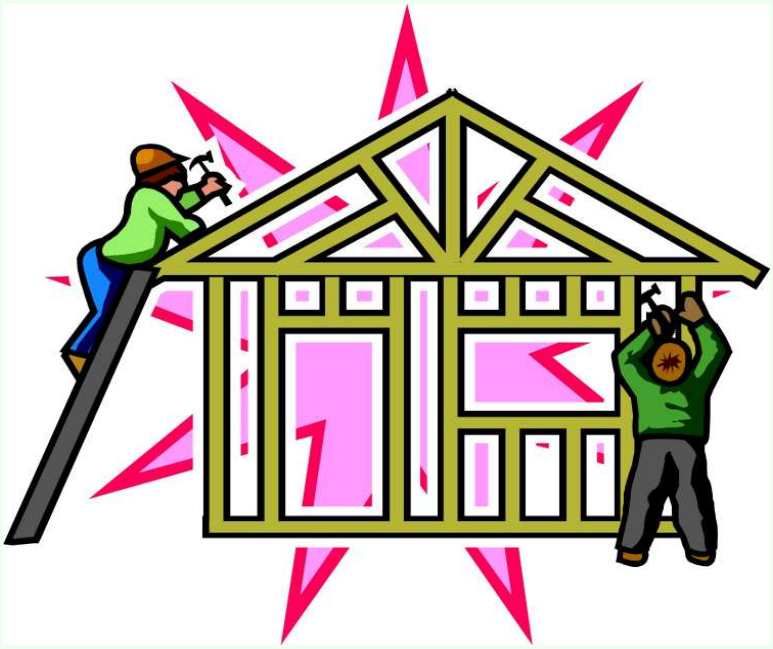
BUILDING REGULATIONS

CHECK LIST



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).

Summary of self-assessment schemes

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.

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

Replacing windows	1 April 2002	L N	Fenestration Self-assessment Scheme (FENSA) CERTASS glazing scheme etc or BSI scheme
Work that affects fire safety e.g most alterations to commercial buildings.	Historic		
Work for disabled people e.g. providing a level access show, lift etc.	Historic		
Installing cavity wall insulation	6 April 2006	L	Approved installer under the BBA Assessment and Surveillance scheme
Installing heating appliances and oil storage tanks	6 April 2006	L	OFTEC competent persons scheme NAPIT Certification (National Association of Professional Inspectors and Testers.
Provision or extension of an electrical supply	1 January 2005	P	Approved electrical contractors and competent persons registered under the 'Part P' self-certification scheme.
Installation of sanitary and washing facilities or alterations to drainage.	Historic		

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.

Power of LA to seek an injunction

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 award

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 2. (1) Peter Lionel Cottingham (2) Julie Cottingham v. Attey Bower and Jones (A Firm) (2000) LTL 31/3/2000: (2000) PNLR 557: (2000) FACS 48: Times, April 19, 2000 Chancery Division Rimer 3. See also summary on http://www.maitlandchambers.com/Cases/Detail.asp?CaseID=539 4. Telegraph Property: Saturday 19 January 2002 "Tripped up in the endgame: was I a victim or a mug?" - Jon Stock (attached) ***© R.H. Hulls: March 2011***

Law and order

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 rapidly approaching.

It's a torrid period, made worse by pernickety solicitors and the seemingly endless time it takes for local authorities to reply to search inquiries.

Will we be gazumped? What will our buyer's damp report say? Will they pull out unless we knock some money off? Now, though, something else has emerged to make the business even more stressful for the punters, and even more lucrative for the professionals: Building Regulations indemnity.

It sounds so utterly, mindnumbingly dull as to be harmless but in the past 18 months it has put up the cost of conveyancing for you and me and lined the pockets of insurers. I know because I was a victim, or a mug; I'm still not sure which.

