Am I responsible for planning breaches caused by the previous owners of my Guernsey property?

When viewing properties, buyers are often on the look-out for any faults that could cost a lot of money to fix further down the line. One thing that may not be obvious is a breach of planning control by the current or previous owners, but this is also something that buyers should look out for to avoid unnecessary expenses in the future.

While the majority of property owners in Guernsey are mindful that they should check with planning before making major changes to their property, there are numerous instances where this has not been the case and it has caused serious problems for unsuspecting buyers.

Take for example a property which has had some sort of extension, and the new owner wants to add to or alter this extension and seeks planning permission to do so. In the planning application process, it transpires that the original extension was an unlawful development and the current owner now is saddled with the expense of rectifying it, despite not being personally responsible for the breach.

Fortunately there are two mechanisms in place to protect property owners from this situation: a Property Search and an Immunity Certificate, and an individual can apply directly to the Planning and Development Authority (the Authority) for both.

A Property Search provides details about a property's planning and control history from 2002 to present, among other relevant details such as protected trees and whether the property is in a conservation area. There are standard and enhanced searches at two different price points available for both domestic properties and non-domestic properties. Any prospective buyer can apply but it's important to remember that a Property Search is separate from an Immunity Certificate and does not offer a prospective buyer any protection, it can only highlight breaches that a future owner may end up liable for. A Property Search can also only be conducted with written consent from the property's owner.

An Immunity Certificate can provide reassurance to purchasers of a property that the Authority will not take enforcement action against them for a known or suspected breach of planning control. The application process involves the Authority conducting a search of the register of enforcement notices and any other relevant files they hold relating to the property. They may also inspect the land to check whether there has been a breach of planning control. Once the Authority is satisfied that they have not taken and are not considering taking any action, and where action has been taken all breaches have been remedied, they will then issue an Immunity Certificate.

Although an Immunity Certificate is certainly a useful tool, buyers must remember that it doesn't retrospectively authorise unauthorised developments, so it doesn't protect you from enforcement action if you make alterations to building works, such as enlarging an extension which was carried out without the benefit of planning permission. So the rough rule of thumb is if you leave unauthorised development as it is when you buy the property, the immunity certificate protects you, but if you make any alterations to that development you are likely to need planning permission to do so.

I would always recommend a buyer to discuss issues like this with their property lawyer, as a conversation now can prevent a lot of avoidable expense in the future.

Ogier's team of conveyancers can help – contact us on 01481 721672 tel and gsy@ogierproperty.com email

Contact Us

For a friendly chat call the residential property team on
+44 1481 721672 or email gsy@ogierproperty.com