TOPIC 15

Other factors that affect the lending decision

LEARNING OBJECTIVES

We looked in Topic 13 at what can affect a property's value, and in Topic 14 at the ways in which a lender and borrower can be satisfied that the property is adequate security for the loan sought. It is also important to be aware of other factors that could affect the lender's decision to lend, including planning consent, building regulations, listed building consent, and environmental issues. We explore these in this topic, and also investigate the costs that a borrower incurs when buying a property.

By the end of this topic you should have an understanding of:

- planning consent;
- building regulations;
- listed building consent;
- environmental issues;
- renewable energy generation;
- fees and charges involved in property purchase.

THINK . . .

Before you start work on this topic, take a moment to think about what you already know about the issues we are going to cover. We looked at the kind of searches that are carried out at conveyancing stage in Topic 7, and in Topic 14 we covered the different types of survey that can be carried out. In this topic we are exploring the costs involved in such work.

If you have been involved in buying a property or carrying out repairs and renovations, you might also know:

- when you need to get planning consent for such work;
- about the need to comply with building regulations.

You might also have explored the implications of installing solar panels, or setting up a wind turbine to generate electricity.

15.1 What is planning consent?

When a property is built or extended, or the owner wishes to undertake other building work on a property, they may be required to seek planning consent (often referred to as planning permission) or follow specific building regulations. Failure to do so could result in a compulsory order to reinstate the property to its original state; planning consent is rarely given retrospectively.

In terms of property values, failure to obtain the necessary consents will seriously devalue the property and is likely to result in lenders choosing not to lend.

Regulations were introduced to simplify and speed up the planning process. Known as 'permitted development', they allow certain development and changes of use to be carried out without the need for planning consent.

Permitted development rights are subject to conditions and limitations on size, scope and type to control the impact of the work on the local environment. Some permitted development rights (such as two-storey extensions) are excluded in areas of 'designated land'.

DESIGNATED LAND

Areas such as conservation areas, areas of outstanding natural beauty, national parks and World Heritage sites.

An owner can build an extension, conservatory or addition to a home without planning consent if it meets one of a number of conditions, including the following:

- The addition and previous additions, including outbuildings, do not cover more than half the area of land around the original house.
- The extension is within certain height and depth limits:
  - the front or side of the property will not be closer to a highway than before;
  - no part will be higher than the highest part of the existing roof;
  - two-storey extensions are no closer than 7m to a rear boundary;

— the depth of a two-storey extension is no more than 3m from the rear wall of the original house.

- Building materials match the existing building.
- Converting a garage internally does not add to the size of the building.
- A loft extension does not exceed $50m^3$ (detached house) or $40m^3$ (any other home).
- Erecting aerials or satellite dishes is permitted.
- A single-storey extension can project from the rear wall of the original house wall by up to 8m on a detached property and 6m on other property. Such work is subject to the neighbour consultation scheme, which requires owners to notify the local authority which, in turn, consults the adjoining neighbours. The local authority considers any issues raised before allowing the development to go ahead.

ORIGINAL HOUSE

The house as it was originally built or as it stood on 1 July 1948 (if built earlier).

The neighbour consultation scheme fast-tracks the process for non-controversial projects while protecting the reasonable interests of neighbours.

FIGURE 15.1 WHAT SORT OF WORK STILL REQUIRES PLANNING CONSENT?

It would be a serious problem if planning consent had not been granted on work on a property that was subject to a mortgage, as the local authority is unlikely to accept the work and may force the borrower to change the property back to its original condition. To make matters worse, if the borrower defaults in the meantime, the lender can be left with a property that is not saleable because it does not comply with planning laws and is subject to an enforcement order. This can result in heavy expenditure by the lender, which it may not be able to recoup from the borrower.

Unfortunately, the failure of a previous owner to gain planning consent or satisfy building regulations will not prevent the new owner from suffering the consequences. Where building work has been carried out on a property, lenders will usually ask for evidence of planning consent (or confirmation that permission was not required), before agreeing to lend.

IN BRIEF

HOW TO APPLY FOR PLANNING CONSENT

- Contact the local authority/council planning department and tell them the plan in outline.
- If they think planning consent might be needed, complete an application form.
- Submit an outline plan (known as a 'pre-application') or a detailed plan: an outline plan saves money and will enable the council to give an idea of acceptability; detailed plans are more costly. Although many local authorities now charge to consider a pre-application, it is still cheaper than producing full plans for initial discussions.
- The application is placed on the application register for public inspection. Notices will be posted on or near the site to inform neighbours.
- The planning committee makes the decision.

15.2 What are building regulations?

Building regulations relate to the structure of the development and the materials used. They are designed to set standards for the design and construction of buildings to:

- ensure the health and safety of people in or around the buildings; and
- maximise energy conservation.

The regulations are separate from planning consent, and so work may not require planning consent but will still be subject to building regulations.

The local authority has enforcement powers where the regulations are contravened, and has a general duty to enforce the building regulations in its area. The building control service can be provided by an approved inspector or the local authority.

