

CONTAMINATED LAND AND YOUR HOME



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This guide has been prepared for homeowners and people looking at buying or selling a property, where land contamination has been identified as a potential issue. It aims to describe the significance of contamination and why it is important for homeowners. It also explains where help and advice can be obtained.

How Does Land Become Contaminated?

Land can become contaminated by substances in or under the land that are hazardous to health, pollute the environment, or damage buildings and structures. Britain has a long history of industrial production and throughout the UK there are numerous sites where land has become contaminated by human activities such as mining, industry, chemical and oil spills and waste disposal. Contamination can also occur naturally as a result of the geology of the area, or through agricultural use.

As our industrial manufacturing base has declined and the demand for housing has grown, much of this land has been redeveloped for residential use. Although practices and requirements for decontamination and safe redevelopment are now well established, there are some instances, especially where houses were built in past decades, where the presence of contamination was not considered nor appropriately managed. In these circumstances the contamination may remain.

What is 'Contaminated Land'?

The presence of contamination in the ground does not necessarily mean that there is a problem and in most cases the risks associated with such sites are low. In many cases there will be minimal risk from living or working on contaminated ground. Indeed many contaminated sites have been successfully and safely redeveloped to provide high quality housing and working environments.

There is a legal definition of contaminated land – that which presents an unacceptable risk to human health or the environment – and it is the responsibility of the relevant local authority to assess and determine whether a particular site in their area is 'contaminated'.

Part 2A of the Environmental Protection Act 1990 was introduced in England and Scotland in 2000 (2001 in Wales), placing duties on local authorities to identify potentially contaminated sites in their area and ensure that they are cleaned up appropriately. When new houses are built, the planning process also ensures that the risk of contaminated land is assessed and dealt with by developers.

What are the Risks?

In a few cases some sites are so contaminated that they present an unacceptable risk to human health or the environment, and could therefore be determined as 'contaminated'. In such cases those living on the site could be exposed to contaminants through inhalation of dust or gases, contact with soil, or through food grown on the land. Contaminants can also drain from the site in liquid form and pollute groundwater and rivers or ponds. The effects on human health and on the environment will depend on the type and amount of contaminant involved.

Brownfield Development

In most large towns and cities there are sites that have fallen into disuse. Some have been left as unsightly wasteland or derelict buildings. These have an environmental and social detrimental effect on the surrounding area. Such land is known as 'Brownfield land', defined most simply as 'land that has previously been developed'.

Many of these sites are in central urban locations and as industry has departed so residential communities have moved in to take their place. Although much of this Brownfield land may have been contaminated, in past years redevelopment of these sites was less well regulated and there was less concern for the management of the potentially hazardous substances present. In fact, not all Brownfield sites are contaminated. However, correctly managed, there is no reason why previously contaminated Brownfield sites cannot be safely occupied for residential use.

The UK Government now wants to bring as much Brownfield land as possible back into use and is encouraging the regeneration of previously developed land to limit unnecessary development of Greenfield sites and preserve the countryside. Strict targets have been set to encourage building of the majority of new houses on Brownfield land.

What if I'm Selling My Home?

In terms of a property conveyance, some buyers have noted that their lender may be reluctant to proceed with the mortgage advance and some buyers may be put off by the possible presence of land contamination. But land contamination *per se* is not necessarily a real problem.

The risks associated with living on most land that has been contaminated by past use are usually low, and, more often than not, any effects are to the value of the property due to perceived risk rather than actual effects to the health of occupiers or to the environment.

You should always seek the advice of your solicitor in the first instance. There are other bodies and sources of information that can help you, as set out below.

Environmental Searches and Contaminated Land

As understanding of the importance of land contamination has increased, so it has become more common for solicitors to make enquiries about land contamination.

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.

Although not a statutory requirement, environmental searches are frequently carried out by conveyancing solicitors to identify contamination that might affect the property being offered for sale. These environmental searches are most often provided by commercial organisations and are supplied at various levels of detail, ranging from provision of purely factual information through to detailed interpretation of findings.

Generally the searches include a study of old historical mapping, land use records and other information that might indicate matters of potential concern. As a result of these searches the provider may issue a certificate stating that the site appears to be at minimal risk of being affected by contamination.

Alternatively if contamination is suspected a certificate may be withheld, but a warning issued that contamination may be present. This is not a guarantee that contamination is actually present, nor is the issue of a certificate a guarantee that no contamination is at the property.

How Do I Find Out More?

In the first instance you should contact the Contaminated Land Officer at the local authority where your property of concern is situated. The Contaminated Land Officer holds information on many sites in your area. It is possible that they may have records of the former uses of your property, how any contamination was tested and details of any remedial work undertaken to make the land safe.

It might also be beneficial to contact your local authority's Planning Department and Building Control Department. Both of these Departments may also have records detailing how contamination had been managed to help you understand the condition of the land.

In addition you can contact the Environment Agency, or the Scottish Environment Protection Agency (SEPA), bodies that address pollution incidents and have powers to enforce clean up of environmental damage.

The Law Society has provided advice to solicitors in the form of a warning card – see www.lawsociety.org.uk and www.lawscot.org.uk

What Happens Next?

Your local authority can provide advice but ultimately it is your responsibility to satisfy yourself that your concerns have been addressed.

You may wish to carry out testing yourself, as physical testing of the ground in its current state is the only way to gain a detailed picture of the actual ground conditions.

However, you should note that the sampling and testing of soil and water and interpretation of the results is expensive and best left to professional advisors. Your local authority can provide advice on the procuring of these professional services, and may give advice on the interpretation of the results of sampling and testing, however, ultimately the decision on subsequent action will usually rest with the property owner.

It is worth noting that only in a relatively small number of cases will the land be classified as 'Contaminated Land' under Part 2A of the Environmental Protection Act 1990.

Sometimes it can be appropriate to take out environmental insurance. A number of companies offer contaminated land insurance policies.

Further Information

Local Authorities

A full list of local authority contact details is available at:
www.direct.gov.uk/en/DI1/Directories/Localcouncils

Environment Agency

Tel: 01454 624400

Email: enquiries@environment-agency.gov.uk

www.environment-agency.gov.uk

www.environment-agency.wales.gov.uk

Scottish Environment Protection Agency

Tel: 01786 457700

Email: www.sepa.org.uk



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You may also be interested in our leaflets on:

- Contaminated Land
- Air Pollution
- Domestic Smoke
- Garden Bonfires
- Small Scale Wind Turbines

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