Guidance for Homeowners, Prospective Homebuyers, Estate Agents, Home Sellers and Solicitors Undertaking Conveyancing Work on their Behalf
Who is the guide aimed at?

This guide is aimed at homeowners, prospective homebuyers, home sellers, estate agents and solicitors undertaking conveyancing work on their behalf.

Purpose

This guide aims to explain what land contamination is and why those involved in buying or selling residential property should be aware of it. It also explains what information and assistance is available from Wakefield Council, identifies from where further information might be obtained and explains the options available should you find yourself affected by land contamination.

Introduction

Like many other areas in the UK, Wakefield district has a long history of industrial activity including coal mining, pottery, glass works and chemical works. These historical industrial activities often resulted in contamination of the land, and many of these former industrial sites have since been developed for residential use. Although it is possible to clean-up and make former industrial sites safe for new housing, in some cases, especially for houses built several years ago, there is a possibility that contamination wasn’t considered or properly dealt with at the time. In such cases there is a possibility the land may still be contaminated. Legislation introduced in 2000 (Part 2A of the Environmental Protection Act 1990) places certain duties on Local Authorities and land owners regarding contaminated land and this has made it much more likely that possible contamination is considered when property is bought or sold.

What is land contamination?

There are a wide range of chemicals that might be present in the ground on a contaminated site that could cause harm to human health, buildings or the environment. The type of contaminants that may be present will depend upon what the land has been previously used for. Historically, industrial activity was much less well regulated than it is today and there was less regard for the safe handling, storage and disposal of potentially hazardous substances. This has resulted in some areas of land being contaminated by pollutants from the past.
Why does contamination matter?

In most cases there will be little or no risk associated with living on, or near, to land that has had a former industrial use. Indeed the safe redevelopment of such sites is now positively encouraged and can result in very high quality housing. In very few circumstances a site might be so contaminated as a result of its former use that it presents an unacceptable risk to people’s health or the wider environment. In such circumstances the Local Authority has a duty to inspect the site to determine whether the risks mean that the site needs to be remediated (cleaned up or made safe). If it is considered necessary to remediate the site then the council will consider legally determining the site to be ‘Contaminated Land’ and will take steps to identify who should pay for the clean up.

Normally it will be the company who caused the contamination who will be liable for remediation or in some cases the builder of the houses. In some circumstances, however, it might be possible that it is the current owner of the land or property that would be liable to undertake and pay for any clean-up.

What are Environmental Searches?

The new legislation has raised awareness amongst mortgage lenders of possible liabilities associated with contaminated land. Consequently, it has become increasingly common for solicitors and conveyancers to undertake a third party environmental search when arranging the transaction of land or property.

The environmental searches are generally based on information obtained from historical Ordnance Survey maps, Local Authorities and the Environment Agency. Over a period of time a particular site may have been home to a variety of industries, each of which may have left contaminants in the ground that may be hazardous to human health and the environment.

If a search of these historical maps shows the presence of past industrial activities on, or near a site or property, it raises the possibility that contamination may be present.

The aim of these searches is to help identify whether a site or property already is, or may in the future, be legally determined as ‘Contaminated Land’ by a Local Authority under the Act.

The concern for mortgage lenders is that if the mortgagee defaults on repayments and the lender repossess the property, they may be left liable for these costs. The decision as to whether a lender will allow you to borrow money or not is down to the individual mortgage company.
An environmental search will normally indicate the potential for a site to be contaminated based on its previous use.

It is important to note that these searches are based on records such as maps or registers and do not consider any actual physical site data. Therefore, without actual physical evidence of contamination obtained from sampling and analysis, the actual presence of a source of contamination is only inferred or perceived. In general, this type of search would only indicate the possibility of the need for a more detailed site investigation that would include actual soil testing and analysis together with a risk assessment.

There are usually two potential outcomes from a third party environmental search that either there is evidence that potential contamination might be present ['Further Action’ Certificate will normally be provided] or there is no evidence ['Pass’ Certificate normally provided].

**Important Note:** Certificates have no legal standing within the contaminated land legislation. Nor is the Council responsible for issuing of these certificates. Possession of a certificate does not mean that the property in question will not be affected by contamination; similarly a refusal to issue a certificate does not mean a property is contaminated.

