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do you have permission to practice?

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 Frame-works (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 neighbours 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 on, under or over 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 work 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

What you propose must be consistent with the outline permission. If your proposal changes, you may be asked to start again with a fresh application.

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. These conditions must be complied with otherwise the development may be in danger of attracting enforcement proceedings.

If planning permission is re-fused, 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 (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 Existing Use or Development (CLEUD)

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 of the property as a dental surgery has subsisted for more than 10 years, then an application to the local planning authority is not required.

3. Planning permission if it is necessary to obtain planning permission in respect of the premises (either for change of use or for building operations), it is essential to consider any conditions attached to that planning permission. These conditions must be complied with and may, for example, restrict the hours of use or the number of car parking spaces that can be provided. It is always advisable to work closely with the planning department to try and achieve a workable planning permission.

4. Indemnity insurance

If it becomes evident that the property you occupy (or are intending to occupy) does not have the requisite D1 use or planning permission, there is always the option to take out an indemnity policy to insure against any potential problems. The cost of such insurance will depend upon various factors, such as how long the building has been used as a dental surgery, when the development or change of use took place, the purchase price of the building or the annual rent and term of lease. A one-off premium would be payable and would insure against any potential action by the local planning authority. This is undoubtedly quicker than an application for a CLEUD or planning permission but the cost could be higher.

About the author

Lucy Gilman joined Cohen Cramer in 2001 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 experience in related issues. To contact Cohen Cramer or solicitors, call 0115 2440857, email dental.team@cohencramer.co.uk or visit www.cohencramer.co.uk.

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