

PRACTICE NOTE 7

BUYING AND SELLING OF PROPERTY IMMUNITY CERTIFICATES AND PROPERTY SEARCHES

Background

The Island's planning Laws for many years were, principally, the Island Development (Guernsey) Laws, 1966-1990. These Laws contained various powers for the enforcement of planning control and the Building (Guernsey) Law, 1956 and the Ancient Monuments and Protected Buildings (Guernsey) Law, 1967 ("Ancient Monuments Law") provided for the enforcement of requirements of the Building Regulations and the Ancient Monuments Law respectively. It has however been widely acknowledged that these powers were generally out of date and no longer fit for purpose in the 21st Century.

The Land Planning and Development (Guernsey) Law, 2005 ('the Law'), and the associated Land Planning and Development (Enforcement) Ordinance, 2007 ('the Enforcement Ordinance'), set out the powers available to the Department to ensure that compliance with the planning restrictions and requirements that apply under the Law and the requirements of the Building Regulations are appropriately enforced. Some existing enforcement powers in the Building Regulations, 1992 are also retained.

What constitutes a breach of planning control?

There will have been breach of planning control for which enforcement action may be taken under the Law where:-

- Development has been carried out without planning permission required under the Law; this now includes operations in relation to monuments and protected buildings previously regulated under the Ancient Monuments Law,
- Any term (including any condition or limitation) of any planning permission has not been complied with, or
- Any relevant requirement of the Building Regulations has not been complied with.

For the avoidance of doubt, the term 'breach of planning control' therefore includes a breach of the Building Regulations.

The new enforcement powers

Part V of the Law deals with enforcement. The main elements of the new enforcement powers as set out in the Law and the Enforcement Ordinance are summarised in a separate guidance leaflet which is available from the Department.

We may decide to issue a Challenge, Compliance or, in certain circumstances, Interim Compliance Notice regarding an alleged breach of planning control.

Challenge Notices are essentially used to gather further information about a suspected breach.

The Compliance Notice is the principal type of enforcement notice that can be served by us. This will specify the alleged breach of control and the steps required to remedy the breach. It will also set out a period or periods within which these steps should be taken.

A Compliance Notice would be served on the owner, occupier or other person with an interest in the land concerned which would be materially affected by the notice (in each case whether or not he was responsible for the alleged breach to which the notice relates, and whether or not he was its owner or occupier or had an interest at the time of the alleged breach).

However, a compliance notice may not be issued against any of the above persons after the expiry of a specified period of time set out in the Law and the Enforcement Ordinance. In the case of development, other than a change of use, this will generally be after the expiry of 4 years from the date of the breach.

An Interim Compliance notice can be served only when a Compliance Notice has also been served and can require an activity to cease before the expiry of the compliance period specified in the Compliance Notice.

Failure to comply with these notices constitutes an offence and may result in prosecution and a fine.

The new Law therefore enables enforcement action to be taken against a successor in title to a property, whether or not he was responsible for the breach of planning control. However, no action under the enforcement provisions of the Law can be taken where an Immunity Certificate has been granted (under section 3 of the Enforcement Ordinance) in respect of a breach occurring on or before the date of the certificate and against the persons on whom the certificate confers immunity.

Immunity Certificates

Immunity certificates are therefore a mechanism, the details of which are set out in the Enforcement Ordinance, designed to provide purchasers of property with comfort when entering into an agreement to purchase a property that we will not be taking enforcement action against them for a known or suspected breach of planning control.

The process that will be adopted by us in dealing with applications for Immunity Certificates is set out in the Enforcement Ordinance, and may be summarised as follows:-

Who makes an application for an Immunity Certificate, and how?

An application for an Immunity Certificate can only be made by a prospective purchaser of the property concerned. An application can be made by more than one prospective purchaser, if they so wish.

The application must be made on a form supplied by us and must include the particulars specified on that form which must include a declaration as to whether or not the applicant (purchaser) has been, in the last 4 years, an owner, occupier or person with an interest in the land in question.

The application must also be accompanied by the relevant fee.

Separate guidance is available from us on how to fill in an application for an Immunity Certificate and the fee charged.

How do we deal with the application, when received?

Upon receipt of the application, we must, as soon as practicable, search (a) the register of enforcement notices, and (b) any file we hold relating to the land in question which is relevant to the taking or potential taking of enforcement action under the relevant provisions of the Law.

However, in relation to our search under (b) above, we are not required to search any file relating to any action under the previous, repealed planning legislation (principally the Island Development Laws and the Building Law), and are required to search any file relating to the enforcement provisions of the new Law only for, where an alleged breach relates to a material change of use, any action which has been taken or which we are considering taking within a period of 10 years beginning with the date of the breach and, where an alleged breach relates to development other than a material change of use, any action which has been taken or which we are considering taking within a period of 4 years beginning with the date of the breach.

We may also inspect the land, or take any other action that we may take under the Law, to ascertain whether there has been a breach of planning control.

In what circumstances will we issue an Immunity Certificate?

Where we are satisfied, after carrying out our search and any inspection of land or other action to ascertain whether there has been a breach, that we have not taken and are not considering taking any action under the enforcement provisions of the Law in relation to the land and that where action has been taken all breaches have been remedied, then we must issue an Immunity Certificate.

