

**COMPLIANCE  
WITH PLANNING  
CONDITIONS**

**I**n the light of an increasing number of queries relating to compliance with planning conditions generally, the Conveyancing Committee has decided to make the following recommendations:-

1. Conveyancers dealing with second or later purchases of residential houses, where there is a certificate from the local authority that the roads and services are in their charge, should not concern themselves with enquiries as to compliance with bonding and financial conditions in a planning permission.
2. Where in a residential housing estate there is a requirement under the planning permission for the provision of a bond or for the payment of financial contributions and/or levies by instalments, and where the estate has not been taken in charge (or there is no evidence available that it has), conveyancers should only be concerned with the provision of the bond or with the payment of contributions up to the date of the first purchase of the subject house.
3. The foregoing recommendations only apply to dwellings forming part of a building estate and built at the same time as the main development. They do not apply to once off houses or to infill development.
4. If the solicitor for a purchaser is on notice of a particular difficulty regarding the taking in charge of roads and services by the local authority, then he/she should advise his/her clients and consider qualifying his/her certificate of title. The matter should be raised as a pre-contract enquiry, and the client advised before contracts are exchanged, so that a decision can be reached as to whether or not to proceed.

The provisions of Section 180 of the Planning & Development Act, 2000, which require the local authority to take roads and services in charge in certain circumstances, may assist in resolving the difficulty.

5. The foregoing recommendations do not change the obligation on a purchaser's solicitor to seek evidence that there is, in fact, planning permission for the house, and, where appropriate under other recommendations, to seek a certificate/opinion from an architect or engineer that the house has been built in accordance therewith and in accordance with the regulations in force under the Building Control Act, 1990.
6. Where a condition in any planning permission states "Before any development commences the applicant shall submit to the local authority proof/evidence of compliance with ..." conveyancers need not obtain written proof or confirmation



from the local authority where there is in existence a certificate or opinion from a suitably qualified architect or engineer confirming compliance with all conditions attaching to said planning permission/building regulations.

- 7 The committee wishes to draw the attention of practitioners to its longstanding recommendation that it is unreasonable for solicitors to insist now on being furnished with documentation which it was not the practice to furnish at the time of a previous investigation of title.

**Note:** The foregoing note is produced in substitution for that which was published in the April 1987 Gazette (and which appears at page 7.12 of the Conveyancing Handbook).

### COMPLIANCE WITH PLANNING CONDITIONS

(Contd.)

*Published in Law Society  
Gazette, July / August 2002*

**I**t has been drawn to the attention of the Conveyancing Committee that in a number of instances, developers, in the course of building houses, have been making variations in reliance on the exempted development regulations. Such variations can involve the addition of extensions or conservatories, conversion of attic space, or revision of internal layout (with or without alterations to or additions of windows).

A planning permission must be implemented in its entirety, or not at all. The implementation of the planning permission entails the construction of the dwelling house in accordance with the plans lodged and on foot of which the planning permission issued.

Where a developer seeks to carry out alterations or to add extensions or conservatories in reliance on the exempted development regulations, he will first need to ensure that the house is fully complete in accordance with the planning permission and plans on foot of which the planning permission issued, and that only then the extension or additional work is carried out.

Solicitors acting for purchasers where such extensions or alterations are carried out after the house has been built, should get an architect's opinion of compliance in the usual form and a further opinion confirming that the extension or works comprise exempted development and are in accordance with the Building Control Act and Regulations.

### NEW HOUSES AND EXEMPTED DEVELOPMENT

*Published in Law Society  
Gazette, December 2002*