Table 15.1 provides examples of the types of work that would be subject to or exempt from building regulations.

TABLE 15.1 WHAT BUILDING WORK IS COVERED BY AND EXEMPT FROM THE REGULATIONS?

Building work covered by the regulations	Building work exempt from the regulations*
▪ The erection of a new building ▪ The extension of an existing building ▪ Cavity wall insulation ▪ Adding or removing internal walls ▪ Loft conversion ▪ The underpinning of a building's foundations	▪ A carport extension, open on at least two sides and under 30 square metres in floor area ▪ A detached garage under 30 square metres in floor area and built at least one metre from the boundary of the property ▪ A new garden or boundary wall

*Exemptions listed above may not apply to listed buildings or those in conservation areas.

Air leakage (also called air tightness, air permeability or air pressure) tests must be carried out on a sample of new homes on all developments to ensure they meet the energy efficiency standards for new homes under Part L of the building regulations.

15.3 What is a listed building?

Listed buildings are properties that are of significant architectural or historical value. They are subject to restrictions on changes to the fabric of the building. This means that permission must be sought when changes are planned. This can affect the value of a property in two ways.

- The limitations placed on listed buildings mean that a new buyer may not be able to make changes to the exterior, or even the interior. Any 'material changes' to the fabric of the building, such as moving a kitchen or removing internal walls to change the character of the interior, will require consent. While this might preserve the heritage of the building and the area, it can be restrictive, and prospective buyers who see potential in a property may be put off by the requirements. Repairs may also be expensive, in that they have to be carried out according to strict rules and often have to use expensive original materials.
- If a listed building has been changed during a previous ownership, the potential buyer must ensure that any work carried out in the past has been the subject of relevant consent. If this is not the case, the property may need to be reinstated or the work carried out again, on the same basis that applies to planning consent.

Listed building consent is required where the owner wants to demolish a listed building or change or extend it in a way that will affect its character as a building of special architectural or historical interest. The procedure is similar to obtaining planning consent. The listing applies to the building and anything attached to it, and any buildings in its grounds. Some of the requirements may be very detailed.

Ultimate responsibility for listing buildings lies with the relevant government minister, although applications for listed building consent are made to the local authority. The local authority may consult with one of a number of government agencies in certain situations, usually where a change is proposed to a Grade I or Grade II* building (or the equivalent). The agencies are:

- England – Historic England;
- Wales – CADW;
- Scotland – Historic Environment Scotland;
- Northern Ireland – The Northern Ireland Environment Agency.

FIGURE 15.2 WHAT ARE THE CATEGORIES OF LISTED BUILDING IN ENGLAND AND WALES?

Grade I	• Buildings of exceptional interest • Represent 2.5% of all listed buildings
Grade II*	• Buildings of particular importance • Represent 5.5% of all listed buildings
Grade II	• Buildings of special interest • Represent 92% of all listed buildings

Scotland – listed buildings fall into three categories: A, B and C, broadly equivalent to I, II* and II in England.

Northern Ireland – listed building categories are A, B+, B, B1 and B2.

Conservation areas are areas (rather than individual buildings) of architectural or historical significance. Local authorities, bodies such as Historic England, and the Secretary of State for Communities and Local Government all have varying powers to designate or influence the designation of conservation areas. Owners of properties in such areas may have to seek permission to carry out alterations, and will need permission to demolish the property. They may also need permission to prune or cut down trees in the designated area (note that trees with historical significance in any area may be subject to

'tree preservation orders', which means they cannot be cut or pruned without local authority consent). As with listed buildings, prospective purchasers of property in conservation areas need to be aware of any potential issues and restrictions before going ahead.

15.4 What environmental factors may cause concern?

Increasingly, the environment in which a property is located has a major effect on its desirability and, therefore, its value. There have been two comparatively recent developments that have had a serious effect on owners of certain houses.

- **Radon gas** is radioactive and is present in high concentrations in certain parts of the UK. It is believed to be highly carcinogenic and tends to work its way through cracks and cavities. To remove its effects, the owner of the property must install fans and pipes in the property to blow the gas around the house and into the atmosphere. Where practicable, particularly in new houses and extensions, a radon barrier could be laid on the floor before final screed. Similar material and cavity trays can be used to act as cavity barriers.

- **Contaminated land**: some buildings are built on land previously used for industrial purposes, leaving contaminates in the earth. Properties built on such land may be seen as posing risks to occupiers' health. Possible contamination is a consideration in property transactions based on the Environmental Protection Act 1990, and it can affect valuation due to negative perception. Many conveyancers carry out environmental searches to identify potential contamination.

- **Overhead electrical power lines** are also thought by some to cause cancer, though there is little conclusive evidence. The controversy is sufficient to make some lenders reluctant to accept mortgage business on properties with cables above them or where an electricity substation is in the vicinity.

Road-widening and infrastructure schemes are both common and controversial. In the early 1990s, some householders in Luton had a portion of their gardens compulsorily purchased in order for the M1 motorway to be widened. The compensation offered was at then-current values that were lower than had been the case only two years earlier due to the property slump. Lending institutions must be aware of such developments and their likely effects on neighbourhoods.

