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 pro-
duced by local planning authori-
ties 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 govern-
ment 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 consoli-
dated national planning frame-
work covering all forms of devel-
opment which sets out national, economic, environmental and social priorities.

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

- The carrying out of build-
ing, engineering, mining or other operations in, on, over or under
land, or the making of any ma-
terial change in the use of any buildings or other land.

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

Planning permission is not al-
ways essential. It is not generally required for internal building work or small alterations to the outside of a property. In addition, other small changes such as putting up bound-
ary walls and fences below a certain height (1.8m) have a “general planning permis-
sion” for which a specific ap-
lication is not required. This is known as permitted devel-
opment. 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 per-
mission. If your proposal chang-
es, 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 build-
ings, or if you want to start work quickly.

If the Local Planning Author-
ity decides to grant planning per-
mission, a decision notice will be issued setting out the condi-
tions of that planning permission. Those conditions must be com-
plied with otherwise the develop-
ment may be in danger of attract-
ing enforcement proceedings.

If planning permission is re-
jected, there is the right of appeal to the Secretary of State for Com-munities 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 serv-
ices 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 Ex-
isting 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 in-
clude 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 ap-
plication to the local planning authority accompanied by sup-
porting evidence (for example, business rate invoices) is appro-
priate. If the use has subsisted for less than 10 years, it would be advisable to make an application to the local planning authority for planning permission for that use. The local authority will as-
sess the application on its merits and in conjunction with the pro-
visions of the LDF.

5. Planning permission if it is neces-sary to obtain planning permission in respect of the premises (either for change of use or for building operations), it is essential to consider any con-
ditions 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 plan-
ning permission.

4. Indemnity insurance if it becomes evident that the prop-
erty you occupy (or are intend-
ing 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 po-
tential 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 develop-
ment 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 in-
sure 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.

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About the author

Lucy Gilman joined Cohen Cramer in 2008 and is a key member of the den-
tal team working on dental practice sales and acquisitions. Her particular area of expertise is property and acquisition related issues. To contact Cohen Cramer for further information call 0115 2440857, email dental team@cohencramer.co.uk or visit www.cohencramer.co.uk.

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