It's essential that planning permission is in place and planning conditions are complied with if you're considering buying or selling a practice, says Lucy Gilman

Planning permission might not be a subject dentists think is of particular relevance to them. However, it is when it comes to dealing with practice sales and purchases. There are many instances where dental practices lack the relevant permission to use a property as a dental surgery, or where they are in breach of conditions attached to any permission for such a use.

The consequences of non-compliance, or indeed lack of planning permission, can be costly and time-consuming to rectify.

Such ramifications include enforcement proceedings for breach of conditions or lack of planning permission, which can be very costly to defend. To give dentists an appreciation of the planning system, set out below is a brief outline, together with a few specific points of interest to dentists in particular.

**Town planning**

The modern-day planning system is concerned with making decisions about the future of our cities, towns, and the countryside around us. It is important that we can balance the need to develop and grow our towns and cities and provide housing for all, with the need to protect the countryside and environment in general.

The planning system is a plan-led system and has, since 2004, developed two main levels of plans:

1. **Regional Spatial Strategies (RSSs)** – these are very broad plans which are drawn up to set out how a region should look in the next 15 to 20 years; and
2. **Local Development Frameworks (LDFs)** – these are produced by local planning authorities with the aim of outlining how planning will be managed in that particular area.

However, with the election of the coalition government in May this year, there promises to be some considerable changes to the planning system. The Government’s programme of reform includes promoting the radical devolution of power to local government and community groups and includes:

- Abolishing regional strategies and returning decision-making powers to local councils
- Giving neighbourhoods far more ability to determine what development takes place in their area
- It also aims to publish a consolidated national planning framework covering all forms of development which sets out national, economic, environmental and social priorities.

**Planning permission**

Planning permission is generally required where there is to be development of the land or a change in the way that the land is used. The Town and Country Planning Act 1990 (Section 55) provides that development means:

- The carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

However, it is always worthwhile checking with the Local Planning Authority whether planning permission is required.

Planning permission is not always essential. It is not generally required for internal building works, or for small alterations to the outside of a property. In addition, other small changes such as putting up boundary walls and fences below a certain height (1.8m) have a “general planning permission” for which a specific application is not required. This is known as permitted development. In addition, certain changes in the use of property are also permitted, however, as a general rule, the change must be within the same use class.

**Planning applications**

There are two main types of planning application:

- **Outline application:**
  - For a new building, you may be able to make an outline application to find out whether the development is acceptable in principle. This usually means that detailed drawings are not needed. However, the local planning authority can require additional information, or insist that a particular application be made as a full application. If outline permission is granted, you will need to get approval of the details (known as ‘reserved matters’) before work can start. These comprise:
    - Siting
    - Design
    - External appearance
    - Means of access
    - Landscaping

- **Full application:**
  - A full planning application requires the submission of all details of the proposal. It would be appropriate if you wish to change the use of land or buildings, or if you want to start work quickly.

If the Local Planning Authority decides to grant planning permission, a decision notice will be issued setting out the conditions of that planning permission. Those conditions must be complied with otherwise the development may be in danger of attracting enforcement proceedings.

If planning permission is refused, there is the right of appeal to the Secretary of State for Communities and Local Government. There are three types of appeal:

- Written representations
- Informal hearing
- Public enquiry

The type of appeal will be based on the complexity.

**Issues to consider**

While it may not appear to be hugely relevant to dentists, there are certain issues which dentists may come across.

1. **Use**
   - The use of a property for the provision of dental services falls within D1 of the Town and Country Planning Act (Use Classes) Order 1987 (as amended). As such, it is important when considering taking on premises or when selling premises that the premises have the requisite “dental use”.

2. **Certificate of Lawful Use or Development**
   - As stated above, it is a requirement for a practice to have a D1 use. If it does not, then there are options, which include an application to the local planning authority for a CLEUD. If the use as a property as a dental surgery has subsisted for more than 10 years, then an application to the local planning authority for a certificate of lawfulness is permitted.

3. **Indemnity insurance**
   - Dentists are encouraged to take out a professional indemnity policy which may not be acceptable for a CLEUD or planning permission but the cost could be higher.

4. **Current use**
   - It is imperative for dentists who are either considering buying or selling a dental surgery to ensure that planning permission is in place and that all planning conditions have been complied with.

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**About the author**

Lucy Gilman joined Cohen Cramer in 2008 and is a key member of the dental team working on dental practice sales and acquisitions. Her particular area of expertise is property with specific expertise in planning, legal and insurance related issues. To contact Cohen Cramer, call 0113 2440597, email denta...