What will an Immunity Certificate do?

An Immunity Certificate will identify the land to which it relates, have effect from its date of issue and will confer immunity on the applicant (purchaser) and any person who is the occupier or has an interest in the land who becomes such on or after the date of issue of the certificate, and who has not been such or the owner of the land at any time within a period of four years before the date of issue of the certificate, in respect of any action which may be taken under the enforcement provisions of the Law as

a consequence of the issuing of a Compliance Notice in relation to any breaches or suspected breaches in relation to the land in question which occurred on or before its date of issue.

What will an Immunity Certificate not do?

An Immunity Certificate will not act as any form of warranty that development that has been carried out at the site prior to its date of issue is authorised.

An immunity certificate will not prevent us from taking action under the repealed legislation in respect of breaches of planning control which occurred before the 6th April 2009. However, under the pre-existing legislation action could not be taken against new owners in respect of breaches committed by the previous owners.

Property searches

We have for some time provided information to prospective purchasers and others with owner's authority concerning the planning history and status of property on Guernsey through the means of property searches.

In undertaking a property search in the past, the prospective purchaser, their agent or other interested party would have made an appointment to go through elements of our property file relating to a property with a member of our staff. The objective of this search would normally be to obtain information concerning the planning history of the property concerned, in terms of consents granted or refused. In addition, information concerning the recognised use of the property concerned may commonly have been requested.

The 2005 Law, and associated improvements in our computer system relating to the processing and recording of planning and Building Control applications and other related information, enable us to offer a more comprehensive property search service, for which we will charge fees. There is no statutory requirement on us to provide for such a service although the Land Planning and Development (Fees and Commencement) Ordinance, 2008 sets out the fees to be charged for such searches and how such a request must be made.

In summary, the different types of property searches now available are as follows:-

1. Domestic Searches

1a. Standard property search for a domestic property (including a building containing flats where the enquiry is primarily in relation to (e.g. arising from the sale of) one or more of the flats and does not relate to the building as a whole).

The Search only comprises planning and building control history from 2002 and may include any of the other information if requested:-

- Planning history from 2002 to present (from computer records and accessing recent file/s as necessary)

- Building Control (BC) history from 2002 to present (from computer records and accessing recent file/s as necessary)
- Current Use Class (if requested)
- Whether the property is scheduled (Protected Building)
- Whether the property includes any protected tree
- Whether the property includes any protected monument
- Whether the property is in a Conservation Area
- Whether the property is in a Site of Special Significance

1b. Enhanced property search for a domestic property

The Search comprises as 1a above, plus:-

- Planning history from prior to 2002 (accessing archive files as necessary)
- BC history from prior to 2002 (accessing archive files as necessary)

1c. Appointment to view file details (domestic) – e.g. approved plans, BC details, etc.
Offered as a standard half hour appointment.

2. Non-domestic

2a. Standard property search for a non-domestic property (including a building containing a number of flats where the enquiry is primarily in relation to the history/status of the building as a whole).

The Search only comprises planning and building control history from 2002 and may include any of the other information if requested:-

- Planning history from 2002 to present (from computer records and accessing recent file/s as necessary)
- BC history from 2002 to present (from computer records and accessing recent file/s as necessary)
- Current Use Class (if requested)
- Whether the property is scheduled (Protected Building)

- Whether the property includes any protected tree
- Whether the property includes any protected monument
- Whether the property is in a Conservation Area
- Whether the property is in a Site of Special Significance

2b. Enhanced property search for a non-domestic property

The Search comprises as 2a above, plus:-

- Planning history from prior to 2002 (accessing archive files as necessary)
- BC history from prior to 2002 (accessing archive files as necessary)

2c. Appointment to view file details (non-domestic) – e.g. approved plans, BC details, etc. Offered as a standard half hour appointment.

Notes:-

Planning History will include details of planning and other applications, decisions on such applications including conditions imposed, appeals made against such decisions and compliance and other enforcement notices served;

Building Control History will include details of approval or rejection of full plans, including modifications or conditions imposed, and issuing of licences, compliance and other enforcement notices served and issue of completion certificates.

The search applies only to the property for which it is requested and to no other property.

The searches will not deal with covenants, rights of way, boundaries or other such legal/conveyance issues.

SCALE OF FEES for property searches - all for each site searched

Standard domestic search charge of £80.00

Enhanced domestic search charge of £120.00

Standard non-domestic search charge of £120.00

Enhanced non-domestic search charge of £200.00

Appointment – half hour domestic – £65

Appointment – half hour non-domestic – £100

There will also be a charge made for copies of permissions and other documents (NB. plans are subject to copyright).

This note is issued by the Development and Planning Authority to assist understanding of the provisions of the planning legislation. It represents the Authority's interpretation of certain provisions of the legislation and is not intended to be exhaustive or a substitute for the full text of the legislation copies of which are available from the Greffe. Electronic copies are also available at www.guernseylegalresources.gg Substantive queries concerning the legislation should be addressed to the Authority by email at planning@gov.gg. The Authority does not accept any liability for loss or expense arising out of the provision of, or reliance on, any advice given. You are recommended to seek advice from an independent professional advisor where appropriate.

