

Searches



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As part of the conveyancing process we, as your solicitors, will carry out a number of searches on any piece of land you want to buy. These will vary depending on where the land is and what you want to do with it. In this edition of [...a little bit of law](#) we run through some of the usual searches we undertake and explain why we do them.

Going local

The mother of all searches is the local search. Each Local Authority has a statutory duty to keep a register of each property in their area and to log certain details including:

Financial charges: Councils have the power to impose financial charges on a property (for example, if they have incurred expenditure in making a dangerous structure safe). Those charges attach to the land – and you would be liable to pay once you’ve bought the land – even if the expenditure was incurred years ago. These show up on the local search.

Tree Preservation Orders: Trees covered by TPOs are protected and can only be felled or even pruned with consent. Breach of a TPO can be criminal, literally – with potential for an unlimited fine. So good to know if any trees are covered before you commit to building a scheme that involves cutting them down.

Conservation Area status: No demolition can take place in a conservation area without Local Authority consent. Important to get that right before you send the bulldozers in to clear your site.

Local searches will also tell you...

- Is the road adopted? Vital for access.
- What’s the planning history of the land. Has there been previous enforcement action for breach of planning and is any contemplated?
- Is the land required for public purposes? Irritating to find you are the subject of Compulsory Purchase Proceedings a week after you’ve started on site.
- Have any proceedings been authorised for breach of building regulations? Particularly important to know if you are not going to demolish the current buildings straight away.

- Is the property on the register of contaminated land maintained by the Local Authority?

When you do a local search, the information could change the following day and you wouldn’t be any the wiser. As a rule of thumb, people tend to rely on searches for 3 months. But if the transaction hasn’t exchanged by then you would usually go back and get an updated search – just in case.

Local searches generally relate to the land you are acquiring. There are some very specific questions that deal with the locality (such as ‘are there any nearby road schemes?’) but generally the search does not provide answers relating to other land. So, for example, the search will reveal the planning history for your proposed site – but won’t tell you if next door has just got planning permission for something you’d rather not be developing next to. If that is of concern there are additional planning searches that can be undertaken through private search companies.

Pipes and wires

Services running under the site can be troublesome.

Not discovering that an electricity cable lies under a site until part way through development can be dangerous, cause delay in construction and result in additional expense (in terms of paying for them to be removed).

The existence of a sewer under a site can mean that development is not allowed without a “Build Over Agreement” with the relevant sewerage authority. These agreements can be extremely draconian and often allow the authority to demolish the newly built building to get to their sewer if they need to in the future. These are bad news in a big way – and it’s often better to re-design your development or divert the sewer.

Fibre optic cables are great in some ways. They enable us to access broadband. We can flick through 328 different TV channels before deciding there is nothing to watch. But they cost an eye watering amount to relocate. So it’s important to find out if you’ll need to do that as part of your scheme.

So, we contact the principal utility providers requesting details of their services and plans of their cables and pipes. These search results come with a warning. The plans have not always been drawn up as accurately as you might expect. The records are often incomplete. Sometimes you

will be able to ‘take a view’ – but if your site is tight and, particularly if it’s previously not been built on, you may be best getting a specialist surveyor to carry out a physical inspection/survey of the site to accurately map what’s down there.

A little bit of history...

Under medieval canon law, the rectors of some parish churches were partly responsible for the repair of their church. That responsibility attached to the land of the rector. Remarkably, that responsibility binds people who now own the land once owned by the medieval rector. Bizarre and amazing – but true.

The only way to get a definitive answer as to whether liability attaches to a piece of land is to carry out a personal search of the National Archives at Kew. In practice most people do a ChancelCheck search. That shows you if your property is within an ‘at risk’ parish. If it isn’t then you are safe. If it is then you can usually insure against the risk.

Desktops

It’s common to commission a ‘desktop’ environmental and flood risk report. The chosen search company will assess certain publicly accessible registers and maps (both current and historic) in order to gauge the potential for environmental nasties and future flooding. It’s important to note that this does not involve any intrusive survey of the actual site. The person undertaking the search will almost certainly be sitting in a comfortable office and will never go anywhere near the site. It’s one way of assessing the potential risk – but no more than that.

Nothing really beats what’s known as a ‘Phase 2’ report – which is produced by an environmental consultant following a site visit and the analysis of soil samples from the site. And certainly if you are planning to develop the site that is what we would recommend.

1066 and all that

For those who watched the London 2012 opening ceremony, you will know that before 1066 our green and pleasant land was organised into self-supporting village communities. People cultivated the land they could – and

uncultivated wasteland was used for communal grazing, fodder and fuel. Then came the feudal system (Kevin Costner, men in tights etc). The land was owned by the lord of the manor – but the common people still had limited rights to allow their livestock to graze. Those ‘Rights of Common’ can still exist – and you probably don’t want sheep grazing in your tenants’ living rooms.

Town and Village Greens are different – where the locals “have indulged as of right in lawful sports and pastimes” for 20 years or more then they can have the land registered as a Village Green. If that happens it’s usually Game Over from a development perspective.

So, where appropriate, we undertake a Commons Registration and Town & Village Greens search. Note that just because land isn’t currently registered, doesn’t mean it can’t be registered after you’ve bought it. But we’ll talk

Sample sale

Searches can be expensive. As a very rough estimate we’re talking up to £1,500 per property. That’s bad enough when you are buying a single piece of land for redevelopment. But if you’re acquiring hundreds of properties (say, on a Stock Rationalisation) or if you are mortgaging half your homes and the bank wants you to show them up to date searches – then we’re talking impressive numbers.

A common approach in those circumstances is to take a calculated risk and select a sample of the properties and undertake searches on just those. If they are all clear then you might ‘take a view’ and assume that all the other properties would be similarly clear. It’s a gamble – but the alternative is to pay through the nose.

In certain circumstances insurance is also an option to consider. This sees you paying for insurance against the adverse matters that might be revealed by a search rather than carrying out the searches themselves.

And finally...

Receiving clear search results (or at least acceptable search results) is an important part of the conveyancing process. But it’s only one part. We still need to review and report on the title records maintained at the Land Registry and you still need to inspect the site.

Almost wholly irrelevant fact

SETI, is the internationally recognised abbreviation for the Search for Extraterrestrial Intelligence. The SETI Institute, in collaboration with Paul Allen (co founder of Microsoft), is currently working to develop a radio telescope 1 hectare in size. It certainly puts carrying out a local search on a house in Lambeth in perspective!

...little bits of law

This is one in a series of leaflets published by Lewis Silkin LLP, providing information on a range of legal issues that face our developer clients. Other topics discussed range from boundaries to wildlife.

Professional advice should be obtained before applying the information in this client guide to particular circumstances.

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