When I sold my house last year, I didn't think there would be a problem with the extension at the back of the house. It had been built at least 10 years ago, long before we bought the property, and was small enough not to have needed planning permission. Virtually every house in the street has an identical one. But did it have the necessary Building Regulations consent, our buyer's solicitors asked? Who knows? What exactly were Building Regulations, anyway?

I quickly discovered that they are a series of construction and design standards that "ensure the health and safety of people in or about buildings". They also "promote energy efficiency in buildings and contribute to meeting the needs of disabled people".

Ominously, there was no mention of any consent in the file, but I told myself not to worry. After all, it hadn't been an issue when we bought the house a few years earlier. The extension had been done too long ago for the local building control officer to mind. At least, that's what a friendly neighbour told me and he was an architect. It wouldn't have been an issue when we sold the house, either, had it not been for a court case in 2000, known in the legal world as Cottingham & Cottingham versus Attey Bower & Jones.

Breathe these words to a conveyancing solicitor and they will visibly blanche. By nature, they are a cautious, herd-like lot and when one of their number, Attey Bower & Jones (ABJ), was sued by Peter Lionel Cottingham and Julie Cottingham for allegedly failing to establish Building Regulations consent, it sent shivers through the entire legal profession, not least because they all knew it could easily have happened to them.

Picture: PHILIP HOLLIS

More trouble than it's worth? A routine extension

The Cottinghams, using ABJ as their solicitors, had bought a house in 1993. ABJ had asked the vendors to produce Building Regulations consents relating to renovations and extensions carried out in 1985, but the vendors said they didn't have any copies. The lack of documentation, however, wasn't deemed to be a problem: under Section 36 (2) of the Building Act 1984, no injunction could be served to pull down or remove the work because it had been completed more than 12 months earlier. The purchase duly went ahead.

In 2000, however, the Cottinghams decided to sue for alleged negligence because the work that had been done in 1985 was of such a poor standard that it was starting to fall down. They discovered that Building Regulations consent had, in fact, been refused twice for the work and the Cottinghams argued that they would not have bought the property if they had been told this. They also contended that the property was structurally unsound and was therefore worth considerably less than they had paid for it. Based on the cost of rectifying the alleged defects, they sued for £40,000.

In the event, they were awarded considerably less (£8,203.26, plus £1,346.68 interest, and legal costs), but what worried solicitors everywhere was the judge's conclusion that there had remained a risk of injunction proceedings under another, little-noticed clause, Section 36 (6), of the Building Act, despite more than 12 months having lapsed.

This judgment has since been taken to mean that any local authority can, theoretically, enforce the restoration of a partition wall, say, that had been removed as long as 15 years ago, if Building Regulations consent was not granted. In other words, there is no time limit.

Which is exactly what happened to us. Our purchaser's solicitors insisted that we took out indemnity insurance against the possibility of the local building control officer turning up and pulling our tiny extension down, even though it had been put up 10 years ago.

It was farcical, but what can you do? It's the last thing holding up the exchange of contracts so you pay. Of course you do. In our case, it only cost £80, but it's the principle, more than the money, although it all adds up. (The one-off premium depends on the price of the house: typically, Building Regulations indemnity for a property selling for £250,000-£300,000 costs £100. Be warned, however: if you have already made a direct inquiry to your local authority about consent for your house, and given the address, an insurer will increase the above premium to £260.)

"The trouble is, these things always crop up at the 11th hour and most people just want the problem to go away so they throw money at it," says Sarah Wray, a conveyancing specialist at Horsey Lightly solicitors in Newbury. "You just want to get your family into your new home as quickly as possible."

No one, not us, not the purchaser, not our solicitors, nor even the insurance company really believed that our humble extension was going to be bulldozed, and that's what was so absurd about it all. "We would never just turn up on someone's doorstep and ask about an old extension; there just aren't the resources to do that," one local building control officer with more than 30 years' experience later confirmed to me. "We would only take action if we had been approached directly about a specific property, and then we would probably ask the owner to seek retrospective consent."

But, as I say, in the endgame we punters are almost prepared to do, or pay, anything, so pay up we do.