Another, more recent, example is the proposed High Speed railway project (HS2), planned to run from London to link eight of Britain's ten largest cities. The project required the ongoing compulsory purchase of land and buildings close to the route, and those whose property value will be affected by the line may be able to sell their property to the government at market value. However, many owners are concerned that their properties will reduce in value but not

qualify for compensation as they are not considered to be close enough to the line.

15.4.1 Geology

In addition to the above, surveyors will take into account the geology of the land: homes built on 'London clay', for example, can be prone to slippage and subsidence, as described in section 14.6.

Subsidence can also be caused by mining works, and has occurred in many of the UK's mining areas. The Coal Mining Subsidence Act 1991 sets out a framework for owners of damaged property to be able to claim for repairs or compensation. It is the responsibility of the mine owner to put right (or pay for putting right) any problems or pay compensation if repairs are not possible or not practical.

Although subsidence can usually be rectified, it may be that a property with a history of subsidence cannot be insured and will not be considered suitable security for a mortgage. Any evidence of past or present subsidence will be highlighted by a basic valuation but the valuer is likely to recommend that a specialist report be obtained before the mortgage application is approved and an offer of advance issued. Even if such a property is insurable as a result of past subsidence having been remedied, the proposed purchaser may well decide to withdraw and look for another 'safer' property.

Other environmental factors include proximity to flood plains, busy roads, mobile phone masts and substations. These factors are unlikely to affect the lending decision. However, they may affect the future marketability of the property and, therefore, the value of the lender's security.

15.5 How does renewable energy generation affect the sale of a property?

Various government initiatives aimed at reducing the UK's emissions and generally improving the environment have allowed homeowners to benefit from excess energy generated from the use of technology, such as solar panels and wind turbines, which is exported to the national grid. The feed-in tariff (FIT) scheme, which ended for new applicants in March 2019, was replaced by the Smart Export Guarantee (SEG). Both schemes pay homeowners for excess energy exported to the national grid.

The Energy Saving Trust has estimated the approximate savings available to owners of a typical property. The amount varies depending on geographical location and the amount of time the property is occupied.

While solar panels offer potential energy cost savings over the longer term, there could still be potential issues:

- The installations can be intrusive and may reduce the 'kerb appeal' of the property for prospective owners.
- Maintenance and repairs are the responsibility of the owner. Solar panels can put additional strain on the roof structure so this needs to be checked regularly.
- While there are immediate savings on energy costs, it will typically take between nine and ten years to recoup the cost of the panels.

A few companies offered 'rent-a-roof' schemes, where they lease the property's roof for a period of 20–25 years in return for installing solar panels on it. The company pays for installation and ongoing maintenance of the panels. There are a number of ways the schemes work, but a typical scheme would allow the homeowner to use any electricity generated for free (or in some cases at a significantly discounted rate), with any excess exported to the National Grid. The company would receive all the income from the electricity generated, which is how it makes its profit.

Although initially viable for the provider, potential profit has reduced (if not disappeared completely) due to reductions in government tariffs, the closure of the Feed-in Tariff scheme in 2019, and the lower cost of buying panels independently. Because of this, increasingly fewer companies are offering a rent-a-roof scheme.

Owners with such an arrangement save the cost of buying and installing the equipment and benefit from free electricity, but there are a number of issues to consider:

- The company will have a legal lease to use the roof for 20–25 years. The lease stays with the property, which means that if the owner sells the property the new owner will be obliged to continue with the arrangement until the end of the lease (unless the company agrees to terminate the lease, which is unlikely).
- Under the terms of the arrangement, the owner is likely to need the company's permission to make any alterations to the property that could affect the roof or the panels, such as a loft conversion. There may also be a clause that requires the company's permission to sell the property.
- If the owner needs to carry out repairs or work that requires the panels to be removed for a period, the company is likely to be entitled to compensation for lost income.
- Although most mortgage lenders will consider mortgages on a property with a rent-a-roof lease, additional work will be required to check the arrangement and grant approval.
- A minority of lenders may not be prepared to offer mortgages on properties with rent-a-roof agreements, because such agreements could be perceived

as likely to reduce the number of potential buyers and so affect the security offered.

15.6 What issues arise in relation to agricultural holdings?

Agricultural properties bring with them some special issues for consideration. Not only is farming a far from trouble-free industry, but there is specific legislation that may mean expert advice should be taken. The Agricultural Holdings Act 1948 gave tenants of agricultural land a high degree of security of tenure (ie they could be very hard, if not impossible, to evict). Further, where there was evidence of poor land management, the Act allowed land to be taken out of the owner's control under a supervision order. Subsequent legislation updated the situation to an extent, but loans against the security of farmland and other agricultural land should still be approached with care, and advice should be taken where necessary.

