

Planning permissions, etc

Checking that a property complies with planning control and Building Regulations requirements is now considered to be a part of a conveyancer's duties on any home purchase. Often, this is also one of the factors which can slow the conveyancing process down, as enquiries are made and checked and copy documents traced. Not all problems can be resolved by us, but we do our best.

We hope these notes will help our clients (both buyers and sellers) understand the main issues involved - buyers to understand why we "delay things" by asking apparently trivial questions about planning and building control, and sellers to understand why it is in their best interests for them to enable us to answer their buyer's conveyancer's own "trivial questions".

Please note that, where a mortgage lender is intending to lend on the security of the property, their often very stringent requirements must also be met – they are very unlikely to agree to take any risk.

Planning permission and Building Regulations consents are separate issues and each is dealt with by a separate department within the council.

Planning Permission.

Most building work or change of use of a property since 1st July 1948 requires planning permission to be valid. There are various exceptions for (eg) some small extensions, but you should never assume you can make any more such changes as sometimes the 'permitted development' rights have been 'used up'. We therefore need to know all building works or changes

- (a) that have been made to the property already (we will only know of these if you tell us or permissions/consents have in fact been obtained for them) and
 - (b) (if we are acting for you as the buyer) that you plan to make,
- so that we can check them out and ensure all is in order.

Please remember the enquiries we make on our buyer clients' behalf are limited to the property itself and do not cover any adjoining or adjacent property (though there are optional searches you can ask us to carry out to cover these aspects) and we do not normally physically inspect the property.

Most planning permissions contain conditions. We need to check these as, if any condition has been breached in the last ten years (not ten years from the date of the permission) or if the condition is "on-going", then the local planning authority can still take enforcement action against the owner. When we have a copy of the permission, we will identify any "problem condition" - the seller will

need to be able to show the condition has not been breached; the buyer will want to be reassured that the condition has not already been breached and will not be breached by their intended use of the property. If there is a problem, do NOT at this stage raise any enquiries with the council - that may prevent the issue of indemnity insurance cover.

Special rules apply if the property is a Listed Building or in a Conservation Area.

Not all sellers have copies of planning permissions, etc, in their possession and often council records are not complete. This does not resolve the problem, however: many planning permissions cover more than one property and it could be the case that, while the council may have lost their copy, a neighbour may still have a copy challenge any alleged breach of planning control.

Building Regulations.

These relate to the way work is done to a property and apply to most projects to a property, briefly -

- The erection or extension of a building
- Plumbing, gas and most electrical work
- Alterations affecting the structure, fire safety, access to or use of buildings
- Underpinning foundations and inserting cavity wall insulation
- Work affecting the insulation, energy status or energy performance of a building.

Breaches of Building Regulations can usually be enforced by the council up to two years after the breach - but a council can *at any time* apply for an injunction for the removal or alteration of any work, where public safety is at risk.

It is sometimes, but not always, possible to obtain a certificate from the council or an approved inspector) confirming that work complied with the Building Regulations at the time.

Often, compliance with the Building Regulations is self-certified by contractors under approved scheme, such as Gas Safe Register (formerly CORGI), FENSA (windows), NICEIC (electricians), etc. Any DIY works by an owner would probably not be satisfactory, unless formally "signed off".

Conclusion

Accurate knowledge is the only satisfactory solution to any possible issues. This can be gained from a suitable survey inspection, coupled with full information and documentation from the seller or the council, before exchange contracts. Lenders do not always carry out a physical inspection of the property you are buying and, even if they do, it is valuation for their benefit only - not a full survey - and can probably not be relied upon if there is an undiscovered problem.

Whether you are a buyer or a seller, please therefore tell us of all changes you think have been made to the property or which (as a buyer) you plan to make. Buyers should satisfy themselves by inspection and other professional advice that the property and any changes already made are structurally sound and have been correctly carried out, especially if evidence of compliance with Building Regulations is not available.

If you have any concerns do ask us.

Where evidence of compliance with Building Regulations is not available, it may be possible to get the work inspected by the council with a view to issuing a regularisation certificate. However, the work needs to comply with up-to-date standards (not those in force at the time the work was done) and to be exposed for inspection.

A preferable alternative, therefore, is to take out indemnity insurance cover (for a modest single premium) against the risk of enforcement action by the council. However, this insurance does not cover the risk that the work might be defective: the buyer should therefore have any uncertified work inspected by a suitable expert to check it is safe.