



**PLANNING
CONDITION
REQUIRING
RESIDENCE OR
EMPLOYMENT
OF APPLICANT IN
PLANNING
AUTHORITY AREA**

A planning condition in the following terms has been brought to the attention of the Conveyancing Committee:-

- "5. (a) Houses to be restricted to persons who have been resident in County Wicklow for at least one year and/or those currently in full-time employment in County Wicklow or other such class of persons that the planning authority may agree to in writing.
- (b) Confirmation from a solicitor or other suitable qualified professional with indemnity insurance that the dwellings have been sold in accordance with this condition shall be submitted to the planning authority upon the sale of the dwellings.

REASON: To ensure that the dwellings are suitably restricted to meet local growth needs as opposed to regional needs, to ensure the development meets with the requirements of the Strategic Planning Guidelines and the County Development Plan with respect to development in the hinterland areas, in the interest of proper planning and sustainable development."

The committee unanimously agreed that it is not acceptable that solicitors would be asked to certify matters in relation to the residence or place of work of their clients. These are matters on which the clients/applicants for permission can easily satisfy the local authority directly by way of completing their own certificate or statutory declaration.

The planning condition brought to the attention of the committee was accompanied by a draft certificate which was to be typed on a purchaser's solicitor's headed notepaper. This certificate is addressed openly "To whom it concerns" and is required to confirm, inter alia, that the solicitor currently holds professional indemnity insurance, that the purchasers purchase with full knowledge of the provisions of the planning permission and the limitations imposed by conditions 5(a) and (b) thereof, that the solicitor certifies that house number X in the development has been sold in compliance with the provisions of conditions 5(a) of the relevant planning permission by virtue of the fact that the purchasers/one of them have/had been resident in the county for at least one year and/or the purchasers/one of them currently are/is in fulltime employment in the county. The certificate is to be signed by the solicitor for the purchasers and dated. There is no requirement that the matters referred to in the certificate should be co-signed or endorsed by the purchasers. The certificate is not stated to be based on information supplied by the purchasers.

The committee noted the format of the certificate required by the local authority and in



particular noted that there is no provision for the purchasers themselves to certify relevant matters to the local authority. Rather the local authority seeks to hold purchasers' solicitors liable for the veracity of the statements contained in the certificate. The committee said it could only speculate as to what the reasons are for the requirement that a solicitor has professional indemnity insurance, but it seemed to the committee that the most obvious reason would be that the local authority intends to sue solicitors on foot of their certificates should the need arise.

The committee was unanimously of the view that solicitors should not complete these certificates under any circumstances.

Purchasers' solicitors faced with requests to complete these certificates should

1. Advise their clients/purchasers to write to the local authority applying for a waiver or a variation of this condition in the planning,
2. Give the clients a copy of this practice note for enclosure with their application for waiver/variation,
3. Advise the clients/purchasers to offer their own certificates and/or statutory declarations to verify the facts required by the local authority.

In addition, the committee would recommend to the Bar Associations in counties which regularly include conditions of this type in their planning permissions, to engage with the planning authorities in those counties with a view to having planning conditions of this nature either removed from planning permissions or varied so as to require the appropriate certification from the clients/purchasers and not from their solicitors. The committee is prepared to assist any affected Bar Associations with such meetings with local planning authorities.

**PLANNING
CONDITION
REQUIRING
RESIDENCE OR
EMPLOYMENT
OF APPLICANT IN
PLANNING
AUTHORITY AREA**

(Contd.)