As a consequence of the difficulties and uncertainty that this legislation presents to lenders, in terms of their ability to exercise their security promptly and effectively, some do not lend against land classed as agricultural land at all. Even the question of what is classified as 'agricultural land' for the purposes of the Act can demand fairly fine detail regarding the use of the land. Applicants for a mortgage on this type of property may need to seek out lenders with expertise who are comfortable lending on such security.

15.7 What additional security might a lender require?

WHAT IS LOAN TO VALUE?

The mortgage as a proportion of the property value is known as the loan-to-value (LTV) ratio. For example, if a house is valued at £200,000 and the mortgage is £160,000, the LTV would be 80 per cent. The LTV is based on the property valuation rather than the purchase price.

We looked in section 11.2 at the role of guarantors where the lender requires additional security due to the status of the borrower. Lenders are conservative in their underwriting, and need to make sure that, if the borrower defaulted on their mortgage and the lender took possession to sell the property, the sale proceeds would comfortably cover the mortgage and additional costs. Most lenders do this by setting a maximum LTV threshold they would consider without some additional security – typically between 75 and 80 per cent LTV, although some lenders set a higher LTV threshold and some do not ask for additional security.

WHAT HAPPENS IF BORROWERS REQUIRE A HIGHER LTV THAN THE LENDER'S THRESHOLD?

Lenders will generally consider a higher LTV, providing the borrower pays for additional security. This additional requirement is not due to concerns about the borrower's financial position but is related to the security offered by the property. So, even if the borrower can comfortably afford the mortgage repayments, further security may be required if the mortgage exceeds 75–80 per cent LTV.

15.7.1 Higher lending charges

Where the LTV exceeds a certain level, the lender may charge a higher lending charge via a single payment that in many cases can be added to the loan.

HIGHER LENDING CHARGES

A mortgage applicant is hoping to borrow £144,000 to purchase a property priced at £168,000 but valued at £160,000. The lender requires a higher lending charge if the LTV exceeds 80 per cent.

The higher lending charge threshold is:

£160,000 x 80% = £128,000

The amount of the advance to be covered by the charge is therefore:

£144,000 – £128,000 = £16,000

If the higher lending charge rate is 4.5%, the premium will be:

£16,000 x 4.5% = £720

Some lenders take the higher lending charge as a way of offsetting the potential risk. However, although the lender is required under MCOB rules to explain the charge as a 'higher lending charge', it may use the charge to buy a mortgage indemnity guarantee (MIG) policy.

A MIG is an insurance policy that protects the lender if the borrower defaults on the mortgage and the sale of the property does not provide enough money to repay the mortgage. It will pay the lender the difference between the sale price and the outstanding mortgage, less an excess (usually 20 per cent of the amount claimed).

Although the premium is paid by the borrower, the mortgage indemnity guarantee does not actually benefit them, except in the sense that, without it, they would not be able to borrow such a large amount. The MIG contract is between the lender and the insurer. The charge is not refundable if the borrower moves or pays off the mortgage, and cannot be taken to another property or mortgage.

A MIG insurer is entitled to exercise its right of subrogation within six years of settling the claim (five years in Scotland). In simple terms, subrogation is the process by which one 'person' can stand in the place of another who has suffered damage, loss or injury. In a mortgage context, subrogation is the process by which the insurer can sue the borrower for recovery of the amount paid to the lender (the 'insured person'). The insurer is able to insist that the lender exercises prudent underwriting methods and can refuse a claim if not satisfied that that was the case.

If the lender makes a claim on a MIG policy, an excess will be deducted from the insurance payment. The lender has the right to claim the excess from the borrower, as long as they inform the borrower of the intention to do so within six years of the property being sold (five years in Scotland). Such a claim would be made in the lender's own right, so would not be made through subrogation.

WHAT IS SUBROGATION?

Subrogation is the right of an insurer to pursue a third party that caused an insurance loss to the insured person. For example, if a person has a car accident caused by another driver, their insurer will meet their claim and then claim the amount it paid out from the person who caused the accident (or that person's insurer).

How does this work in relation to mortgage lending?

If a lender sells a repossessed property for £120,000 but the total owed by the former borrower is £130,000, the claim made by the lender on any MIG would be for £10,000, less the £2,000 excess (ie 20 per cent of the claim).

The insurer will probably sue the borrower under its right of subrogation for the £8,000 that it has paid to the lender. The lender could also sue the former borrower (not through the right of subrogation) for the £2,000 excess, which is the loss it has suffered.

15.8 What professional fees might a buyer incur?

As we have seen, buying a house involves the payment of fees for the services of experts. The next section looks at the typical fees involved and whether they are refundable if the purchase fails to complete.

15.8.1 Estate agents

Estate agent fees are paid by the vendor once the sale has been completed and can vary between 1 and 3.5 per cent of the sale price, depending on whether the agent has sole selling rights or joint/multiple agency. Some agents charge a fixed fee, unrelated to the sale price. Most agents have a no sale, no fee agreement.

The development of online estate agents offering lower and often fixed fees has led to more competitive fees from high street agents. Fees tend to increase during buoyant markets and decrease slightly in poor markets.