What is the Council of Mortgage Lenders view?

It is the stated view of the Council of Mortgage Lenders [September 2004] that there should be no standard requirement to obtain such environmental searches or certificates as, in practice, they are unlikely to help lenders with their decision on whether to lend for a mortgage without further specialist advice. This is because the reports frequently do not contain enough information on which to make a judgement about risk and that even if some contamination is present, this is not necessarily a barrier to lending.

Will an Environmental Search Tell me Whether my Land will be Determined Legally as Contaminated Land?

**No.** Simply identifying the possible presence of contamination will not be sufficient to make an informed decision as to whether a site or property is likely to be determined legally as Contaminated Land.

Local Authorities have been charged with the responsibility for making decisions on what is contaminated land, not the company or individual undertaking the environmental search.
What if I receive a certificate from a search company saying contamination is not likely to be present?

If no contaminative past uses are identified, then the site or property may be given a ‘Pass’ certification by the company who undertook the search as contamination is unlikely to be present.

This certificate does not constitute a guarantee that the land does not meet the statutory definition of contaminated land. Instead it is a statement from the company undertaking the search that a review of the data examined in the search did not identify an obvious potential source of contamination at the land in question.

If I am refused a certificate what should I do next?

The decision whether to proceed with or without third party certification is ultimately an issue between the buyer, seller and the mortgage lender. However, there are a variety of avenues open which may provide you with more information before making that decision. These are:

1. **You could conduct additional investigations which would include contacting the appropriate Local Authority (i.e. Wakefield Council)**

   Wakefield Council will be able to advise you as to whether the site or property in question has been inspected as part of its Contaminated Land Inspection Strategy. A strategic approach to this inspection of potentially contaminated land has been adopted by Wakefield Council in line with Central Governments Acts, Regulations and Guidance. Land or properties which have historically been the site of potentially contaminative industrial activity, with a recognised higher risk, are being inspected first.

   Wakefield Council will generally have access to the same historical map data on which the search company will have used to make their decision. In addition, Wakefield Council may have more detailed maps together with supplementary map data, more detailed local knowledge and may hold information of past problems in that area.

   If the dwelling has recently been built i.e. after 2000 it is likely that the investigation and clean up of the land was regulated by suitable planning conditions. These conditions require the developer to submit investigation/remediation reports to the Local Planning Authority for their approval. These conditions would only be discharged when sufficient information had been submitted to ensure that the development has proceeded in a safe manner. This information is not taken into consideration by the environmental search companies.

   Wakefield Council makes a charge for providing information so it is worth checking with the Land Quality Team before deciding what information is actually required and what the associated cost will be. Refer to the ‘Access to Land Quality Information’ section on the Council’s website.
2. You could make enquiries with the developer of the site or property in question

The original builder/developer may have some information on any contamination found and/or remediation undertaken at the site even if the Local Authority has no such information. The various warranty providers such as the National House Builders Association (NHBC) may also have information on contamination, or may have provided a warranty against contamination. You should make the appropriate checks on this as well.

3. You could employ an environmental consultant to undertake an investigation

In the absence of any site investigation reports you or the seller may wish to arrange to undertake your own independent site investigation. An environmental consultant would normally provide such services. This will give actual physical site data and can help indicate if the site may be determined as ‘Contaminated Land’ through an assessment of the risks. If you use such a service, check that the environmental consultant can provide a suitable level of indemnity and liability cover. Wakefield Council is unable to recommend the use of specific consultants. It should be noted that there may be a significant cost involved in following this course of action which may be inappropriate for a house purchase. Estimated costs for a typical garden is likely to be in the region of £2K.

4. Insure against any potential risk

Environmental insurance is available which provides cover against the Council determining the site or property as ‘Contaminated Land’. This should cover you against any future costs for clean up works. It should be noted that insurers may require information on the site’s history before providing this insurance and may not be willing to underwrite land where significant contamination is suspected. Details of insurance products will normally be included within the environmental search report or alternatively your solicitor should have some information on this.

Wakefield Council
Environmental Health
P.O. Box 700
Burton Street
Wakefield
WF1 2EB

☎ 0845 8506 506
✉️ landquality@wakefield.gov.uk

**Important Note:** The Council will not advise on whether land or property should be bought as this decision lies solely with the potential purchaser.