

PLANNING MATTERS.

We have prepared this guidance as to the meaning of Planning Permission and Building Regulation Approval, and title insurance where alterations have been carried out and no proof is available either of the approval or that approval was not needed. It must be remembered that the deeds of a property may contain restrictions on what you can do or not do with your property. Do not assume because you have obtained building regulation approval and/or planning permission, or decided that none are needed that your problems are over. You may still need approval from your Landlord or a previous owner such as the builder of the property.

Alterations or extensions to properties may require approval from the Local Council.

This approval can take two forms.

1. You may need building regulation approval.

This is obtained from the Building Control Department of the Local Council. Your Local Council will be able to assist you with any queries and advise if approval is or was required. There are two ways of applying for building regulation approval:

- By a full plans application; or
- By giving a building notice

If you proceed by a full plans application then the Local Council will carry out inspections of the work at various stages and issue a **completion certificate** once they are satisfied that the works have been carried out in accordance with the Building Regulations. This is a very important document and is accepted as proof that the Building Regulations have been complied with. If this procedure is adopted and you have a disagreement with the Local Council then you can ask for a determination from the Office of the Deputy Prime Minister.

The building notice procedure is designed to get work under way quicker. It does not involve submitting plans. The downside is that a completion certificate will not normally be issued and there is no right of determination by the Office of the Deputy Prime Minister.

2. You may need planning permission.

This is obtained from the Planning Department of the Local Council.

If a property has a large extension, particularly if it has two storeys then almost certainly both planning permission and building regulation approval is or was needed. Obtaining planning permission does not mean that building regulation approval has been given and vice versa. They are two separate things.

WHEN IS CONSENT NEEDED

We cannot give advice as to whether planning permission and/or building regulation approval is or was needed in a particular case. That advice must be obtained from elsewhere preferably the Local Council. We can offer the following generalisations however:-

BUILDING REGULATION CONSENT

a. It is not true that all Conservatories do not require any approval. Most do not but it does depend on size and other factors.

b. Replacement or new double glazed windows and doors have needed building regulation approval or a FENSA certificate since 1st April 2002.

c. New electrical works carried out after 1st January 2005 usually require building regulation approval.

- d. Nearly all Loft Conversions require building regulation approval even if there is no intention to use it as living accommodation.
- e. Laying new drains or installing a septic tank requires building regulation approval.
- f. Small ground level extensions not larger than 30m² in floor area, such as a Conservatory or a Porch, do not usually require building regulation approval, but the electrical and glazing works must comply.

PLANNING PERMISSION.

- a. A new house needs planning approval.
- b. Changing the use of the property e.g. from a shop to the house needs planning approval.
- c. Dividing your house perhaps into flats or a granny flat requires planning approval.
- d. Extending nearer to the road than the present property unless there would be at least 20 metres between the house as extended and the property requires planning approval.
- e. If the house is a listed building then planning approval is required for any alteration.
- f. A new porch will require planning permission if it will have a ground area (measured externally) of more than 2 square metres, or would be higher than 3 metres above ground level, or would be less than 2 metres from a road or footpath.
- g. You need planning approval if you are erecting a new fence, wall or gate if it is to be more than 1 metre high and next to a road or otherwise more than 2 metres high.
- h. You can need planning permission for a satellite dish for certain properties.

It is possible for the Local Council to restrict by order your right to make any alterations without consent. This is called an Article 4 direction. It is wise therefore to check with the planning department if you need approval whatever works you plan to do.

Provided there is no Article 4 direction you are allowed to extend up to a certain amount without planning permission (building regulation approval will probably still be needed). The limits are:-

- For a terrace house (including an end of terrace) you can extend without planning permission if the volume of the original house (this means as it first stood or as it stood on 1st July 1948) would not be increased by more than 10% or 50 cubic metres (whichever is the greater).
- For any other kind of house you can extend without planning permission if the volume of the original house would not be increased by more than 15% or 70 cubic metres (whichever is the greater).
- In any case you need planning permission if the volume of the original house would be increased by more than 115 cubic metres.

The above points are only a summary and must not be taken as legal advice. It is crucial that you contact the Local Council to check if any alteration requires or required approval.

WHAT HAPPENS IF APPROVAL IS NOT OBTAINED?

Planning permission.

Normally the Local Council can take action against the current owner for lack of planning permission provided not more than 4 years has elapsed since the works were completed. If instead the owner is in breach of a condition attached to a planning approval then the time limit is 10 years. The limit is also 10 years for an unlawful change of use of the property, although it can be argued that a change of use to a single dwelling-house has a time limit of 4 years.

Building Regulation.

Proceedings for breach of Building Regulations must generally be brought within 12 months of the work being completed. In certain cases however it was decided in a case heard in 2000 that there is no time limit for enforcement. This only applies to alterations carried out on or after 11th November 1985.

Successful enforcement action would be against the current owner and could result in the extension being demolished or brought up to the correct standard or a substantial fine being imposed. It does not matter who carried the works out the current owner is the liable person.

WHAT STEPS DO WE RECOMMEND

If you are the seller.

1. If there have been works carried out to the property that required building regulation approval, but it was not obtained,

We recommend that you apply as quickly as possible to the Building Control Department of the Local Council for a regularisation certificate. This means work carried out on or after 11th November 1985. The Local Council will charge you for this service. If you apply early enough this should not delay your transaction.

2. If you are confident that the works were authorised.

Let us have copies of the approval and if necessary obtain this information from the Local Council. If planning permission was required we need a copy. If building regulation approval was required we need a copy of that and of the completion certificate.

3. If you think that no approval was necessary.

Get a letter from the Local Council confirming that approval was not required or pay for title insurance (see below).

If you are the Buyer.

1. If no approvals can be provided for work done that would have required approval.

Obtain a further survey of the property to specifically look at the works. The lack of evidence of approval can mean that the works did not comply with the building standards applicable at the time or ask the seller to obtain a regularisation certificate. Remember the certificate can only be obtained for works carried out on or after 11th November 1985.

2. What if you are not sure if approval was needed.

This is a common problem and often title insurance (see below) is the only solution. This often applies where the property has a Conservatory or an internal wall has been demolished. There is doubt in these and similar circumstances if any approval would have been needed. The best solution is to ask the seller to obtain a letter from the Local Council to confirm that no approval would have been required. There is often time to obtain this without holding up the chain if action is taken quickly.

3. Future Problems.

It is important to remember two things when dealing with this situation;

- If the works were not carried out to the required standard you may have to pay the cost of repair in the future.
- You will be the seller one day it is best to sort this problem now.

4. Your Mortgage Lender.

If you are having a mortgage then your lender has an interest in the property and we must comply with their requirements as well. We may have to report any defects to them for approval before the loan can proceed.

TITLE INSURANCE

The last and often the only solution is for one party , usually the Seller, to pay for and obtain a title insurance policy. The cost is dependent on the policy required and the value of the property.

Title Insurance.

The effect of such a policy though is purely to protect you against enforcement action being taken by the Local Authority in certain circumstances. It does not provide cover for any structural failing in the property. Cover can also be withdrawn with some policies in the event that enforcement action is taken consequent upon discovery of infringements as a result of inspections for new alterations. It must be remembered also that a prior approach to the Local Council may disqualify a subsequent application for insurance.

FURTHER INFORMATION

Your main point of contact should be the Local Council for any advice on planning matters.

You can also visit www.planningportal.gov.uk for useful advice on planning topics.

Finally you can visit www.communities.gov.uk/ to obtain or view any planning publications including Building Regulations an explanatory booklet or planning a guide for householders.