15.8.2 Mortgage fees

FIGURE 15.3 WHAT MORTGAGE FEES MAY BE PAYABLE?

Product fee

- Payable when the borrower wishes to take advantage of a special deal – eg a fixed-rate mortgage
- May be a flat rate or a percentage of the mortgage, and may be refundable if the mortgage does not go ahead due to circumstances beyond the reasonable control of borrower or lender
- Can usually be added to the loan if required

Application fee

- Charged by some lenders on some or all of their mortgages to cover assessing and processing the application
- The fee can be as low as £50 and as high as £2,000 or more. In many cases, the arrangement fee includes a basic property valuation

Higher lending charge

- Where the LTV exceeds a certain level (see section 15.7.1)

Lender's reference fee

- Typically around £50 may be charged by an existing lender to supply the new lender with a reference in relation to the conduct of the existing account
- They are less common now because online central databases contain information about mortgage accounts

Adviser fee

- May be charged by an intermediary (broker) to arrange the mortgage
- Must be stated clearly in the intermediary's initial disclosure information
- Most commonly a fixed charge, although some intermediaries charge a small percentage of the mortgage advance, especially for non-standard cases
- In addition, the intermediary may receive a procuration (finder's) fee from the lender; advisers employed by the lender are not required to disclose this information

Mortgage packager fees

- Mortgage packagers (see Topic 1) charge fees ranging from a percentage of the mortgage to a flat fee of £300 upwards

MORTGAGE EXIT FEES

MCOB rules require the lender to state the amount of any fees to be paid on redemption of the mortgage, although it is acceptable for the lender to state the current fee (ie it may change over the life of the mortgage). The FCA's guidance for lenders is based on principles of fairness outlined in the Consumer Rights Act 2015.

The FCA considers the following to be acceptable components of the lender's costs of redeeming a mortgage:

- deed release fees;
- Land Registry charges;
- staff processing cost;
- a reasonable proportion of general overheads.

Where a borrower considers a mortgage exit fee to be unfair, they have the right to refer the case to the Financial Ombudsman Service, where the case will be considered on the basis of fairness.

An increase in a mortgage exit fee from the amount originally stated is likely to be reasonable if the contract contains a valid reason for an increase. The most likely valid reason would be increases in the lender's administration costs between the start of the contract and redemption. Any increases must represent the true increase in the lender's costs, and the right to vary the costs should be explained clearly in the contract.

15.8.3 Valuation and surveys

We looked at the different types of valuation and survey available and the likely costs of each in Topic 14.

15.8.4 Legal fees

The solicitor or conveyancer will charge a fee to cover the legal work carried out during the purchase process; it is payable on completion of the purchase. If the sale does not complete, some solicitors will reduce their charge, particularly if they are asked to carry out another purchase. Many solicitors now charge a flat fee, regardless of the property value.

In addition to the conveyancing fees, there are a number of additional fees and disbursements incurred by the conveyancer, as shown in Table 15.2.

TABLE 15.2 WHAT TYPICAL ACTIVITIES GENERATE CHARGES?

Activity	Description
Local authority searches	Before exchange of contract and not refundable once completed. The Local Land Charges Registry (LLC1) searches identify any obligations or restrictions attaching to the property. A CON29 search identifies plans for new roads and developments that may affect the property, planning or building regulation breaches and compulsory purchase orders.
Land Registry search	Pre-exchange and not refundable once completed. The fees are charged per register and depend on whether the search is conducted online, by post or in person, with online searches being less costly. Unregistered property may require a search of more than one register.
Environmental searches	Pre-exchange and not refundable once completed. They check for a history of flooding, mining subsidence, radon gas and so on.
Drainage search	Searches the water authority's records to check whether the property is connected to mains drainage and water supply, and if so the location of sewers and drainage pipes. Fees are not refundable once the search is completed.
Bankruptcy searches	Pre-exchange and not refundable once completed. These are carried out to ensure that the buyer is not an undischarged bankrupt. A bankruptcy search may also be conducted on the vendor if there is suspicion that they may not be entitled to receive the proceeds due to bankruptcy.

Land Registration fees	Payable to the Land Registry after completion of the sale to register the property in the new owner's name. The fees range from £40 for a property sold for £80,000 or less, to £910 for a property sold for more than £1m where application is made by post. Fees are reduced by 50 per cent when using the government online portal. The fee varies from £40 to £250 where a new mortgage is registered on a property but ownership does not change.
Indemnity fees	Title indemnity is required where the title cannot be fully guaranteed. The fee is typically 0.10 per cent of the property value, paid before completion. The policies can be arranged to protect only the lender, or the lender, the borrower and any subsequent purchasers. It is also possible to arrange indemnity insurance to protect the buyer against other potential problems. This might be appropriate in cases where an extension has been built and no evidence of planning consent is available. Indemnity insurance would cover the buyer against financial losses caused by retrospective local authority action, but not in relation to the quality of construction.

15.9 Property transaction taxes

Property transaction taxes are levied on the physical transfer of the property (or a lease) from the vendor to the purchaser.

