

ENVIRONMENTAL



Contaminated Land

Local Authorities are required to investigate land in their areas and locate any contaminated sites. Increased activity in such identification can now be expected since Local Authorities were all required to disclose their action plans for this purpose to the Department of the Environment by July 2001. If the Local Authority finds an area of contaminated land it is required to serve, and enforce, a remediation notice requiring either the removal of the contamination or the sealing off of the contamination in such a way that it cannot escape and harm anyone.

Why should this matter to you? Firstly because you would not wish to live on a contaminated site – particularly since the long term effects of exposure to contamination are not fully known or understood. Secondly because if you are the owner of contaminated land you may be required to pay for the cost of removing the contamination, even though you had nothing to do with causing the contamination. The law requires Local Authorities to enforce clean up of contamination against the original polluter, if that polluter can be found. Unfortunately this is not always possible and if the polluter was a Limited Company which has been put into liquidation then the Local Authority cannot pursue that Company any further or look to its shareholders or directors. The Local Authority then tries to find other people who might be in some way responsible – particularly previous owners who knew of the contamination but did nothing to clean it up. However if the Local Authority cannot enforce remediation against anyone else they must go against the current owner of the contaminated property. If the owner, having received a remediation notice, fails to carry out the work then the Local Authority can do the work itself and claim the cost from the owner.

In the light of this potential liability it is clearly important that property buyers should consider carefully whether the property they are buying might be contaminated. If the property is being purchased with the aid of a mortgage then it is probable that the lender will require that an environmental search, referred to below, be made. You might expect that any Chartered Surveyor who inspects the property, whether engaged by your lender or by you, would be able to advise on contamination issues. However Chartered Surveyors are not insured for this work and for that reason their survey reports state specifically that they accept no responsibility for contamination issues. There are contamination experts who carry out detailed surveys of sites to establish whether they are contaminated. Unfortunately it would just not be economic to engage such experts to investigate the site of a private dwelling and the works required (such as making trial borings) would be very intrusive.

What can you do to protect yourself against a liability to clean up contamination?

1. A certain amount can be inferred from the previous history of the site. If your property is built on brown field land there is a much greater probability of contamination than if it is built on a green field site. However even with former agricultural land there are dangers because some farmers have in the past buried diseased cattle or unwanted chemicals.
2. It is possible to make an unofficial environmental search. There are various providers. This type of search is a “desktop” investigation – in other words the information is compiled from existing records and not from a site visit. The providers of this type of search are all commercial enterprises who have assembled information from various sources. None of them is an official Government Agency although one of their sources will be the Environment Agency. Because lenders require that Solicitors acting on their behalf make all usual and necessary searches, if you are having a mortgage it is necessary for such a search to be made. The current cost is £35.60 plus VAT.
3. Alternatively it is possible to make an official enquiry of the Environment Agency. These searches usually take too long to be of use to a buyer (several weeks in fact) and are expensive.
4. Various low cost insurance packages are available under which the Insurer will provide cover up to a maximum amount for a defined period (usually something like 10 years) in return for a single premium. The cover may be loss of value or for the cost of remediation. The premiums and terms of policies vary and if you would like to pursue this option please discuss with us further. We receive no commission or return on any environmental insurance arranged through us.

The benefit of the policy cover cannot be transferred to your successors in title, when you sell the property on.

The policy cannot be taken out after you know whether there are any environmental problems with the property, as they will not insure for known risks. However, if the insurance is purchased at the same time as a report, and the report reveals contamination, you will be covered for any enforcement order subsequently made against you (but not your successors) for remediation work. An insurance leaflet explains the basic cover.

We hope that you find this explanation helpful. Undoubtedly environmental issues are going to become much more important in the next few years and you should be aware of the potential dangers. If you have a particular concern you should discuss it with the person here dealing with your work.

Flooding

For your protection, and the protection of your lender, we recommend that you undertake a flood report. This examines whether the property is situated on or near land which may be susceptible to flooding. The purpose of this is to identify from available data whether there are current and potential flood risks which could result in your property being flooded or adversely affect your ability to obtain suitable insurance cover. We will undertake this search as a matter of course,

unless you do not require us to do so and specifically instruct us to the contrary. Should you not require us to undertake this search, please would you confirm this in writing by return and bear in mind that we will not be in a position to advise you on these issues in this transaction.

We can also offer a search informing you of planning applications and land use issues which could potentially affect the value of your property in the future.