



Contaminated Land

How does this affect your pension?



**WILBOURN
ASSOCIATES**

Chartered
Environmental
Surveyors



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.

When?

From April 2000 Local Authorities have been under a duty to inspect their areas to determine whether any land can be labelled as being contaminated. Every Local Authority in England, Wales and Scotland has employed contaminated land officers, often as part of their environmental health remit to undertake this exercise.

Local Authorities have now begun serving remediation notices on approximately 100 sites throughout the country. Residential and commercial properties are equally affected.

What does the law do?

It can give rise to liabilities for the owners 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.





Why pensioner trustees?

The law defines an owner as being:

'A person (other than a mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it was so let...'



What should I do next?

Initially, the valuer will be expected to complete the Property Observation Checklist relevant to the asset found in the RICS Guidance Note 'Contamination and Environmental Matters – their implications for property professionals', which became effective from 1st December 2003.

Wilbourn Associates will review the commercial valuation and if there are issues which need further investigation, an Environmental Screening will be recommended.

Will Wilbourn Associates recommend an Environmental Screening in every case?

No. Not all require an environmental screening and the remainder proceed to the legal stage unhindered.

Is this any different to buying a commercial property outside of a pension scheme?

No. The Law Society issued a 'Warning Card' to all solicitors in June 2001 on contaminated land matters. It states that 'in every transaction' whether residential or commercial the solicitor 'must consider whether contamination is an issue'. Approximately two thirds of all residential purchases now have an environmental report as a matter of course.

What will the Environmental Screening say?

The Environmental Screening will involve undertaking a risk based approach of the property looking at historic and existing uses in the context of its environmental settings. A risk assessment is undertaken which will give a high/medium/low rating as to the environmental risk associated with the property.

If my property is a high risk will it be declined by the pensioner trustee?

Possibly yes, but there may also be issues which can be addressed by the occupier to reduce the risk rating. There may also be situations where this cannot be done.

What if my property is a medium risk?

This doesn't necessarily mean that the property will be suitable for inclusion in a pension fund. This will be a matter for your SSAS/SIPP provider to decide.

Will the property be reviewed in the future?

Possibly. Depending upon the scheme if valued in the future by the scheme's trustees, this will be forwarded to us for review as before. A second inspection may take place to ensure compliance with the earlier recommendations.

Is this just more red tape?

No. Businesses whether these be customers or suppliers are looking towards the corporate and social responsibility of others in business to ensure that environmental issues are addressed.

Where can I get more information?

See the following websites:

www.environmental-surveyors.com

www.rics.org/env

www.environment-agency.gov.uk

www.sepa.org.uk





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?

Whether you are buying property for a pension fund or you want to own your own home, 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.





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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