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Informational Guide

Environmental Issues When Buying A Property



Our aim, as a firm, is to mitigate risk for you and give you peace of mind when you buy what is potentially your most valuable asset.

This guide is to help you understand the environmental issues that you should consider.

What are the Problems?

Past Activity

Because of past industrial activity, the land, or any water underneath the property you want to buy, may contain contaminants. Awareness is much higher now than in the past when highly toxic chemicals were simply poured into the ground or the river, aside from any accidental spillages and other pollution incidents that have occurred.

Landfill Sites

Some parts of the country were used as landfill sites and, as you can imagine, there were various environmental consequences arising from this. For example, contaminants can ‘migrate’ on to other land or enter rivers. Because of bacteriological activities such as rubbish degrades, methane gas can be emitted and enter the atmosphere. There can be health risks associated with landfill sites, which can remain biologically/chemically active for many years.

Radioactive Waste

There have been instances of radioactive materials dumped indiscriminately and there are also the problems of flooding and coal mining or other mining activities remain biologically/chemically active for many years.

Pylons

There has been publicity over the last few years regarding the effects on health of electricity apparatus such as pylons.



Why do These Issues Matter?

- The presence of such contaminants may damage your health.
- The presence of such contaminants may affect the foundations or structural stability of the property you are buying.
- Having to cope with a legal demand served on you by the local council to “clean up” the land upon which a property has been built may cause you considerable stress, delay inconvenience and expense.
- The stigma or blight attached to your property because of the presence of contaminants, or the effects of any clean up, may severely depress the value of your home.
- The costs of ‘clean-up’ can be enormous.

What is the Law With Regards to ‘Clean-Up’?

- Under the Environmental Protection Act (EPA) 1995, even private householders run the risk of receiving a “Remediation Notice” from a local authority to clean up a particular piece of land. The legislation is complex, but in simple terms, if a purchaser of contaminated land knew, or ought to have known, that the land was contaminated, then they will be considered to be a ‘Class A’ person and potentially liable with any other parties of the same class, if the original polluter cannot be found to pay for the cost of “clean-up”.
- Under the Water Resources Act it is an offence to allow contaminants to enter controlled waters. A clean-up notice can also be served on a landowner under this legislation. Controlled waters include any ground water which might be underneath a house.
- A landowner can be called upon to clean up his property if he is prosecuted for statutory nuisance. For example, noxious smells or noise above a certain decibel level can lead to prosecution by the Local Authority.
- Under the EPA, the Environment Agency has the power to enter property to clean up in the event of there being either:
 - An imminent danger of serious pollution to the environment or
 - Serious pollution in respect of past industrial processes.
- Any waste unlawfully deposited on land in the past can be the subject matter of a clean-up notice, with the cost of recovery being recovered from the current landowner.
- There are various other statutes dealing with the clean-up and recovery of costs incurred.
- If you buy land with knowledge of a “nuisance” being committed by the existing owner, then you will be deemed at law to have “adopted” the problem and therefore the liability.



What are Your Options?

Undertake an “Envirosearch”

- Ensure a “desktop” study of information, known as an “envirosearch”, relating to the property is undertaken.
- Various sources are used to obtain information that would highlight information about past and present polluting processes, areas of coal mining activity, landfills, waste management sites, nearby toxic or explosive substances, areas of ground that may have been dug and filled in the past, probability of radon gas and the risk of subsidence and flooding.
- Any information provided is reliant on it having been accurately recorded in the past, so there is no guarantee that if a search comes back clear the property is actually completely clear of contaminants.
- If you are borrowing money to purchase your property, we will be obliged on behalf of the lender to undertake this search.
- If the search did reveal entries against the property or against adjoining sites which might have a bearing in terms of structural integrity, health and safety, the presence of, or migration of, contaminants or any combination of these factors, then you would have the choice to either withdraw from the transaction or undertake further investigation.

As lawyers, we do not have the expertise to interpret the significance of particular replies to these enquiries and it might then be necessary for you to obtain advice from an environmental consultant.