The tax is applied progressively on each band of the property's value. As a result of devolution, the governments of Scotland and Wales have certain tax setting powers. Both governments have used these powers to introduce their own forms of property transaction tax – Land and Buildings Transaction Tax in Scotland and Land Transaction Tax in Wales. These are covered in sections 15.9.4–5.

15.9.1 Stamp duty land tax (England and Northern Ireland)

Stamp duty land tax (SDLT) applied throughout the UK until 2015, when the Scottish government replaced it in Scotland with Land and Buildings Transaction Tax (LBTT). The Welsh government replaced it from 1 April 2018 with Land Transaction Tax (LTT). SDLT now applies only to England and Northern Ireland.

Since 1 April 2021, non-UK residents purchasing property in England and Northern Ireland are subject to an SDLT surcharge.

For certain 'non-natural persons', such as corporate bodies, SDLT is charged at a higher rate where the price is more than £500,000. This may be reduced by the application of a number of reliefs available in certain situations.

SDLT is payable by the purchaser through their solicitor within 14 days of completion. Some general exemptions apply, including where:

- the purchase price of a freehold property is less than £40,000;
- the transfer does not involve a payment (eg as a gift);
- the property is inherited from a deceased person's estate.

Leasehold property

When someone buys a leasehold property, they buy the lease for a premium from the current owner and must also pay ground rent to the freeholder. If the property is subject to an existing lease, the SDLT is calculated on the premium in the same way as on the purchase price for a freehold property. SDLT is not payable on the ground rent.

When the lease is new (such as for a new-build flat), the premium may be subject to SDLT depending on the premium amount. If the ground rent is more than nominal, SDLT may be payable on the lease as well.

The value of the rent is the net present value, which is the total amount of rent payable over the term of the lease as calculated using a prescribed formula. Where annual rent is high enough to exceed the SDLT threshold, there could be SDLT to pay on the rent as well as on the premium. However, no SDLT will be payable on the rent if the buyer qualifies for the first-time buyer exemption.

First-time buyer exemption

There is a first-time buyer SDLT exemption:

- First-time buyers are exempt from SDLT on residential properties valued at £425,000 or lower.
- On residential properties valued between £425,000 and £625,000, first-time buyers are exempt from SDLT on the first £425,000 and pay SDLT at the normal rate(s) on the balance.
- The first-time buyer exemption does not apply to residential properties with a purchase price exceeding £625,000.

In order to qualify for the first-time buyer exemption, the buyer and property must meet certain criteria as follows.

- **First-time buyer** – a buyer who does not own or has not previously owned, anywhere in the world, a major interest in a dwelling* or an equivalent interest in land. A 'major' interest means that they are the person for whom the property is intended to be of benefit. So, a trustee would be named

as the legal owner of property bought to provide a home for the absolute beneficiary of the trust but, as they are not the person intended to benefit, they would not be deemed to have a major interest. Conversely, although the trust beneficiary would not be the legal owner, they would have a major interest because they are the person intended to benefit from the property.

Ownership of non-residential or mixed-use property does not count as long as it does not include a dwelling.

*If the buyer owned a property, but on a lease with less than 21 years to run, they would still be deemed a first-time buyer and would be eligible for the exemption.

- **Joint buyers** – in order to benefit from the first-time buyer exemption, both joint owners must meet the definition of a first-time buyer. This means that if one of the joint owners owns, or previously owned, property then the exemption will not apply.
- **Main residence** – to benefit from the exemption, the buyer must intend to occupy the property as their only or main residence. There is no requirement for the buyer to occupy the dwelling immediately after purchase, but there must be a clear intention to occupy it as a main residence in the future. This allows for circumstances where it is not possible or practical for the buyer to move in immediately.
- **Definition of dwelling** – in simple terms, a dwelling is a building, or part of a building, where people will live or a building where they will be able to live once adaptation or construction has been carried out. The exemption applies only to the purchase of a single dwelling. For example, if a house has a self-contained 'granny annexe' where the annexe has separate access and facilities enabling the occupier to live independently from those in the main house, the building would count as two dwellings and the exemption would not apply.
- **Shared ownership** – if the buyer is purchasing a property on a shared ownership scheme, the first-time buyer exemption is available. The buyer can choose to apply SDLT to the market value of the property or to the share purchased.

  However, if the market value exceeds £425,000 and the buyer opts to pay SDLT only on the share purchased, there could be SDLT when further shares in the house are purchased.

SDLT: EXAMPLES

As SDLT rates can change in an annual Budget, the following scenarios use example rates.

Carrie buys a flat for £300,000. Assume the nil-rate threshold is £250,000 and the band from £250,000 to £925,000 attracts 5% SDLT. She pays:

Purchase price	Rate	Amount
First £250,000	Nil	Nil
£250,001–£300,000	5%	£2,500
Total		£2,500

If Carrie was a first-time buyer she could claim the first-time buyer exemption and would not pay SDLT.

