CONDITIONS IN PLANNING PERMISSIONS RE SIGHT LINES

NEW PROBLEM FOR CONVEYANCERS

A number of Local Authorities are imposing conditions in planning permissions requiring the applicant to secure sight lines at the entrance to a house site from the public road.

The following is an example of a condition imposed by a Planning Authority as a general condition.

> *"Prior to commencement of development, vision lines of 68 metres shall be provided in each direction, at a point 3.05 metres back from the road edge at location of vehicular entrance. Said vision lines should be based on eye object height equal to 1.06 metres over height of 1.06 metres. Documentary evidence of consent for location of vision lines over third party lands shall be submitted to the planning authority for written agreement prior to commencement of development."*

Clearly planning authorities are entitled to take into account the need for traffic exiting a site to have an acceptable view of traffic approaching and the need for that traffic approaching to have an adequate opportunity of seeing a car which might exit into its path.

The Committee has seen a number of different conditions. It has also been informed that in some cases applicants anticipating the requirement have offered to provide the necessary sight lines in the application so that there was nothing on the face of the planning permission to alert anyone of the requirement.

In at least one case the applicant had offered to reduce the height of a hedge (with the permission of a neighbour who owned the land in question) and no thought seemed to have been given to what was to happen when the hedge grew again. In another case the applicant (again with the permission of a neighbour) confirmed that an arrangement had been made with a neighbour to provide an appropriate sight line. In that the case the neighbour did not really understand what was required of him and the Planning Authority in question did not clarify the position. It is not satisfactory that Planning Authorities in some cases do not deal with the long-term implications.

It seems clear that conditions like this are going to cause problems for architects and engineers who may be asked to certify compliance. They will also clearly cause problems for solicitors. Solicitors who are advising clients in relation to the purchase of a property subject to such a condition will have to advise their client very carefully, particularly if the condition is not going to be properly dealt with. In such circumstances solicitors should point out that they are likely to have a problem in certifying title and that there is a clear risk that there will be problems on re-selling. The Committee advises that such advice should be confirmed in writing. In addition when acting for a client purchasing a site with

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(Contd.)

the benefit of a planning permission it is yet another reason to advise clients to have the position regarding the planning permission checked out by a competent person. The Committee doubt that it is wise for solicitors to brief an architect or engineer on behalf of their client in such situations but recognises that from time to time solicitors will find that they have to do this. The Committee feels that such briefing should be in general terms rather than trying to anticipate all the issues that could arise., However the issue of sight lines, and other easements could be addressed by asking the surveyor to review whether the house, its access and any facilities such as a septic tank or percolation area or water supply can be provided without passing over or acquiring rights over land in the ownership of any third party.

The practical problem is that an applicant who already owns a site and who has received a Grant of Planning Permission subject to such a condition might not realise the full implications of such a condition and might have the house half built before realising that there may be a problem. Compliance with the condition may be impossible because it would require the applicant to acquire land perhaps from both adjoining owners to provide the necessary lines of sight. Arguably the planning authority should not grant permission until the applicant satisfies it that the applicant has such legal rights or perhaps ownership necessary to enable it to comply with any such condition. Planning Authorities already do this routinely in relation to easements for drainage if a site cannot be drained without a grant of easements over property in the ownership of third parties.

Solicitors faced with such a situation should give the following advice. The best solution is for the client to buy the necessary land so as to put himself in a position of being able to comply with the planning condition and to provide a sight line in a permanent way. If this is not possible or practicable the client should acquire a grant of easements which will enable him to comply properly with the condition. Any grant of easements should be registered on the title of the grantor. If none of this is possible solicitors should advise clients that they will have to qualify their certificate of title in a manner which may not be acceptable to a lender and that the property may not be re-saleable without the problem being regularised. The Law Agent of one of the main lenders for housing has indicated that a qualification of a Certificate of Title would not be acceptable if it indicated that a condition about the provision of sight lines in a Planning Permission had not been complied with. The Committee suspects other lenders will take a similar position. Informal arrangements or letters from friendly neighbours are simply not sufficient.

The purpose of this note is to alert solicitors to the need for care in relation to these matters. The Conveyancing Committee intends to make representations to all relevant authorities to try to have a more consistent and reasonable practice applied.

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