

Kings Barton - building defects

Summary

This handout has been produced in conjunction with Headbourne Worthy Parish Council to provide outline guidance to homeowners and residents at Kings Barton who are experiencing defects in their new build homes. Inevitably, every situation is different and specific advice should always be sought as to the options that are available to you.

Key Considerations

Parties to disputes routinely have the same objectives, i.e. they want to resolve their dispute as quickly as possible to their satisfaction and at minimal cost. Ultimately, parties rarely want to be embroiled in litigation.

Broadly speaking, the two main options that are open to homeowners and residents who experience new build defects are:

1. Pursue a claim through their warranty provider (such as NHBC, LABC, Build Safe); and/or
2. Pursue a claim for breach of contract and/or negligence against the builder.

Each have their respective advantages and disadvantages.

Warranty Provider

Each of your properties will almost certainly be covered by a 10 year warranty provided by a third party such as NHBC, LABC, and Build Safe which covers the following:

1. For the first two years most (but not all) defects are covered. Warranty providers typically require homeowners to notify the builder first and give them an opportunity to remedy the alleged defect, failing which they will step in and conduct their own investigations. If they find the builder to be at fault, they will either direct that they fix the problem or the warranty provider will quantify the cost and pay the homeowner compensation.
2. From the next eight years the warranty continues but only covers major defects, for example structural issues or weatherproofing. Anything which falls outside the warranty or is considered to have a nominal value (below £1,500) will be rejected.

A couple of points to note: First, warranty providers will have their own tolerances on an acceptable build and they do not always side with the homeowner, however unjust that may leave the claimant feeling. There is the option of challenging their outcome by appeal and, if necessary, through the Financial Ombudsman Service. Before contacting the warranty providers it is sensible to review the terms of the policy and identify how the alleged defect fits within the covered issues.

Second, rejection of a claim through the warranty provider does not necessarily mean that it is not a valid complaint. NHBC does not cover everything and if a claim has been rejected it is important to understand why so that you can take appropriate steps.

Breach of contract/Negligence

An alternative course of action, perhaps because a homeowner has unsuccessfully exhausted a claim through the warranty provider, is pursuing a claim for breach of contract and/or negligence against the builder.

Everyone has a contract in which they agreed to buy their property. That contract will have a number of terms which are expressly set out and it will also have terms which are implied by existing law, e.g. consumer protection legislation. Contracts vary hugely but new build contracts often include obligations on the part of the builder, for example to build the property in a good and workmanlike manner. Such obligations often go beyond the scope of the warranty provider's whose remit, particularly after two years, is limited.

Generally speaking, in order to pursue a claim for breach of contract, expert evidence in the form of a surveyor's report is needed. This will detail the specific areas of concern by reference to the contractual obligations and provide the proof that you need to advance a claim.

Proving your claim

Both the warranty provider and the builder will need evidence of the alleged defect in order to properly consider your claim. It is recommended to take clear photographs of any suspected defects and to keep a clear written record of when these were notified to the builder or warranty provider. As above, it may at certain stages become appropriate to obtain expert evidence from a surveyor on the extent of the defects.

Limitation

The warranty covers the period 10 years from completion of the first sale from the builder to homeowner. It continues regardless of whether the property changes hands.

Breach of contract and negligence claims have their own deadlines by which claims must be made to ensure that they do not become barred simply through the passage of time. Generally speaking, the deadline for bringing a breach of contract claim against the builder will be six years from the date of the contract (not completion of the purchase which can be months later). There are situations when the starting point varies but consideration on this is outside the scope of this note.

Kings Barton Estate - building defects

How we can help

Trethowans is happy to assist homeowners throughout the dispute process. This may be through taking formal action such as preparing a letter before action to the builder setting out a claim relating to the defects, or it may be through providing private advice and assistance to the homeowners in the background.

Our hourly rates range between £165 and £285 plus VAT.

Should you wish to discuss a potential instruction, please contact Linden Talbot by telephone or email.



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This summary is intended as a general guide only and is not legal advice to be relied on in relation to any one specific situation. Every case turns on its own facts and specific legal advice should be sought where needed on cases.