

PROPERTY TRANSACTIONS – DEALING WITH PLANNING PERMISSION AND LISTED BUILDING CONSENT

If you are buying or selling a house it is important to ensure that all the proper consents are in place for any work that has been carried out. This may also include work that previous owners have done. The advice given in this document should, in the opinion of the Planning Authority, be sufficient for most property transactions but it does not constitute a formal determination. Under the Planning Acts this can only be achieved by making a formal application for the relevant consent.

For advice on building warrants please follow this link.

There will still be a requirement for a Property Enquiry Certificate in most cases. These can be ordered online on the Planning and Building Standards Portal or alternative agencies can provide this service.

Planning and Strategy deal with Planning Permission and Listed Building Consent. **Retrospective letters of comfort are no longer being issued for past works.** If the advice below does not satisfy the buying or selling solicitor or their clients, formal applications will have to be made to get a decision. Forms can be downloaded from this website or applications can be made online via the Planning and Building Standards Portal.

Planning Permission is only required for external works and changes of use and only then under specific circumstances. Please phone the Planning Helpdesk on 0131 529 3595 or email Planning Helpdesk for further advice on this.

Time limits on breaches of Planning Permission - Building, engineering, mining and other operations (known as operational development) undertaken without the benefit of Planning Permission become lawful in planning terms after four years from the date of substantial completion of operations. This also applies to a change of use of any building to use as a single dwelling house. For all other breaches of planning control, including other changes of use and non-compliance with conditions or limitations attached to Planning Permissions, development becomes lawful after 10 years from the date of the breach.

Certificates of Lawfulness - Under Section 150 of the Act, an application for a certificate of lawfulness can be made to regularise matters. There is no compulsion to make such an application, but the existence of a certificate of lawfulness may facilitate completion of property transactions. Such applications are determined purely on evidential fact and law where evidence submitted needs to meet the "balance of probability" test.

Unlike Planning Permission, the failure to obtain Listed Building Consent can never become immune from enforcement action by virtue of the time bars above. It is an offence to execute or cause to be executed any works for the demolition of a listed

building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.

Listed Building Consent is required for demolition, extensions and alterations which affect the character of the listed building. This includes internal alterations to any category of listed building whether it be A, B or C(S). Technically any unauthorised work can be subject to enforcement action going back to the date of listing but in practice we will not take enforcement action against longstanding work (with some exceptions) or minor works.

To check whether a building is listed and the date of listing please contact the Planning Help Desk (details above) or Historic Scotland on 0131 668 8600 or use their website at <http://www.historic-scotland.gov.uk/listedbuildings>.

The following criteria will be used in determining whether or not to take enforcement action against unauthorised works to a listed building. Please note that even if the works fall outwith this criteria we will only take enforcement action after full investigation and Committee authorisation.

- **Date of Works.**

1. If the works are over 10 years old we will not take any enforcement action unless they involve significant changes to the external appearance of the building or involve significant changes to principal rooms or stairwells/hallways. Significant changes include the creation of partitions, removal of original doors and fireplaces and the lowering of ceilings. A principal room is one of the main rooms of a property. Individual properties, including flats, may have more than one principal room. Principal rooms will usually be the largest rooms in the property; well proportioned, often symmetrical and will have good quality/original plasterwork and joinery.
2. We will not take any enforcement action on works carried out prior to the enactment of the Town and Country Planning (Scotland) Act 1972.
3. We cannot take any enforcement action on works carried out prior to the listing of a property.

- **Types of Property.** Internal works to colony type flats, basement/sub-basement flats and attic flats with coombed ceilings will not be the subject of enforcement action

- **Minor Works.** We will not take any enforcement action in respect of minor works no matter when they were carried out. Minor works include:

1. the conversion of cupboards to form en-suites/bathrooms
2. the removal of a partition within or between cupboards
3. the replacement or relocation of kitchen and bathroom fittings within an existing kitchen or bathroom
4. the creation of new partitions, the removal of old partitions or the creation of new openings in non-principal rooms
5. the installation of vents, flues or pipe work on the rear elevation

6. re-wiring or re-plumbing
7. the installation of satellite dishes hidden in roof valleys
8. the removal of non-original partitions to re-instate rooms (including principal rooms) to the original size
9. repair and maintenance works in matching materials

It should be noted that freestanding structures, e.g. sheds, built within the grounds of a listed building do not require listed building consent. However, these may be a breach of planning permission if built within the last 4 years.

THIS ADVICE IS NOT BINDING IN TERMS OF PLANNING LAW AND DOES NOT BAR THE COUNCIL, AS PLANNING AUTHORITY, FROM DETERMINING TO SANCTION ENFORCEMENT ACTION IN RELATION TO INDIVIDUAL CASES.