

BUILDING CONTROL LEGISLATION

Overview

As in Ireland, the English legislation on Planning Permission and Building Regulations are separate and have different purposes. Planning legislation relates to the external appearance of buildings as the impact on the environment, the use of buildings, spatial policy and the safeguarding amenities. Building Control legislation and Building Regulations deal with construction standards.

There are two aspects to Building Control legislation. The first aspect is the obligation to comply with detailed Building Regulations. The second aspect is the procedural requirements in relation to approval of plans and certification of works.

The Building Regulations require all building work to be carried out in accordance with the technical requirements set out in the various parts of the Schedules to the Building Regulations 2000 and 2006. There is an approved document (AD) for each part of the Schedule giving guidance to construction methods and standards so as to comply with Building Regulations.

The Regulations are broadly structured in the same manner as the Irish Regulations and they deal with the following:

1. Structure
2. Site preparation and resistance to moisture
3. Sound resistance and Cavity Installations
4. Means of ventilation and condensation
5. Hygiene
6. Drainage and waste disposal
7. Combustion appliance and fuel storage
8. Air supply; discharge of combustion products

9. Protection of the building, protection of fuel storage systems, pollution protection
10. Protection from falling collision and impact
11. Conservation of fuel power
12. Access
13. Glazing

The technical documents stations are available on the internet. The documents are designed to give a considerable amount of flexibility and do not have to be followed if the requirements can be met in some other way. The plans will be approved, unless they are defective or show a contravention of the Regulations.

Failure to comply with the approved documents does not mean automatic breach. The failure to comply raises an onus to prove compliance with the requirements in another way.

Building Control Requirements

Building Regulations must be complied with, whenever there is building work, a material alteration or a material change of use.

The procedural rules in relation to Building Regulations are more onerous than in Ireland. In Ireland formal approval of plans are only required in respect of Fire Safety and then only for buildings other than single dwelling houses. In contrast in England, plans must be either approved by the Local Council or by an Approved Inspector. The National House Building Council (equivalent of Homebond) is an approved inspector and often signs off on Building Regulations in new developments.

“Building work” includes the erection or extension of a building or the provision of a controlled service. A “material alteration” is one after which the building does not meet the requirements of the Building Regulations where it previously had, or making it less compliant. A material change of use is one which would result in the relevant change of occupancy or remove an exemption as listed in the Building Regulations.

Enforcement

The Local Authority is under a duty to enforce the Regulations and it is a question to decide whether or not to inspect building work in progress. Breach of the Regulations is an offence and the Local Authority can take enforcement action. Failure to comply with the Regulations is likely to cause a builder or developer to be civilly liable to a purchaser.

The Local Authority has powers to enforce Building Regulations by enforcement notice requiring the offending works to be removed or corrected. It also has powers to apply for an injunction without certain rights of appeal.

It is possible to obtain dispensations or relaxations to the Building Regulations in particular cases where requirements are unreasonable in a particular circumstance.

A developer may use an approved inspector or the Local Authority. However, the Local Authorities powers of inspection remain even where an approved inspector is retained. There are a number of alternative compliance procedures. Under the “building notice procedure”, a notice is given to the Local Authority together with certain required information. A Local Authority is not required to accept the notice. It may however ask for such plans and information it needs to enable it to discharge its functions. Once notice has been given with the required fee, the work can be started provided the Local Authority is given at least two days notice.

No enforcement action can be taken against a Local Authority provided the works are undertaken in accordance with the plans. Full plans may be deposited with the Local Authority under an alternative procedure. The Local Authority must pass or reject the plans within five weeks unless the period is extended. The period may be extended for up to two months. If the Local Authority rejects the plan it must give reasons sufficient to enable the developer to change them.

The Local Authority will issue a completion certificate where one is requested. Where works have been carried out without approval or notice having been given it is possible to obtain a regularisation certificate. A certificate will be issued if the work complies.

Private Inspectors

The Building Act enables a person to employ an Approved Inspector to take over the Local Authority's responsibilities under the Building Regulations. Most Approved Inspectors deal with works other than new builds. National House Building Council is an Approved Inspector to deal with all types of buildings. Developments in England and Wales commonly use the initial notice procedure in conjunction with National House Building Council as inspectors.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.