

Land Contamination – Information Sheet for Homeowners

Why do I need to worry about Land Contamination?

Requirements for cleaning up contaminated land are now well established. In the past, however, cleaning up contaminated land when houses were built was not common practice. As a result, contamination may have stayed in the ground which is why there are many sites in South Cambridgeshire that could be affected.

If a property is relatively new, the planning process should have ensured that the risk of contamination was assessed and dealt with by the developer who built the houses.

How do I find out whether the property I am buying may be affected by contamination?

When buying a property, you could be liable for any previous contamination issues on that land, so it is advisable to ensure that you know its history and wider environmental setting prior to completing the purchase.

Your solicitor will usually request an environmental search for you as part of their standard conveyancing duties from one of a number of specialist private companies. These searches may not, however, incorporate up to date information such as remediation or assessment that may have been undertaken during development.

If the environmental search company has concerns that a property may be affected by contamination you can contact South Cambridgeshire District Council to see if further information is available. The council may hold further information on the site, including site investigation and remediation reports, which might indicate the condition of the site. Although the council is happy to discuss what information is known regarding any particular property, a fee is payable should details be required in writing.

In some circumstances, it may be advisable to undertake an intrusive site investigation to confirm the presence or otherwise of contamination at the property. In this instance, please contact us for further advice.

Why do Solicitors carry out the Environmental Search on behalf of the house purchaser?

In 2001, Conveyancing companies were made aware of the issues relating to contaminated land liabilities following the issue of a Law Society Warning Card relating to Part IIA of the Environmental Protection Act 1990. The main points of the card are listed below:

In purchases, mortgages and leases, solicitors should:

1. Advise the client of potential liabilities associated with contaminated land. Generally, clients should be advised of the possibility and consequences of acquiring interests in contaminated land and the steps that can be taken to assess the risks.

2. Make specific enquiries of the seller

In all commercial cases, and if contamination is considered likely to be a risk in residential cases, (e.g. redevelopment of brown field land):

3. Make enquiries of statutory and regulatory bodies.

4. Undertake independent site history investigation, e.g. obtaining site report from a commercial company.

In commercial cases, if there is a likelihood that the site is contaminated.

5. Advise independent full site investigation.

6. Consider use of contractual protections and the use of exclusion tests.

This may involve specific disclosure of known defects, possibly coupled with price reduction, requirements on seller to remedy before completion, and in complex cases the use of warranties and indemnities.

Unresolved problems, consider

7. Advising withdrawal, and noting advice;

8. Advising insurance (increasingly obtainable for costs of remediation of undetected contamination and any shortfall in value because of undisclosed problems).

Can I carry out a Site Investigation myself?

Generally, site investigations are carried out using a phased approach which can include a desk study, followed by intrusive investigation if necessary. Intrusive investigations generally consist of trial pits and boreholes to collect soil and groundwater samples, which are then analysed for potential contaminants in a laboratory. A risk assessment is undertaken based on the sample results and a remediation strategy is formulated if considered necessary.

Much of the work is very specialist and you will almost certainly need the assistance of an environmental consultant. However, your knowledge of the history of the land will help the consultant carry out the site investigation.

For more information or to discuss any concerns relating to a property, please contact:

03450 450 063 or email env.health@scamb.gov.uk