

Other Leaflets:

The Council has produced a range of other leaflets from which you can obtain further information, these include:

Building Control

BC02- Building Control Department
BC10- Exempt Buildings
BC16- Making a Building Regulation Application
BC19- Regularisation Explained

Development Control

DC1 – Extending Your House
DC2 – Certificate of Lawfulness
DC3 – Roof Extensions & Dormer Windows
DC4 – Buildings and Other Structures & My House
DC5 – Fences & Walls
DC6 – Planning Made Easy
DC7 – Pre-Application Advice
DC8 – Discharging Conditions

Conservation

- Listed Buildings
- Conservation Area Advice
- Living in an Historic Building
- Extensions and Additional Buildings

Trees

www.iwight.com/trees

Q. Where will I get further advice?

- A. Ask your solicitor or surveyor in the first instance.

If you discover the property you are intending to buy or sell is without the necessary planning consents then contact planning services for advice on how to regularise or rectify the breach. The following sections of the Local Planning Authority can provide further advice:

On-line at www.iwight.com

Countryside (Advice on trees protected by planning condition, conservation area or preservation order)	823893
Development Control (Advice on planning)	823552
Conservation and Design (Conservation areas and listed buildings)	823552
Building Control (Building Regulations)	823580

DEVELOPMENT CONTROL

ADVISORY NOTE DC 13

ADVICE FOR HOUSE PURCHASERS



PLANNING SERVICES

Council Offices
Seaclose
Fairlee Road
Newport
Isle of Wight
PO30 2QS

November 2005

BACKGROUND

Buying or selling a house is a big step for most people and this leaflet is an overview of how planning legislation can affect your intentions for your new home.

Planning applies to older properties just as much as to brand new homes. It highlights the areas your solicitors or other advisors should alert you to as potential future problems. These liabilities may result in you being required to undertake remedial actions due to the seller's failure to comply with the planning legislation and therefore affect your proposed use and enjoyment of the property.

This leaflet can only be considered as an overview on how planning legislation can affect your proposals for the property you are intending to buy; the fundamental message is to check and satisfy yourself that all matters are adequately covered prior to purchase.

Permitted Development Rights

All dwellings potentially benefit from "permitted development (pd) rights." These rights allow the property to be altered or extended within certain limits without the need for the formal consent of the Local Planning Authority to be obtained. Certain properties have this right removed in whole or in part which means that you must make a formal application to the Local Planning Authority. Flats, maisonettes or houses in multiple occupancy do not benefit from permitted development rights.

Certain properties have their pd rights removed in whole or in part by a planning condition on a consent which means that you must make a formal application to the Local Planning Authority. It cannot be automatically assumed that pre 1948 properties escape any encumbrances as this restriction may have been imposed as a result of a more recent planning application or indeed the property may now be a listed building.

Location, Location, er... Location

The location of a property can place additional restrictions on it if it lies within a specially designated area or the property is a listed building. Properties such as those in a conservation area will have certain restrictions placed on them.

Dwellings in those parts of the island designated as the Area of Outstanding Natural Beauty (approximately half of the Island) also carry more restrictive permitted development rights than normal.

Other restrictions

Any building can have restrictions placed upon it depending on the circumstances when it obtained planning consent. Therefore it is important to undertake a local search to find out and read, carefully and in full, any conditions attached to any consent affecting the property.

HOW DOES PLANNING AFFECT ME WHEN...

Q. I am buying a house; how does planning affect me?

- A. Occasionally restrictive planning conditions can be placed on a property that runs in perpetuity. For example:
- Who can occupy the property; holiday use only or agricultural workers.
 - Remove "permitted development rights" for replacing or altering windows (including obscured glazing) or removing chimneys.
 - Remove "permitted development rights" for extensions or outbuildings.
 - Requiring planting, fencing etc to be kept below a maximum height to maintain highway visibility.
 - Provision of car parking spaces or a turning area.

Q. I am buying a house on a new development; how does planning affect me?

- A. In addition to the above, some developments carry certain conditions that the developer is required to comply with prior to the property being occupied such as completion of roads, lowering of roadside boundaries (to improve highway visibility) and landscaping.

If the developer breaches these conditions the local Planning Authority can take action to obtain compliance against the person who has caused the breach (the developer) and if necessary the land owner (i.e. the house purchaser). The action is usually in the form of a Breach of Condition Notice that specifies the work required to comply with the condition. Failure to comply with the Notice can result in a prosecution in the Magistrates Court.

Other conditions that can affect purchasers are those with an ongoing liability such as the requirement to maintain any soft landscaping for a period of five years from planting.

Q. What happens if the development does not comply or a condition has been breached?

A. Failure to discharge conditions at the correct time or build in accordance with the approved plans can invalidate a planning permission rendering the site without the benefit of consent and at the risk of enforcement action.

