

Commentary

This is an example of a question that is based on a specific and narrow area within the conveyancing processes, namely the local authority search and enquiries made of the local authority. The question requires a detailed knowledge of the kind of information that might be disclosed in a search result and how that information might be of use to a client in deciding whether or not to purchase a property. In this particular example the points in the question are all there for several good reasons. Each raises an issue that might affect a client and whether or not a property is suitable. The answer must be in the form of a letter of advice and needs to highlight what might be disclosed in the search and should therefore address each point in turn. The client's intentions should be borne in mind at all times, namely the proposed use of the property as bed-sits. Mention should also be made of the seller's limited duty of disclosure even when the sale is by executors. See the case of *Rignall Developments Ltd. v Halil* [1988] Ch. 190.

Remember this assessment could be a test of your writing and drafting skills as well as your knowledge of the conveyancing process. This being so, ensure your letter is well structured, written in plain English, and avoids legal jargon where possible. Plan your answer before starting and make sure you keep to the plan. If necessary adopt numbered paragraphs or headings. Remember good legal writing will come from clear legal thinking. The outcome should be concise, clear and to the point.

Suggested answer

Dear Ms. Christoforou,

Your proposed purchase.

I refer to your recent instructions concerning your proposed purchase of the house in Palmers Green London and write to provide you with the information you require. I particularly note that you intend to use the property for student bed-sits and I will refer to this subsequently.

I can confirm that most, if not all, of the concerns you have can be addressed by a local search sent to the appropriate local authority. The local search is actually a local land charge search together with enquiries of the local authority. Section 3 Local Land Charges Act 1975 requires local authorities, (usually the district, metropolitan, or London Borough council) to maintain a local land charges register. There are various matters capable of registration but, bearing in mind your express concerns, it should be noted that the register will contain details of planning charges. The effect of registration is that a buyer is bound by the registrations whether or not a search is made. Accordingly a search of this kind is an absolute necessity for a prudent buyer. The items capable of registration are limited and as a consequence other important details can be sought from the local authority by means of pre-printed enquiry forms. There are lengthy standard enquiries that question the council about road schemes, outstanding notices, compulsory purchase, and areas designated for slum clearance and planning applications and consents.

Turning to your specific requirements, you are firstly concerned with road widening schemes in view of the fact that the property is on a main road that has been widened a few miles further on. Question 3.4 that the council must answer specifically asks if there are any such schemes that may affect the property. Clearly if there are, then details must be sought before any decision is made to exchange contracts. Apart from road widening, question 3.4 also discloses new road schemes as well that might similarly affect the property concerned.

You say you would like to use the basement for bed-sits although it is at present boarded up. Indeed your intention is to change the use of the whole of the property from a single dwelling house in the occupation of one family to multiple occupation in the form of bed-sits. Two points arise, first can you use the house in this way and, secondly can you use the basement? I am of the view that your proposed use would be a material change of use for planning purposes and without any consent authorising the change to multiple occupation would be a breach of planning law. However the local authority search and enquiries would, from the answers to questions 1.1 and 1.2, reveal planning applications and consents and, if there was a consent for the property to be used in this way then there is no difficulty. Otherwise you will need to make a planning application and you will have to decide whether or not you will want to exchange whilst awaiting the outcome of the application. The risk is of course that your application is unsuccessful notwithstanding that you may well have already exchanged. As to the basement there is a possibility that due to its condition that the council have made a closing order declaring the area to be unfit for human habitation. The council search and enquiries will reveal whether or not this is the case. If it is then you may well want to renegotiate the price or withdraw from the transaction altogether.

You have mentioned that nearby the council have demolished houses to make way for a new area of council houses and you are clearly concerned to ensure that your proposed property is not similarly affected. Question 3.12 asks if the property is subject to a compulsory purchase order and orders will be registered as a land charge. Accordingly a local search result will indicate if a property is, or is likely to be, the subject of compulsory acquisition by the council and, if this is the case then of course my advice would have to be that you should not proceed.

Finally you have mentioned that there are similar houses nearby that the council are keen to preserve and you have also mentioned the fact that you are considering making some external alterations by way of double-glazing. I have taken these two items together because in fact they are inter-related so far as my advice and the council search are concerned. If councils want to preserve a neighbourhood they can do so by declaring a conservation area. If the property is so affected this will be seen as a land charge being a restriction on the use of the land and will be disclosed in the local land charge search result. Indeed if the property is covered by a conservation order then there are severe restrictions placed on an owner which include a prohibition on external alterations such as new windows. Accordingly if the property is in a conservation area you will need to enquire of the council to see if they would allow new aluminium windows, otherwise you would be in breach of planning law if you went ahead with the changes without council consent.

I know you do not think that the sellers will provide much information because they are mere executors. However I can tell you that notwithstanding their capacity the sellers are

still obliged to disclose a local land charge if they are aware of it. So if the executors have become aware of a local land charge from the deceased's papers then they will be obliged to provide details failing which you may be entitled to damages or rescission.

To conclude, I am of the view that your concerns will be addressed by the result of a local land charge search and the council's replies to enquiries. I therefore suggest that the search be sent to the local authority as a matter of priority and that I will then let you know the result that should be available two to three weeks from the date of dispatch.

Yours sincerely

Trainee Solicitor