



Information and Guidance for Homeowners And Prospective Homebuyers Affected by Potential Land Contamination

Contaminated Land Document CL- 04
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WHO IS THIS GUIDE AIMED AT ?

This guide is aimed at homeowners, prospective homebuyers, homesellers and solicitors undertaking conveyancing work on their behalf.

PURPOSE

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

INTRODUCTION

Like many other urban areas in the UK, the City of Gloucester has a long history of industrial activity. From the mid 18th Century onwards Gloucester has been home to numerous industries and activities, including engineering and manufacturing, town gas production, timber treatment, military activities and waste disposal.

These 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 safe former industrial sites for new housing, in some cases, especially for houses built several years ago, the possibility of 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 IIA of the Environmental Protection Act 1990) places certain duties on Local Councils 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. What contaminants might be present depends upon what the land has previously been used for.

Historically industry 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.

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 health, or the environment. In such circumstances the City Council has a duty to inspect the site to determine whether the risks mean remediation is required. If it is considered necessary to remediate the site then the City Council will consider legally determining the site to be 'Contaminated Land' and will take steps to identify who the appropriate person to remediate the site is, and ensure they do so.

Normally it will be the original polluter 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. Should individuals find themselves facing hardship as a result of such liabilities, however, they may well be exempted from having to pay any costs.

THE PROPERTY HAS FAILED TO GET A CERTIFICATE – WHAT DOES THIS MEAN ?

Though not essential, environmental searches are now routinely carried out by conveyancing solicitors to identify any contamination concerns that might affect a property. They may be obtained from a variety of private companies.

These companies keep large databases of environmental information, including land use information obtained from old Ordnance Survey maps. When a search is carried out these companies check their database records and if it appears there is little likelihood of contamination being present they will issue some form of certificate to confirm this. Often some form of insurance cover or warrantee will be provided to accompany the certificate.

If however there is some possibility that the property might be affected by contamination then often the company will refuse to issue a certificate and often they will advise the affected parties to make further enquiries.

It is important to note that such certificates do not actually confirm either the presence or absence of contamination at a given property. 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.

Ultimately it is down to the views of any particular search company whether they wish to issue a certificate or not, depending on their assessment of, and attitude towards the risk that the property might be affected by contamination.

It is the stated view of the Council of Mortgage Lenders (Sep 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 isn't necessarily a barrier to lending.

SO WHAT SHOULD I DO NOW ?

If an environmental search company has concerns that a property may be affected by contamination and fails to issue a certificate the first step is to contact Gloucester City Council's Contaminated Land Officer to see if further information is available.

The Contaminated Land Officer holds further information on a large number of sites in Gloucester, including site investigation and remediation reports, which might indicate the site is not contaminated, or perhaps that it once was, but has now been cleaned-up.

The Contaminated Land Officer will always be happy to discuss what information is known regarding any particular property, but a fee is payable should details be required in writing. Note that in some circumstances it may not be possible to provide copies of site reports for copyright reasons, though almost all information will be available for public inspection.

In addition to the Contaminated Land Officer it might also be beneficial to contact the Council's Planning Department and Building Control Department. Both of these Departments might also hold records which might be useful in understanding the condition of the land.

IT IS UP TO YOU IN THE END

Ultimately the only way to be sure whether land is contaminated or not is to carry out a proper investigation. The City Council is in the process of inspecting land known to have had an industrial use, now used for housing, but this process will take several years to complete. Even at the conclusion of this process it is possible further information might come to light that may require a piece of land to be re-inspected.

Gloucester City Council recommends all potential purchasers of property to make all the necessary enquiries to gather the available facts. Ultimately it is they must then decide for themselves whether they wish to proceed.

Should a homeowner consider that possible contamination concerns are making it difficult to sell their property, there are a small number of possible options.

One option that might be appropriate is to consider some form of contaminated land insurance policy. There are now a number of companies offering a range of policies. Either your solicitor or the Council's Contaminated land Officer will be able to advise you on what options exist.

Another option is to commission environmental consultants to undertake a site investigation to establish the actual condition of the property. Gloucester City Council is rarely able to endorse such action, due to the associated complexities, costs and uncertainties. In some circumstances it may, however, be appropriate.

The Contaminated Land Officer may be able to offer advice on how the homeowner can go about selecting a suitable consultant, and what sort of investigation is most appropriate. However the Council might decline to offer advice if it considers an investigation is not appropriate given the circumstances.

The Contaminated Land Officer will usually comment on results obtained from any such investigation, but can never guarantee that a site will never be classified 'Contaminated Land', as further information may emerge, or there may be changes to the law or technical guidance.

WHERE CAN I GET FURTHER INFORMATION ?

Gloucester City Council Website: Contaminated Land

<http://www.gloucester.gov.uk/Content.aspx?URN=2543>

or search for 'contaminated land' from the Gloucester City Council site

Contamlinks Website

www.contamlinks.co.uk

Department of Environment, Food and Rural Affairs (DEFRA)

www.defra.gov.uk

Environment Agency

www.environment-agency.gov.uk

Or please contact the Contaminated Land Officer on:-

Telephone: 01452 396312

Email: enviro@gloucester.gov.uk