Make Enquiries to the Current Owner

- Specific enquiries can of course be made to the current owner of the property, however, the seller may not have the skill or knowledge to give meaningful responses to enquiries.
- If the seller does know that the land is contaminated, then failure to supply this information to you as the buyer could amount to non-disclosure or misrepresentation. This would provide you with some remedy at law but only to the extent that the seller is in fact worth prosecuting in a civil action.

Enquire at Regulatory Bodies

- Enquiries can be made of a regulatory body such as the Environment Agency. However, responding to specific enquiries from individuals is not the main focus of this agency, so any information is likely to be slow and expensive to obtain.

Undertake Local Authority Searches

- Local Authority Searches are normally undertaken during the conveyancing process and can be extended to include questions about contamination. Local councils are now obliged by law to inspect their areas to see whether there are any sites which can be classed as contaminated and if they could pose a serious risk of harm to people or the environment.
- Land can be contaminated but not present a serious risk of harm to the environment or personal health. In due course once Local Authorities have compiled their registers of such sites, their locations will be recorded on Local Authority searches. However, the absence of an entry on a Local Search is no guarantee that the land is “clean”.

For New Houses - Obtain Copies of Land Quality Statements

- If a new house has been built on a “brown field”, site copies of any land quality statements supplied by the developer to the National House Building Council (NHBC) can be obtained.
- Enquiries can be made of the developers’ lawyers to see what environmental strategies were employed in terms of the clean-up of the land.
- Current NHBC practice is to cover contaminated land problems, but only in respect of a property registered with the NHBC since the 1 April 1999.
- The protection given by the NHBC under its build mark cover is for a limited period, is subject to financial limits and the observance of other conditions.
- Blight is not covered in any payment by the NHBC and there are other limitations to the cover.
- Cover for contaminated land problems is now only available during years 3 to 10 of any Buildmark Insurance Policy where NHBC Building Control Services Ltd has undertaken building control.
- In the event of there being environmental issues identified, for example in terms of the contamination of the land or aquatic environment or emissions to the air, you would be within your rights to commission an environmental audit of the property. The prospects of this actually happening are extremely remote and had this point been reached we would be advising you very strongly not to proceed.



Take Out Indemnity Insurance

- There are various environmental risk insurance products in the market place which offer some comfort, but only for certain risks and specific circumstances.
- In our experience, this insurance appears only to be available if it is requested at the same time as the environmental search is submitted - before any potential contamination has been identified.
- It is unlikely that insurance will be available after a negative search result has been received. If you think that you may wish to take out insurance, it is important that you make us aware of this prior to any searches being commissioned.
- Please note that no insurance product will cover all eventualities, so you would need to consider the terms of such a policy very carefully.

Whether you rely on envirosearches, environmental risk insurance products, some form of environmental audit, or a combination of these, there can be no guarantee that any property you are hoping to buy is going to be free from environmental hazards.

However, with a better understanding of the environmental issues that could affect your home purchase, by taking some action as outlined here and with our help, you can make an informed decision as to how you wish to proceed.



Further Help

If you require help with anything mentioned in this guide, get in touch with us by calling us on 01727 858807 or send email to us at crt@labrums.co.uk.

We look forward to hearing from you.

These guidance notes deal in general terms with a complex subject. While we believe the contents to be correct, they should not be regarded as sufficiently full, accurate or precise so as to apply to any particular situation. You must always seek legal advice concerning any situations referred to in this guide and Labrums or its author can accept no responsibility for any loss suffered by any person as a result of acting in reliance upon the contents of this guide.

Environmental Issues when Buying a Property Request Form



We will carry out an Envirosearch as part of the searches set out in the schedule.

If you would like any additional enquiries or searches made, please complete and return this form.

- Please commission a basic envirosearch with associated insurance product
- Please commission a more advanced envirosearch
- Please make enquiries of the regulatory agencies, advising of costs prior to undertaking
- Please provide details of an environmental consultant

Signature

Signature

Dated

