



Since the first Town & Country Planning Act of 1947 came into force on 1st June 1948 it has not been possible to develop land in the UK except in accordance with the planning controls set out in the legislation.

Whilst there have been many policy changes on planning since 1948 the current legislation – the legislation has not greatly changed. Development is broadly defined to include not just physical changes to the property but changing the use to which it is put – even if there have been no physical changes.

If a property has been physically changed or its use changed without planning permission being granted, then it may be that enforcement action can be taken against the property owner. In a worst-case scenario that could require a building to be demolished or the current use stopped.

Therefore, when looking to buy a property it is vital to ensure that all necessary planning consents are in place. But it is not just a case of looking at the property that your client is looking to buy – it is also necessary to look at the wider environment. For instance, if neighbouring land has planning permission for development then this could adversely affect the property your client is looking to buy.

Planning due diligence for residential properties

Traditionally solicitors have carried out the following checks to find out about planning issues.

1. Local authority CON 29. This is the planning search which the property lawyer would normally do on every occasion. It covers a wide range of matters including planning and building regulation decisions, S 106 agreements, road adoption, statutory notices and enforcement notices.

For road and rail matters CON 29 searches out to 200 metres – however for everything else it is property specific – it only responds for the property being searched. So, for example if the next-door house had submitted a planning application for a large extension, (which might affect the view from your client's property) this would not show on the CON 29 search. The report is also present in table format- there is no map to help either the solicitor or client. However, these provide very little information outside of the subject property. It is therefore of limited use.

2. Local authority CON 29 O. 'O' here stands for optional. There is a list of some 21 sections and the solicitor ticks the box for those he wants a response to. It is important that the solicitor (and his PA) appreciates that there is a charge for each question. The cost for each varies again from about £5 to £40. So it could be very expensive if every box was ticked. In practice the solicitor will only make this search if he is concerned that there could be something relevant affecting the property- for example a footpath close to or going through the property.

3. Property Information Form, TA6. This is the standard enquiry form that is sent to the seller's solicitors for residential transactions. Section 3 is headed Notices and Proposals and has two questions:
 - 3.1. Have any notices or correspondence been received or sent e.g. from or to a neighbour council or government department, or any negotiations or discussions taken place which affect the property or property nearby? If yes, please give details.
 - 3.2. Is the seller aware of any proposals to develop property or land nearby or of any proposals to make alterations to buildings nearby? If yes, please give details.

Whilst this does ask questions about nearby land which might be developed the seller and his solicitor may not know the answer to this question and therefore the response from the Seller's solicitor is commonly 'Buyer should make his own enquiries'. Therefore, in practice this enquiry often gives little practical assistance.

4. The Landmark Plansearch Plus report is designed to supplement the above searches and enquiries. It is designed specifically for residential buyers and their lawyers. Unlike Con 29 it provides information on the surrounding area – up to 750 metres for large developments. The key information is clearly set out on the front page. All planning applications are divided into two main sections, residential planning applications and non-residential planning applications. How far the search extends depends upon the type of application. For example, single dwelling alterations search up to 50 metres as any greater distance is unlikely to be relevant and would simply clutter up the report with unnecessary data. On the other hand, for new builds of over 250 dwellings (which will clearly have an impact at a much greater distance) the report searches to 750 metres. The location of each application is clearly shown on a map with details provided in a table.

Some of the information in this search covers information that would be available on the CON 29 O, for example on Public Rights of Way. Depending on the additional information required, it may well be the case that with a Plansearch Plus search it will not be necessary to go the additional expense of undertaking a Con 29 O search.

Advice about Planning Issues in client care letters

As the local authority search we have to carried out only deals with planning issues at the property and not in the immediate vicinity, for your protection and the protection of your lender, it is our policy to provide you with a Landmark Plansearch Plus report.

Whether a development is likely to impact on your property is largely subjective. In view of this it is recommended you review Section 1 of the Plansearch Plus report – this clearly details local planning applications that may have an impact on your quality of life in your new home, as well as having a material impact on the future value of your property (either positively or negatively).

In addition to current and recent planning applications the local development plan (Section 2) will provide insight into how the area may change in future.

Finally, the report provides details of local amenities and demographic information, which may be of particular interest if you are unfamiliar with the area.