





Contaminated Land

How does this affect property investment?



**WILBOURN
ASSOCIATES**

Chartered
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Environmental law has developed rapidly. It has moved beyond its origins in public health to a wide ranging concern for the quality of the environment media for air, water, land and for protection of animal and plant species. Land provides an important repository for many pollutants in their transport within the wider environment. It has become essential for those concerned with property to be aware of the impact of environmental law and the measures required to be taken.

Why the concern?

Since April 2000 the environmental health departments in local authorities have been under a duty to identify and ensure the cleanup of contaminated land within their area. Every local authority now has contaminated land officers in order to undertake this exercise.

Remediation notices have now been served on sites across England, Scotland and Wales with a mix of residential and commercial properties affected.

What are the implications?

The legislation can introduce liabilities for the owners and or occupiers of property which may be:

- ➔ Punitive - fines and imprisonment as a result of a breach of environmental law; or
- ➔ Financial - liability for costs or damages or for environmental remediation.

What happens if I have an environmental liability?

It may:

- ➔ Require urgent remediation at considerable cost;
- ➔ Have effects on business and efficiencies;
- ➔ Expose the present and past owner or occupier to criminal and/or civil proceedings;





- ➔ Affect the underlying asset value of a property including its use for loan security and balance sheet purposes;
- ➔ Prejudice use of the site for some new purpose or increase the development costs;
- ➔ Cause concern for the health and welfare of on site staff, contractors, visitors and neighbours.



How does this affect my property transaction?

No class of organisation or individual is exempt unless you are a mortgagee not in possession. Even charities and those who act as trustees fall under the gaze of the legislation.

But shouldn't my solicitor check for any problems?

It is true that the Law Society issued a 'warning card' to all solicitors in June 2001 on contaminated land matters. This requires the solicitor to consider 'in every transaction' whether contamination is an issue. However, conveyancing solicitors will not generally have the specialist knowledge necessary to assess the level of risk.

An environmental search is now obtained in the majority of property transactions.



Surely an environmental search is sufficient then?

It should be noted that such searches are generally desk based reports with the recommendations based on available data and historical mapping only.

If the property you wish to purchase is industrial or commercial in nature it is likely that the current use of the premises will be a material consideration when looking at potential liabilities. An inspection of the site to assess the present occupiers' management of risks would be appropriate in the majority of such sites..

The lender/pension company may also require further studies in order to minimise risk to the investment.

What if there are pre-existing environmental reports?

The presence of such reports suggests that concern has already been raised with regard to environmental risk either by previous owners/occupiers or possibly the planning department of the local authority at the time of development.

It may be possible to get any such reports reassigned to interested parties by the authors on payment of a fee but it should be noted that warranties and professional indemnity insurance would need to be checked for validity and extent.

But won't intrusive investigation be needed to identify whether contamination is present?

Not necessarily. This is because high quality strategic advice is normally sufficient. However, there may well be situations where discreet targeted work is needed.





So what are the options?

The **Environmental Screening** and **Land Quality Statement** reports are strategic tools in considering the potential liabilities attached to property ownership and management. They are used in decision making at the time of acquisition, to satisfy planning conditions relating to the phased investigation of contamination and in assessing the site management of current occupiers.

An **Environmental Screening** is a phase I environmental risk assessment with targeted enquiries to local authorities. The risk assessment contains clear advice appropriate to the site regarding legislative requirements to assist with compliance and practical guidance on ways to mitigate any risks identified.

A **Land Quality Statement** comprises a more detailed study with additional enquiries. The risk assessment is structured around a conceptual site model, questions material to property transactions and valuations and Part IIA of the Environmental Protection Act 1990.

Each of these reports are generally considered acceptable for lenders when seeking funding and pension providers when purchasing property through a pension scheme. However, it should be noted that pension providers may well have their own set procedures in assessing environmental risk.

How much do these reports cost?

The price for an **Environmental Screening** starts at £1000 + VAT and disbursements for sites of up to 1 hectare.

The **Land Quality Statement** starts at £2500 + VAT and disbursements.

An hourly charge of £95 + VAT may also be appropriate for the review of any pre-existing environmental documentation.





Vision Statement

We operate in a people business and we do business by being accessible, flexible and placing our customers first. This will enable us to: Build a sustainable people focused business which is the first point of call for advice on contaminated land and environmental risk and its impact on land, property and construction.



INVESTOR IN PEOPLE

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