Alan and Adrian buy a house for £1m. Assume the band from £250,001 to £925,000 attracts 5% SDLT, and the band from £925,001 to £1.5m attracts 10% SDLT. They would pay:

Purchase price	Rate	Amount
First £250,000	Nil	Nil
£250,001–£925,000	5%	£33,750
£925,001–£1m	10%	£7,500
Total SDLT		£41,250

15.9.2 Buy-to-let property and second homes

Buy-to-let and second home purchases for £40,000 or more are subject to an additional 3 per cent SDLT over and above the standard rate applying to the purchase price, including any nil-rate band. The surcharge applies if the purchaser of a property owns a major interest in a property and then buys another property that is not to replace their existing main residence. A major interest is where the individual owns, or jointly owns another residential property anywhere in the world, and their share is worth more than £40,000.

EXAMPLE: MAJOR INTEREST THRESHOLD

If a married couple own a flat worth £75,000 on a joint basis, they would each be deemed to have an interest worth £37,500. As this is below the £40,000 threshold, neither would be required to pay the surcharge when buying another property.

The rules are complex, so we will consider just the main points. For the sake of simplicity, we will call the second purchase the 'new property'.

- The surcharge will not apply if the new property is purchased to replace the buyer's main residence. This means that if the individual already owns the family home and a holiday home, they can sell or gift the family home and buy a new one with the intention that it will be their new home. This would not incur the surcharge, even though they would own two properties.
- The surcharge applies if no other person has a lease on the new property that has more than 21 years to run.
- The surcharge applies if the chargeable consideration (price paid) for the new property is £40,000 or more. The £40,000 threshold applies to the total consideration rather than each joint owner.

General

Investors are required to declare that the property will not be used as their main residence – effectively they are required to 'opt in' to the SDLT surcharge. In the case of joint borrowers, the surcharge applies if just one of the buyers owns another property. If a home-owning parent agrees to help their child to buy a home, and as part of the agreement is registered as joint owner, the surcharge will apply, because the parent already owns their home. The surcharge also applies where someone owns a property abroad, even for holiday use, and buys a property in the UK for the first time.

It is also important to understand that, from an SDLT perspective, HMRC considers married couples and civil partners to be one 'unit' for property ownership. This means that as long as they are living together, property owned in the sole name of one partner will be regarded as being jointly-owned for the purposes of SDLT. So, if the property is registered in the sole name of the husband and the wife decides to buy her own property, her purchase will be subject to the second home surcharge, even though it is her only property. Living together is defined as married or in a civil partnership, and not divorced or legally separated.

There are special rules for two situations where someone might buy a second home:

- If the disposal of the existing main residence takes place before the land transaction return for the new residence is due, no additional SDLT will be due. If the individual(s) buy(s) a property intended for use as their main residence before selling their existing home, they can claim a refund of SDLT if they dispose of their original property within 36 months of buying the new home.
- If they sell their main home, keep an existing buy-to-let property, and then buy a new main home, no SDLT surcharge will be payable if they buy the new family home within 36 months.

There is what may be seen as an anomaly regarding SDLT. If two people buy a property together and one of them already owns a property, the purchase will be subject to the 3 per cent surcharge. This applies even if one of the buyers is a first-time buyer. There are two particular situations where it appears to have unintended consequences.

- A parent wishes to help their son or daughter to buy their first property but wants to be registered as an owner, either to give them some security over the property or to obtain a mortgage that the child could not otherwise afford. This would result in loss of the first-time exemption and the surcharge. Some lenders offer a joint borrower, sole proprietor mortgage, where a parent or relative is a joint borrower as a way to provide security, but the property is registered in the single name of the person they are helping. As the 'helper' is not registered as a legal owner, their situation is not taken into account for either the first-time buyer exemption or the second property SDLT surcharge.
- Two people who each own property decide to move in together, buy a joint property and one or both parties decide to keep their original property. This could be as an investment, as security in case the relationship breaks down or simply because they cannot sell. On purchase, the surcharge would apply. It may be possible to claim a refund if the original property is sold within 36 months, although this will not help to alleviate the initial expense.

Married couples and civil partners

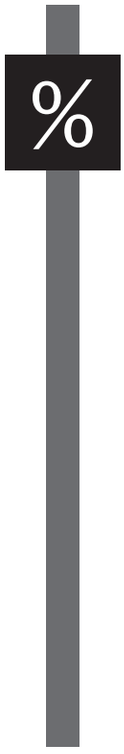
We looked at the position for 'normal' situations regarding married couples and civil partners. There are certain circumstances in which the surcharge will not apply.

- If a court orders, as part of a divorce settlement, that one party may remain in the former marital home until a specified event, such as remarriage or sale, but both parties can remain as joint owners. The surcharge will not apply if the person who left the property buys another main residence.

- In circumstances where a separation is likely to be permanent, SDLT will not be payable if one party buys a new home before the family home has been sold or transferred. This 'relief' is not automatic, and each case is considered in light of the circumstances, but there must either be a Court Order, a separation agreement or a permanent desire to separate.
- In situations where a spouse or civil partner transfers or sells their interest in a property to their spouse/civil partner, as long as there is only one buyer and seller, and they are married and living together on the date of the transfer.

