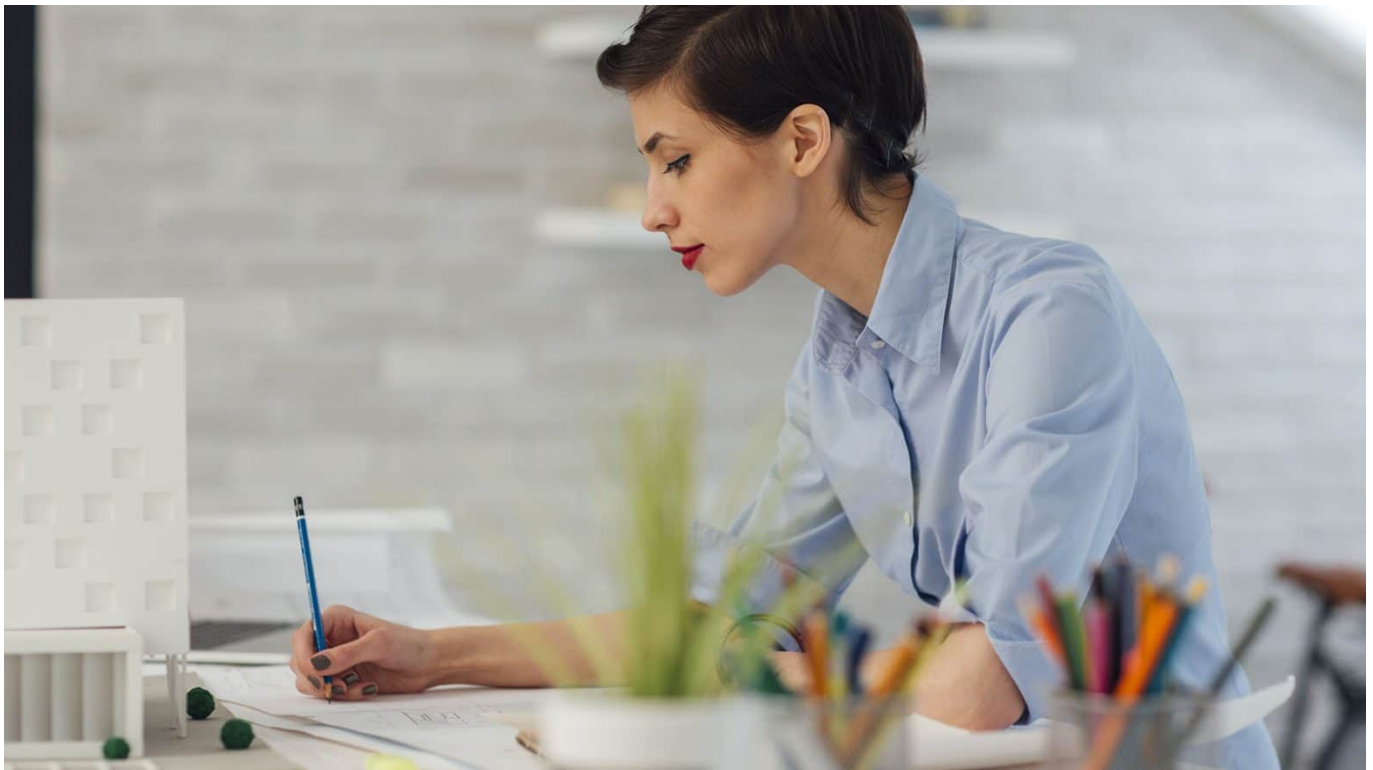


## Conservation covenants – more commonplace in 2023?

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Conservation covenants have been discussed sporadically for the past ten years. They have now come to the fore following the recent implementation of statutory rules, enabling conservation covenant agreements to be registered as a new form of Local Land Charge. The Environment Act 2021 (EA 2021) received Royal Assent in November 2021. Part 7 of the EA 2021, which came into force on 30 September 2022, legislates on conservation covenants. It is likely that conservation covenant agreements will become more commonplace as we look towards 2023.

Conservation covenants are written agreements, voluntarily entered into between land owner (of freehold estate or leasehold estate in excess of seven years) and “responsible bodies”. A system akin to conservation covenant agreements already exists in the USA and New Zealand. The new form of agreement will enable individuals and organisations the opportunity to deliver long lasting conservation outcomes to land, imposing both positive and restrictive burdens to land, for the greater public good.

Conservation covenants bind the original parties to the agreement (as you would expect) and most crucially, successors in title to the affected land. Therefore, unless expressly stated to the contrary, a conservation covenant will apply indefinitely (or in the case of a leasehold interest, for the remainder of the lease term). Given the ability to impose both positive and negative covenants on land to bind successors in title, it is anticipated that the conservation covenant agreement will provide a “low cost” alternative to the existing and sometimes unsatisfactory workarounds of rent charges; chains of covenant indemnity and/or the grant of leasehold interest.

The pool of “responsible bodies” will be wider than the Secretary of State or Local Authority, and will extend the scope of application of the agreements beyond the parameters of the tried and tested s106 agreement. It is hoped that conservation covenants will assist with;

- Supporting BNG requirements under EA 2021 – If Part 6 of the Act becomes enforced in November 2023, conservation covenants are anticipated to be a solution to achieve BNG. For Town & Country Planning applications, conservation covenant agreements could be entered into as part of the process of discharging the mandatory BNG pre-commencement condition, particularly where the required BNG is to be provided offsite.
- Delivering and managing ecological mitigation with the creation of positive obligations, which bind successors in the title. This accords with Natural England’s view that offsite mitigation land should ideally be maintained in perpetuity.
- Offsetting carbon emissions;
- Achieving nutrient neutrality/water neutrality.
- Securing heritage assets;
- Altruistic uses;
- Providing an alternative to land purchase by conservation organisations;
- Enabling the disposal of land by conservation organisations.

Conservation covenants will not override existing statutory rights, obligations, planning permissions or other statutory designations already affecting land. It remains to be seen whether DEFRA’s guidance on how to apply to the Secretary of State to become a responsible body and separately how to register a conservation covenant agreement as a local land charge will be prepared in time for Christmas.

## How we can help

We have an experienced team who are able to advise further, not only on conservation covenants, but any [real estate](#) or [property dispute](#) query you may have. Please [get in touch](#) with us.

Written by



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