

IT'S THE LAW: Conveyancing Searches



As part of the conveyancing process your solicitors (hopefully us) commission, review and report on a number of searches. They're all part of trying to make sure that the property you buy doesn't come with any nasty surprises. This edition of IT'S THE LAW looks at some of the searches we frequently carry out on a development site. Property development is tricky enough as it is without last minute surprises that could have been avoided – or at least spotted sooner.

SIM(PLES)

In the olden days, if you wanted to sell your house (or castle), you'd prove that you owned it by bringing out the deed that transferred it to you, together with the deed that transferred it to the person who transferred it to you and also the deed that transferred it to the person who transferred it to the person who transferred it to... You get the picture. Now, around 80% of land in the UK is registered at the Land Registry. That means that the Land Registry has taken the time to read through the dusty title deeds once and for all and neatly logged the ownership (and other relevant details) on the Land Registry computer.

So, one of the first searches we carry out is known as a SIM Search. That's a Search of the Index Map. We send a plan to the Land Registry and they tell us whether that land is registered and, if so, under what Title Number. The result might show that there is more than one Title Number for the same physical piece of land. Very occasionally that's because the Land Registry has made a mistake. More commonly it's because the property is subject to a lease. There will be one Title Number for the freehold and another for the lease. It's important we know that at the outset.

Going local

Each Local Authority has a statutory duty to keep a register of every property in their area and to log on that register a number

of details. A Local Search is a search of that register. The search will reveal a whole host of things but some of the most important are:-

Some types of financial charge: Local Authorities have the power to impose certain financial charges on a property (for example, if they have incurred expenditure in making a dangerous structure safe). Those charges attach to the land, therefore a new owner will be liable for them even though they were incurred at a time when they didn't own the property.

Tree Preservation Orders: Trees covered by TPOs are protected and can only be felled or even pruned with certain Local Authority consent in place. Destroying a tree covered by a TPO is a criminal offence. Magistrates can fine someone up to £20,000. In particularly serious cases, the matter can be referred to the Crown Court where there is no limit to the fine that can be imposed.

Conservation Area status: No demolition can take place in a conservation area without Local Authority consent. Also, all trees in a conservation area are treated as if they are covered by a TPO.

Whether any planning enforcement or stop notices have been served: You'd want to know if the Local Authority already thinks there is a breach of planning and have started enforcement action. Even if you intended to clear the site and develop



Neil Toner
Partner, Head of Real Estate
020 7065 1823
neil.toner@devonshires.co.uk



Aruna Sarwar
Partner
020 7065 1846
aruna.sarwar@devonshires.co.uk



Jamie Leonard
Solicitor
020 7880 4246
jamie.leonard@devonshires.co.uk

it afresh under a new planning permission – it's good to know if you are about to walk into a fight with the planners.

It's your way or the highway

Our Local Search will state whether the road in front of the property is an adopted highway. But usually that's not enough. Knowing that Acacia Avenue is an adopted highway does not tell you whether the title you are acquiring at No.2 Acacia Avenue extends all the way to the adopted extent of the road. It is possible for small strips of land to exist between the land being acquired and the adopted extent of the highway. These are often referred to as ransom strips, since if the person who owns it does not cooperate, they can make the property unusable and therefore hold it to ransom.

We will often, therefore, forward a specific plan identifying the precise extent of the title to the Highways Department at the Local Authority and ask them to confirm the precise extent of the adopted highway – to make sure they touch. This is, unsurprisingly, called a Highways Search.

Going underground

Services running under a site can be a pain in the neck. Not discovering that a gas pipe crosses a site until after development has started can be dangerous, cause delay in the construction programme and result in additional expense (in terms of paying for it to be moved). The existence of a public sewer can mean that development is not allowed without a Build Over Agreement with the relevant sewerage undertaker. These agreements are usually extremely draconian and often, at least in theory, allow the sewerage undertaker to demolish any building if required to gain access to their sewer in the future. To add insult to injury – not only do they not have to compensate the landowner, they are allowed to charge them the costs of demolition.

We therefore contact the principal utility service providers requesting confirmation of their services. They provide plans showing the route of their services in the area. In practice, whilst we will look at these plans, as they are technical in nature, you would need to rely on your technical consultants (usually your Employer's Agent) for a full opinion. We will send you copies of the results for that very purpose. Also, note that it's rare that the accuracy of these plans is guaranteed by the service providers who supply them. If in doubt, you'd be advised to commission an onsite survey.

Who says property law doesn't move with the times?

Under medieval canon law, the rector of a parish church was responsible for the repair of the Church Chancel (the alter end of the Church). That liability attached to the land owned by the rector at the time of the dissolution of the monasteries by Henry VIII. A change in the law that came into effect in October 2013 means that the number of properties bound by this liability will reduce over time – but in certain circumstances it can still bite. So, where relevant, we'll do a Chancel Check Search to find out if there is

a potential risk. If there is, we'll usually recommend that you take out insurance.

IIA or not IIA

You need to know whether the land you are about to buy is contaminated for a number of reasons. Under Part IIA of the Environmental Protection Act 1990 you might be ordered to undertake remediation works (or pay for them) by the Local Authority or Environment Agency. If contaminants are spreading from the property you buy and harming others, you may find they sue you for damages. If the land is contaminated, it's likely the planners will require you to make the land safe as part of your development proposals.

We therefore commission a Desktop Environmental Search. This will assess the risk of the land being contaminated by collating information from regulatory bodies (particularly the Environment Agency) and reviewing current and historic uses of the land. This search does not include a site visit or testing of soil or groundwater samples.

And the rest

The above is just the tip of the iceberg. There are an array of additional searches we'll consider – depending on where the property is and what you intend to do with it once it's yours.

- Village Greens & Common Land
- Tin, Clay and Limestone
- Coal (notwithstanding Lady Thatcher)
- Proposed Railways: Crossrail and HS2
- Existing Railways: London Underground, Network Rail, Docklands Light Railway...
- River/Stream/Canal Bank Responsibility

...but that's not all folks

The above will tell you a lot about the property – but these searches represent only some of the pieces of the jigsaw. We still need to investigate title. You still need to inspect the property. Your technical consultants will still need to carry out surveys.

The tiny print

This is one of a series of leaflets published by Devonshires' Real Estate & Projects Department aimed at our developer clients. No action should be taken on the matters covered by this leaflet without taking specific legal advice.

Find out more

Neil Toner
Partner, Head of Real Estate
020 7065 1823
neil.toner@devonshires.co.uk