When advising clients, surveyors need to be alert to circumstances which require consent under the Building Regulations.

Need for B. Regs approval

In view of recent changes in the regulations, the date of alteration is relevant in deciding whether approval was required or not. Work which may previously have been uncontrolled, such as re-roofing; replacement of windows; installation of cavity wall insulation; re-rendering or cladding a building now require an application, unless the contractor holds exemption status (FENSA registrations for windows; NFRC registration for roofs and 'Gas-safe' registration for gas-fired appliances - there are many more).

The Table below provides a check-list and indicates work which currently requires Building Regulations approval or self-certification by contractors registered and operating under an approved self-certification scheme.

<table>
<thead>
<tr>
<th>Nature of Controlled Work requiring compliance under Building Regulations</th>
<th>Relevant Date when control came into effect</th>
<th>Refers to Approved Document</th>
<th>Self-certification Scheme for approved contractors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Erection of new buildings</td>
<td>Historic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Barn or domestic garage conversions</td>
<td>Historic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extensions to existing buildings</td>
<td>Historic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Replacement shop fronts</td>
<td>Historic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Re-roofing of pitched or flat roofs</td>
<td>6 April 2006</td>
<td>L</td>
<td>Yes. Insulation upgrade NFRC Registered Contractor</td>
</tr>
<tr>
<td>Underpinning of foundations</td>
<td>Historic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alterations to roof spaces</td>
<td>Historic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Structural alterations not considered a repair</td>
<td>Historic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carrying out any remedial work to a thermal element, for instance renewing external render</td>
<td>6 April 2006</td>
<td>L</td>
<td></td>
</tr>
<tr>
<td>Erection of new chimneys, flue liners or flues</td>
<td>J</td>
<td>HETAS registered competent person scheme (solid fuel appliances) Gas-safe registration scheme (gas appliances); OFTEC (oil-fired appliances)</td>
<td></td>
</tr>
<tr>
<td>Removal of a load-bearing wall</td>
<td>Historic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Creating new door or window openings.</td>
<td>Historic</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Cottingham & Cottingham v. Attey Bower & Jones

With due regard to Building Regulations …. The case of Cottingham, Cottingham V Attey, Bower and Jones (ABJ) is often worth quoting to a client when historic alteration is recorded on survey but where there is uncertainty about building regulations consent on the part of the person selling or the selling predecessors in title.

An alteration may appear significant, such as erection of a large extension cunningly added to the back of a large country house, or, in relation to a more modest dwelling, such as removal of a chimney breast, partition wall or provision of a small ensuite shower-room in a bedroom. All such work would have required Building Regulations and ought to be referred to in a report.

Changes to Part L of the Regulations, effective from 6 April 2006, are more subtle and, apart from minor exemptions, require approval for re-roofing, rendering or re-cladding domestic premises - usually with a requirement from the local authority to upgrade thermal efficiency at the same time.

Until the Cottingham case, it had been widely accepted that, if unauthorised building work escaped the notice of the local authority for more than twelve months, it would be exempt from enforcement procedures. This is stated reassuringly under sub-section (4) of S.36 of the Building Act 1984. However, sub-section (6) of S.36 is a potential ‘catch-all’ for unauthorised work and makes provision for the local authority …“ to apply for an injunction for the removal or alteration of any work on the ground that it contravenes any regulation or any provision ” of the 1984 Act.

This was the argument put forward successfully by Mr and Mrs Cottingham to prove negligence on the part of their solicitors in failing to confirm building regulation approval for unauthorised work. The Cottinghams had commissioned a survey before purchase but the survey failed to point out the extent of disrepair and the surveyor proved to be uninsured and not worth pursuing, so action was taken against the unfortunate conveyancing solicitors.

This is a case worth reading and is unusual since the possibility of enforcement by the local authority was accepted as a valid argument in diminishing the value of Mr and Mrs Cottingham’s house even though no enforcement action had taken place or was contemplated.

The claimants sued for damages of £40,000 but were awarded £8203.26 plus £1346.68 interest and legal costs.

The procedure to counter similar claims when building regulations approval is in doubt is for solicitors to require the seller to pay for a building regulation indemnity policy but, in effect, such a policy will only be useful in the event that the local authority decides to take action. It will not protect the wretched surveyor who has failed to spot defects or to advise the client properly.
Useful Guidance

Useful reading:

1. The curse of Cottingham (publ. 5 March 2004): Law Society Gazette
   http://www.lawgazette.co.uk/news/the-curse-cottingham

   Chancery Division Rimer

3. See also summary on
   http://www.maitlandchambers.com/Cases/Detail.asp?CaseID=539

   “Tripped up in the endgame: was I a victim or a mug?” - Jon Stock (attached)

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Tripped up in the endgame: was I a victim or a mug?

Beware the latest, nasty trap in the housebuying business: building regulations indemnity. Jon Stock fell into it - to his cost

There comes a point in the tortuous process of buying and selling a house when you are prepared to do, or pay, almost anything in order not to break the chain. It occurs somewhere late in the wretched endgame, when both properties are under offer and the agreed exchange date is indeed approaching.

Let's be candid, most house buyers, lack confidence. They see a broader period, raise issues with other potential homeowners and the seemingly endless buying time it takes for local authorities to reply to searches. The property market is not a consumer-friendly one.

Will we be gazumped? What will our buyer's stamp duty shortfall mean for us? Will they pull out as we knock down their mortgage offer? etc. etc. One such tale was Building Regulations consent, with almost every house in the street being an identical one. The cases of every house in the street, we were told, had been built within the past 10 years, and were not subject to the same building control officer. At least, that was what a friendly neighbour told us.

What is the legal advice? The solicitor is an expert in this field, or is it? We were assured that everything had been checked and balanced. By nature, solicitors are a cautious, hard-headed lot, and we were taken in. We were also told that the building regulations were a minor issue.

Anyway, what is a building regulations consent, anyway? We quickly discovered that there is a series of conditions and design standards that must be met for the health and safety of people in or about buildings. These regulations are enforced by building control officers, and failure to comply can result in fines and even the demolition of the building.

In the case of the property we bought in 1988, we were told that the building regulations consent had been obtained in 1985, and that the building control officer had not been notified of any changes or additions to the property since then. We were also told that the property was structurally sound and was therefore worth considerably less than the price we had paid for it. Based on the cost of addressing the alleged defects, we were offered £10,000.

In the event, the solicitors were awarded considerably less (£2,500), plus £1,300 for interest and legal costs, but what worried us was that the building control officer had not been notified of any changes to the property since 1985, and that the property was structurally sound and was therefore worth considerably less than the price we had paid for it. Based on the cost of addressing the alleged defects, we were offered £10,000.

I was furious, but what can you do? It's the last thing you want to be dealing with in a sales transaction. Of course you do, in our case, it is not only £10,000, but it's also a lot of time and effort. We were told that the building regulations were a minor issue, and that everything had been checked and balanced. By nature, solicitors are a cautious, hard-headed lot, and we were taken in. We were also told that the building regulations were a minor issue.

After their solicitors, had bought a house in 1988, they had asked the vendor to procure building regulations consent for the addition of a garage and a small extension. The vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985, and the building regulations consent had not been obtained in 1985. The vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985.

This is a clear example of a situation where the vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985. The vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985. The vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985. The vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985. The vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985. The vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985. The vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985. The vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985. The vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985. The vendor had signed the agreement to sell in 1988, but the consent had not been obtained in 1985.