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Introduction

This Guide summarises some of the key planning issues relevant to residential properties. It also deals with the need for listed building consent and indicates where expert advice from our planning team may be necessary.

What works are covered by a planning permission?

It has been made clear by the courts (*Stevenage BC v SoS for Communities and Local Government*) that associated plans and drawings form part of a planning permission. This means that plans could authorise or require works which are not referred to in the planning permission itself. They could also raise ambiguity about what works are covered by the planning permission.

It is therefore very important to view the plans associated with any particular planning permission in order to check the precise extent of the works which have been authorised. Plans are generally protected by copyright and copies are not usually attached to the planning permission. Whilst plans for more recent planning permissions can often be viewed on a council's website, it may be necessary to view any related plans by visiting the planning department at the council's offices.



What if a property is in a conservation area?

If the property is in a conservation area the following points apply:

The council must pay special attention to the desirability of preserving or enhancing the character and appearance of the conservation area when considering any development proposals. This means that it is often harder to secure consent for a planning application in a conservation area.

The demolition of buildings will need planning permission. General permitted development rights are restricted or removed entirely. This means that planning permission will be required for most works, including carrying out roof alterations to a dwelling house.

All trees within a conservation area are protected and it is a criminal offence to carry out works to trees without the prior consent of the council.

What if a property is listed?

If a property is listed:

- Listed building consent will be required for any external or internal alterations to the property. This is in addition to any application for planning permission.
- It is a criminal offence to carry out works to a listed building without formal listed building consent, punishable by a fine or prison sentence.
- The council can also require the building to be put back as it was. There is no immunity from enforcement action for works carried out to a listed building. A buyer could receive an

enforcement notice relating to unauthorised works carried out by a former owner. Reinstating period features removed by a previous owner can be very expensive.

- General permitted development rights are restricted or removed entirely. This means planning permission may be required for works which would not require consent if the property was not listed e.g. a swimming pool.

What if the property adjoins a listed building?

If it is proposed to alter, extend or demolish a property adjoining a listed building, the council has a duty to consider the effect the proposed development will have on the setting of the listed building. This means that planning permission for the development may not be granted if it would have an adverse impact on the setting of the listed building.

Likewise, if the property is within part of the former garden or grounds of a listed building, it could be classed as a “curtilage” of that listed building. In that case, the listed building regime applies to the “curtilage” property. The issue of “curtilage” listing is complex and advice should be sought at an early stage from our planning team.

What is permitted development?

Permitted development rights allow certain building works and changes of use to be carried out without the need for planning permission. Permitted development rights are changing all the time and specific advice on how they apply in your particular circumstances should be obtained from our planning team.

Broadly speaking, however, there are permitted development rights permitting:

- Extensions and other alterations to residential properties.
- Buildings and other structures within the curtilage of residential properties.
- Conversion of buildings from office to residential use.
- Conversion of buildings used as shops or for the provision of financial or professional services to change to residential use.
- Conversion of agricultural buildings to residential use.

However, conditions, limitations and restrictions apply to each of these rights. For certain matters, an application for a determination from the council as to whether prior approval is required must be submitted, although the council will be restricted in what they can consider. It is therefore important to seek early advice from the planning team if you suspect that permitted development rights apply. The council can also remove or restrict permitted development rights by passing a specific direction or by imposing conditions in a planning permission.

As a general rule, works for the maintenance, improvement or alteration of a building which affect only the interior or do not materially affect the external appearance of the building can be carried out without planning permission, provided the building is not listed.

When can the council take enforcement action?

Time Limits for Enforcement Action

Planning enforcement action must, in general, be taken within either a 4 or 10 year period depending on the nature of the breach after which time there is immunity from enforcement action and a certificate of lawfulness can be applied for:

- Building work – 4 years from the date of substantial completion of the works.
- Change of use of a building to use as a single dwelling house – 4 years from the date of the breach of planning control.
- Material change of use (other than to a dwelling) – 10 years from the date of the breach of planning control.
- Breach of planning condition – 10 years from the date of breach of the condition. However, the breach must be continuous throughout the 10 year period and continuing at the date of an application for a certificate of lawfulness. If a property is bought relying on a long term breach of a condition, it must be understood that any future compliance with that condition wipes out the established breach so that the 10 year period starts again.

These time limits can be extended where there has been deliberate concealment (see further below).

There is no immunity for breach of listed building control.

It is important to note that immunity is not 'automatic' after 4 or 10 years. If the council ask questions, it is for the owner of the property to prove with detailed evidence that the work/use is immune from enforcement action. A certificate of lawfulness confirms that the use/work is lawful but it is not a foregone conclusion that the council will grant a certificate where there has been a breach of planning control. An application has to be backed up with

detailed evidence of a continuous breach of planning control for the full 4 or 10 year period.

In cases where immunity from enforcement action is claimed, it is important to seek early advice from our planning team who can advise on what evidence is needed, prepare statutory declarations or check those prepared by others. In most cases statutory declarations need to be backed up with other evidence such as: invoices for work done or tenancy agreements demonstrating occupation for a continuous period.

What if a breach of planning control has been concealed from the council?

Buyers need to be aware that, if a seller has deliberately concealed information about building works or unauthorised use of a property, there is a risk the Court will allow the council to take enforcement action against the buyer (as the new owner) outside the usual time limits set out above.

Measures we can try and take to protect against liability for concealed breaches are:

- If there is any reason to think uses or works have been concealed from the council we can ask specific enquiries about this. It is important that any buyer and their surveyor makes us aware of any such uses/works which are apparent on the site, since the Law Society's Protocol for residential property transactions prohibits the raising of general enquiries of this nature.
- To require the seller to obtain a certificate of lawfulness for any breach of planning control before exchange.

- If there is insufficient time to obtain the certificate of lawfulness before exchange, retain monies from the purchase price at completion until it is obtained. However, this is unlikely to be acceptable to most mortgage lenders.
- Take out an indemnity policy – a standard form policy is now available to cover the risks associated with the enforcement powers relating to concealed breaches.

Section 106 agreements and other agreements

It is common for councils to require that an agreement is entered into as a condition of granting planning permission. These are known as section 106 agreements or unilateral undertakings.

Local searches reveal whether any section 106 or other agreements affect a property. Section 106 obligations bind future owners who could be liable for a breach of the obligations which are not fulfilled, even though they were imposed upon the original developer. Section 106 agreements can also contain restrictions on the use of land. Such agreements may need to be checked carefully by our planning team and advice given on any ongoing liabilities.

Information provided up to date as of March 2020

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