

## Buying and Selling

When a Solicitor in Scotland buys a property for you that has been constructed or altered in the last thirty years or so he will expect that, amongst the Title deeds sent to him by the sellers Solicitor, he will find the Planning Permission, Building Warrant and Certificate of Completion. If not he will insist on the seller obtaining copies of these papers, or the alternative documents (like Letter of Comfort) or showing that the work falls within one of the specific legal exceptions making a particular document unnecessary.

If you are **selling**, you should let your solicitor know of any alterations you have carried out and make sure either that all the papers are with your title deeds or give them to the solicitor. If you know there are no papers, again let the solicitor know as early as possible so that he can try to arrange the alternative papers, as this take come considerable time.

If you are **buying**, you should let your solicitor know of any alterations you know of (either from seeing them, being told about them, or having them mentioned in your survey), so that he can make sure the necessary papers are delivered by the sellers solicitor. If these papers are not delivered, you run the risk of the local authority requiring you to carry out work at your own expense, or having difficulties yourself when you come to sell the property.

This information contained in this leaflet is general advice only. It cannot be relied upon as a definite statement of the law and you should take specific legal advice on any particular situation.

A Large Print version of this leaflet is available on request



**Georgesons**  
solicitors  
— Est 1887 —

**A Client's Guide to**

**PLANNING AND BUILDING CONTROL**



**22 Bridge Street  
Wick  
Caithness KW1 4NG  
Tel: (01955) 606060  
Fax: (01955) 603016**

**19 Traill Street  
Thurso  
Caithness KW14 8EG  
Tel: (01847) 892225  
Fax: (01847) 892235**

**Email: [Servicedesk@Georgesons.co.uk](mailto:Servicedesk@Georgesons.co.uk)**

**Website: <http://www.georgesons.co.uk>**

## The Difference between Building and Planning Control

Planning Control is the process whereby the community (through the Local Authority) decides whether a development is acceptable. This takes into account aspects of sight, sound and smell, local needs and preferences.

Building Control, on the other hand, is the process where the Local Authority checks whether a property meets the Building Standards set by law. These Standards are intended ensure safety and longevity of construction. They are generally more lax in the south of England where the climate is mild than in the north of Scotland where it can be harsh. They change from time to time.

### Planning Control

An application for **Planning Permission** is needed in most cases where a building or structure is to be built or placed on an area of ground, or where an alteration is changing the design on the building or structure. These changes are all called **developments**.

Planning Permission is not always required, as certain "**exempt developments**" (mostly internal or minor work to an existing building) are automatically permitted by law. However, if you are not certain whether this applies, you should check before going ahead with the work. Where there is doubt whether planning permission is needed, a "**certificate of lawfulness**" can be applied for. This requires plans and a fee to be paid to the Local Authority.

The Planning Permission consists of a written Permission together with the associated approved plans. If a development is not in accordance with those plans (or is without any permission) then the

Local Authority is entitled to demand that the **current** owner remove the building or part thereof which offends and, if appropriate, replace it with something which accords with the Planning Permission. This could be expensive.

The Law, however, puts a limit upon this. If building work is carried out, either without Planning Permission or in breach of the Planning Permission granted and four years passes after "substantial completion" of the works the Local Authority is not entitled to take any enforcement action. If there is a change of use of a property to a house and four years passes without action by the Local Authority then there can be no enforcement action. In the case of any other breach the period is ten years.

### Building Control

So far as Building Control is concerned, when you wish to construct/alter a building then you have to apply for a **Building Warrant**. Again there are a few types of work which are automatically allowed by law without such permission (mostly repair of existing structures or installing certain ready-built or pre-approved design structures).

Attached to your application will be your plans. The application and plans will be scrutinised and if they meet with current standards they will be passed and stamped. A Building Warrant will be issued. After the work has been completed (or in the case of large works at various stages of completion) it is inspected by the Local Authority. A **Completion Certificate** will be issued if the works have been carried out according to the warrant granted.

The Local Authority has power to require works to any property which is unsafe to make it safe. If there is any doubt, the authority is allowed to err

on the side of caution, in the interests of public safety. Where there is doubt whether conditions have been complied with it can require the works to be completely removed and re-installed.

**Example:** Where a Building Warrant has been granted subject to inspections being carried out by the authority; even although the work may in fact be perfectly adequate, since the council inspector cannot guarantee that, the work may be required to be completely re-done.

Sometimes people carry out works to their house not realising that they need a Building Warrant. There are two alternatives in this situation. One is to apply for a retrospective Building Warrant and Completion Certificate. The other is to apply for "**Letter of Comfort**", which confirms that while the required papers were not obtained, the authority will not require anything to be done about them. For minor works Letters of Comforts are usually issued after three years and for major works after ten years.

Of course, the Local Authority can still refuse such applications, if it does not think the work complies with the Building Regulations or is unsafe.

### Which Do You Need?

Although Planning Permissions and Building Warrants both come from the local authority, they are completely different legal documents. There are cases where you need only Building Warrant, and some where you need only Planning Permission, but in most cases you need both.

If you have any doubt you should ask a solicitor or the Local Authority which you need before starting works.