Q. The house has a tree within its grounds does this affect what I can do with it?

A. A single tree or a group of trees may be protected by a Tree Preservation Order which requires you to obtain prior approval for any proposed works. If you live in a Conservation Area then works to trees above a certain size also require prior consent.

It is also possible that you live in a property with carries a planning condition protecting trees from removal as part of a landscape condition

Works to a protected tree in the absence of the appropriate consent is one of the few instances where the breach is not just unauthorised but a criminal offence.

Q. I am buying a house in a conservation area; how does planning affect me?

A. Conservation Area status imposes a higher level of control on development in order to protect the architectural or historic character of an area. Conservation Area Consent will be required to undertake demolition of buildings (including walls). Works to trees within a conservation area require 6 weeks notice in writing to the local authority before works are undertaken. Changing windows or other alterations to the external appearance of a property may also require planning permission within a conservation area. Further advice is available in a separate conservation area leaflet.

Undertaking these works without the necessary consent can lead to enforcement action being taken requiring the works to be rectified, for instance:

- Demolition of unauthorised extensions and out buildings
- Rebuilding of demolished structures
- Replacement of removed trees.

The Local Authority can also consider prosecution where appropriate. There are 26 conservation areas on the Island, the location and extent of these areas can be checked on-line or with the conservation section.

Q. I am buying a listed building; how does planning affect me?

A. Listed Buildings are properties of a special architectural and/or historic interest; there are approximately 2000 Listed Buildings on the Island.

Listed building consent is required for all alterations that affect the special character or appearance of a listed building. This will include internal works and usually works within the curtilage which may include boundary walls/railings or outbuildings. If a previous owner has undertaken unauthorised works for example, an extension, replacing windows, repairs with inappropriate materials e.g. re-pointing with cement or the installation of a satellite dish, the new owner can be required to rectify these works. Therefore it is advisable to ask your surveyor to check these aspects while undertaking the survey and ensure that if works have been undertaken that the correct consents have been obtained.

Unauthorised works to a listed building is one of the few situations where the breach is not just unauthorised but a criminal offence. Anyone permitting or undertaking unauthorised works to a listed building or not complying with conditions attached to any listed building consent can be prosecuted and an enforcement notice issued requiring reinstatement of the unauthorised works.

The guiding principle of owning a listed building is conservative repair (not replacement) using traditional materials and methods where appropriate. If in doubt ask the Conservation & Design Team prior to undertaking works to a listed building and refer to the separate listed building leaflet.

Q. I am looking to buy a house from which to run a business?

A. Many people use their home as a base from which to run a business. This could involve storing tools in a garage or using a room as an

office. In these cases there is little or no external evidence of the presence of the business. Where you may be attracting deliveries, employees or customers to the property then it is likely that formal consent will be required and you should make further enquiries at the Planning Office.

Q. How do the Building Regulations affect me?

- A. Consent is required for most building works other than repairs, and it is a criminal offence not to comply with these regulations. Although works may have been undertaken illegally by a previous owner, Building Control can take action against the current property owners in order to rectify the works.

Q. How do I know if the previous owner has complied with Planning and Building Regulations?

- A. The owner should be able to show you a copy of any Building Regulation approvals and completion certificates, Planning Consents and written approval of conditions obtained.

Alternatively the same information if complied with will be available for your inspection from the public files at the council offices at Seaclose.

Unless the seller can supply you with confirmation of the appropriate consents or compliance is self evident on site then a breach of planning may have occurred and the council may take action against any present owner at the time it becomes aware of the breach.

Depending on the nature of the breach it is possible that whilst the works did not benefit from the necessary consent in the first place they may be immune from further action through the passage of time. However any owner will face uncertainty on selling the property if the necessary consents have not been obtained.

Also certain works relating to listed buildings and protected trees never acquire immunity through the passage of time. Similarly works in breach of Building Regulations that affect Fire Safety or Environmental Health will not become exempt.

Q. What else can affect my plans for the property?

- A. Utility companies (water, gas, electric, BT etc) can have wayleaves under or over land restricting what can be built or planted close to their services.

Restrictive covenants may have been placed on the property due to previous transfer of land between adjacent owners etc. Your solicitor can advise you on this.

Q. When should I not buy?

- A. If you can live with the property as it is then that's fine go ahead and buy it; should you get consent to change it look on that as a bonus. If you could only accept the property with the approved changes you should try and hold back on completion until the necessary permissions have been obtained. To purchase in expectation of gaining permission is a risk.

As a general rule if you wish to make alterations to a property or change its use you can make a planning application before you buy it providing the current owner is served with the correct notification. You could indicate through your solicitor that you will buy it "subject to obtaining the necessary consent". However, on the basis that consent is not personalised then it is possible for anyone to implement the consent.