

Room for development?

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Have you ever considered the development potential that your land or garden may offer? With the increasing demand for housing and the growth of the local population, now could be the time to explore the opportunity to capitalise from your property.

Many property owners are exploring the benefits that their home may offer to extend and create a separate unit or even build a new house in their garden, the profits from which could contribute towards improvements to their existing home, moving up the property ladder, or even their retirement.

If you believe your home offers you this potential, it is essential that you consider a number of areas that may cause potential restriction on your plans.

Building restrictions specific to your property

Your first course of action should be to contact your lawyer to find out whether there are any building restrictions or "covenants" which may prevent you carrying out the development of your property.

For example, some properties are subject to a covenant that specifically stipulates only one "private dwelling" or house will be constructed on that piece of land, or there may be a neighbouring property or properties that benefit from rights over your property which may effectively operate as building restrictions. If part of your property is subject to a right of way it is important to ascertain the extent of that right of way before building close to it. If you impede that right of way the person who has that right can insist that the new construction be removed. In a similar manner, one cannot build over an area where a neighbour has a right to establish drains or other services. Again, if the neighbour has a right in his deeds to access your property in order to maintain his walls or the side of his house the area of your property over which he may exercise such rights cannot be developed or changed so as to deprive him of that

right.

You should also consider local "common law" which imposes an obligation on every property owner to set back any new building constructed on his property at least eighteen inches from a boundary. You may find that this obligation is negated in a property owner's title or deeds by way of a right to build right up to the boundary line without leaving an "offset" or "relief", which is a set distance retained by the owner of that boundary in order to maintain it from the far side.

Furthermore common law dictates that you may not establish any windows or other openings too close to the boundary or the neighbour's and therefore any such windows or openings must be set back at least three feet from the boundary, unless otherwise permitted in your contract.

Your lawyer will be able to advise if any common laws affect your proposed plans.

If your lawyer is involved from the outset they can provide advice as to how to avoid any potentially expensive breaches of these restrictions and laws, how to go about approaches in order to possibly lift such restrictions and how best to split the property if your eventual goal is to sell some or all of it.

Housing conditions

Your property may also be subject to conditions imposed by the Housing Minister in accordance with historical or current housing laws. Conditions might exist regarding the use of and residential classification of the existing property/land and secondly, conditions and classifications may be imposed on any additional dwelling accommodation. Those conditions may only be lifted or amended with the full consent of the Housing Minister. Again, you should refer to your lawyer who will be able to provide further advice if you are unsure how those conditions may affect your plans for development.

Consent from the Planning and Environment Department

In accordance with planning laws, the consent must be obtained from the Planning Minister prior to commencing development of a property.

Home owners thinking of submitting an application for planning consent may now benefit from a pre-application meeting and advice service from the Planning and Environment Department, both of which are free of charge. No guarantee is given that your application will be approved as it will be subject to a formal assessment process, but you will receive guidance and information that will save you time and possible costs if it is considered that your application is inappropriate or requires amendment.

In order to prepare for the meeting, your architect should prepare a full a description of what is

proposed, together with site maps and photographs showing existing buildings, features and environmental factors such as protected trees, a detailed description as to the proposed use of the new building and how it will comply with current policies, together with drawings of proposed plans including access and parking and full details as to the materials to be used.

Taking professional advice

Capitalise on your investment by researching the property market and establishing what impact the new development may have on the existing property. This is where the advice of an experienced estate agent is invaluable to ascertain the financial merits of the project.

Contact your lawyer from the outset and make the most of the expert advice available to you along each step of the way.

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