



‘Kerb your enthusiasm. Christopher Hamer, The Property Ombudsman says that parking can become a big issue.’

Over the years a number of complaints have been referred concerning disputes over allegedly incorrect information provided by agents about the parking provisions at a property. Parking is a fundamental consideration for some buyers and I wish to highlight a few matters which may cause concern.

A complainant may refer to a possible breach of the Property Misdescriptions Act 1991. My role is not to consider whether any criminal offence has occurred but solely whether the standard of service provided by the agent has fallen below that expected, causing financial loss, distress, aggravation, or inconvenience to the complainant and meriting compensation.

The starting point will usually be the property particulars. Paragraph 4h of the TPO Code of Practice requires an agent to take all reasonable steps to ensure that all statements made about a property are accurate and not misleading. Paragraph 4i requires agents to ask the seller to agree the property particulars and to confirm that the details are accurate.

However, it is not unusual for a seller to confirm details which include “off road parking” in circumstances where the seller does not in fact have a legal right to park in the area concerned, albeit that he has been doing so for some time without encountering any problem. As such, the agent should be alert for situations where a seller, for whatever reason, has provided information which may not be accurate. If an agent has, or should have, reason to believe that a seller has given him misleading information, he should, rather than rely on it, question such a statement and in particular ask the seller for evidence that the information is accurate.

‘An agent should check information given by a seller.’

In a recent case, the seller asserted that there was off road parking and the agent, without question, noted the same on the property particulars. It transpired that there was no such approved parking and the local council were not prepared to issue a ‘Certificate of Lawfulness’ to permit the owner of the property to lawfully park in the paved area in front of the property, previously the front garden. I noted that the presence of a raised kerb should have put the agent on notice that all might not be as it seemed and further questions should have been asked to verify the information from the seller before property particulars were issued. In that scenario, the Complainant had proceeded to purchase the Property, after ascertaining the correct situation. I upheld the complaint and made a compensatory award of £200 to reflect the aggravation.

Should the availability of off road parking be such an issue to a potential buyer that, on realising that the parking is not as initially described, he withdraws from the purchase, I may make an award to reflect the financial loss to the complainant in terms of legal costs, survey fees and mortgage application fee. However, I will consider a number of factors such as the seller’s responsibility to provide correct information, whether the agent should have been on notice to verify information and the responsibility of the complainant to ensure that what he intended to buy was suitable for his needs. A Complainant

alleged that property particulars, noting that parking was available, were incorrect. The Complainant ascertained the true situation but, some two months later, withdrew citing the reason for doing so as concerns over the parking. I upheld the complaint as the property particulars had been incorrect but did not agree that this had been the only reason that the Complainant withdrew. As such, the Complainant had some responsibility towards costs that had been incurred.

In another case, the particulars noted that the property benefitted from parking. In fact, parking was on an area which was technically part of the road opposite, and not part of, the property and on which the seller had parked his own car for some years. I considered that the agent, on visiting the property, should have queried this. I would have expected to see reference to parking “on the public highway”, to clarify this statement. I upheld the complaint and made an award of £350 for the aggravation and to compensate the Complainants for a proportion of their incurred costs, the Complainants having withdrawn from the intended purchase.

Clear and accurate property particulars are an essential aspect of any sale and as this article has set out to demonstrate, parking arrangements are an aspect where an agent needs to be more diligent in ascertaining the exact nature of the facility before simply describing parking as available in whatever form the seller states. Testing the seller about the precise status of the parking arrangement will avoid the potential for a lost sale and for any such complaint being upheld by me. ☺

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