15.9.3 Multiple property purchase

If the purchaser buys more than one residential property from the same vendor at the same time in a single transaction, or as part of a series of linked transactions, the amount of SDLT chargeable will be determined by the average value of each property.



EXAMPLE – SDLT ON MULTIPLE PROPERTY PURCHASES

If an investor bought four properties at a total cost of £1.2m, SDLT would be charged as if each property was sold for £300,000, and then the result multiplied by the total number of properties. The SDLT is the result of that calculation or 1 per cent of the combined purchase price, whichever is higher.

Assume the first £250,000 would normally be subject to a nil rate of SDLT and the excess up to £925,000 would be subject to 5 per cent SDLT. Assuming the buyer already owned their own home, the purchases would be subject to the 'second home' surcharge of 3 per cent. An average purchase price of £300,000 would result in SDLT of:

£250,000 @ 3% = £7,500 (surcharge applies)

£50,000 @ 8% = £4,000 (surcharge applies)

Total for each property: £11,500

£11,500 x 4 = £46,000 total bill for the four properties.

If the purchase is for six or more properties, the buyer can opt to apply commercial property SDLT rates to the total value of the purchases but cannot use multiple property relief as well.

15.9.4 Land and Buildings Transaction Tax (LBTT)

In Scotland, LBTT replaced SDLT from 1 April 2015, reflecting the Scottish Parliament's right to establish certain tax legislation. Although essentially the same as SDLT in how it works as a progressive tax, the rates and thresholds for LBTT are different. LBTT is collected by Revenue Scotland, rather than by HMRC.

Buy-to-let and second properties purchased for £40,000 or more are subject to an LBTT surcharge, applied in the same way as SDLT in the rest of the UK but at a rate set by the Scottish Parliament.

The first-time buyer exemption also applies in Scotland, but the amount is set by the Scottish government.

15.9.5 Land Transaction Tax – Wales

SDLT was replaced by Land Transaction Tax (LTT) in Wales from 1 April 2018. The Welsh government has set LTT rates progressively.

A surcharge on each band applies to second properties and buy-to-let properties with a purchase price above £40,000.

The Welsh government confirmed that there is not a first-time buyer exemption from LTT. Instead it raised the nil-rate threshold with the idea that at least 45 per cent of purchases will not be subject to LTT and the average first-time buyer will not have to pay it.

FACTFIND

To find the current SDLT rates, go to: www.gov.uk/stamp-duty-land-tax

To find the current LBTT rates, go to: www.revenue.scot/land-buildings-transaction-tax

To find the current LTT rates, go to: gov.wales/welsh-taxes

THINK AGAIN ...

Now that you have completed this topic, how has your knowledge and understanding improved?

For instance, can you:

- describe the types of building project that fall within the scope of 'permitted developments'?
- explain the implications for lenders and borrowers if building work is carried out without the necessary planning consent?
- explain why some lenders are not willing to grant mortgages for agricultural property?
- explain the implications for the borrower if the lender imposes a higher lending charge?
- list the mortgage fees that a borrower may have to pay?
- describe how SDLT is calculated on multiple property purchases?

Go back over any points you don't understand and make notes to help you revise.

Test your knowledge before moving on to the next topic.

Test your knowledge

Use these questions to assess your learning for Topic 15. Review the text if necessary.

Answers can be found at the end of this book.

1) Which of the following would not be deemed a 'permitted development'?

   a) A loft extension of 40m^3.

   b) Internal conversion of a garage.

   c) A two-storey extension 2m deep.

   d) A barn conversion.

2) Which of the following would be exempt from building regulations?

   a) A 25m^3 extension.

   b) Cavity wall insulation.

   c) A detached garage with a floor area of 20m^2.

   d) A loft conversion.

3) Local authorities generally give retrospective planning consent if all their requirements have been met. True or false?

4) Converting an attached garage internally to create a living room of the same size would not usually require planning consent. True or false?

5) A rent-a-roof scheme contract for solar panels is automatically terminated if the property is sold. True or false?

6) Local authority searches generate a non-refundable charge before exchange of contracts. True or false?

7) Glen owns a third share in a buy-to-let flat, valued at £100,000, which he intends to keep. He is now buying a house for his family. Glen would not have to pay 3 per cent stamp duty land tax surplus on his new purchase. True or false?

8) Vicky's property purchase fell through just before exchange of contracts. She had already incurred a number of fees and charges. Which of the following fees could be carried forward to a new property purchase?

   a) Solicitor's fees.

   b) Local authority search.

   c) Environmental search.

   d) Land Registry search.

9) Clive owns a family home in Brighton. Would he have to pay stamp duty land tax on a buy-to-let purchase of £180,000?

10) Joe is buying seven buy-to-let flats in one transaction. He can choose to pay SDLT at the commercial property rate. True or false?

TOPIC
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