

THP SOLICITORS



“BUYER BEWARE” WHY DO SEARCHES AND SURVEYS?

When you buy a property you buy it in its current physical condition and subject to any matters affecting the legal title and any environmental, planning or other matters affecting the neighbourhood. You may have heard the phrase “caveat emptor” which means buyer beware.

For this reason it is the buyer’s responsibility, aided by his legal advisor and his surveyor, to check these and any other matters which would affect their decision to buy the property. The seller has no obligation to offer information save for limited required disclosures, although they can be asked specific questions about the property and are under an obligation not to mislead or misrepresent.

Due to this principle of buyer beware it is very important that the relevant searches are undertaken and that the property is physically inspected by someone qualified to advise upon it’s condition before you exchange contracts (legally commit to buy the property) to ensure you are clear on what you taking on.



SURVEYS

The Seller does not provide any warranty as to the structural soundness of their property. It is our advice that you should always have a survey regardless of the age or type of property being purchased although the type appropriate will vary according to the age and type of property. You will find that if you speak to a surveyor they will be able to guide you in the right direction of which type of survey is appropriate for your circumstances.

You buy the property in the condition it is in at exchange. Unless the Sellers have misrepresented the position regarding defects to the property then you will not have any recourse to the Sellers should you discover any defects or structural issues.

You should also be clear that we do not inspect the property and will only be able to report to you upon the information received from the Sellers Solicitors and the results of your searches. The survey is likely to be the only physical inspection of the property and the only way of confirming whether there have been works to the property so that we can ensure that the works have the necessary consents.

Often a survey will reveal works which the Seller has not disclosed perhaps because the Seller has forgotten the works have been undertaken or was not aware of them because they pre-date their purchase (and they did not themselves have a survey).

You may wish to view the information contained on RICs website which gives some information and guidance about surveys and the different types of survey.

We are aware that there are a few misconceptions about when you do and don't need a survey.

New Build Properties

Whilst it is likely that a new build property will have the benefit of a new build guarantee we would still recommend that you consider having a new build snagging survey. This will contain advice about the build process and involve an inspection report which you can pass to the developer detailing the snagging items you require undertaken.

Lenders Valuation Report

There is a common misconception that a survey is not required because their lender is undertaking a mortgage valuation. The basic valuation carried out by your lender is only intended to confirm that the house is good security for the mortgage loan and is prepared for your lender not you meaning that you could not seek to rely on it if there were a problem.

Flats

Often people believe that because they are buying a flat within a block not the whole structure a survey would be a waste of money. A surveyor will be able to check the property to see whether any works have been undertaken which may have required both Local Authority and Landlords consent.

In addition they will be able inspect the main structure of the block and advise on any major works required to the property which you will end up paying a share of via the service charges. Some surveyors will also be prepared to review the service charge accounts and confirm whether they believe the funds being collected or held in reserve are sufficient taking into account the level of maintenance required for the property

SEARCHES

As part of the conveyancing process we undertake certain searches in order to be able to provide you with information about the property. The current recommendations are that we undertake a Local Search with the Local Authority, a Water and Drainage Search with the utility provider and an Environmental Search. Other searches may be appropriate depending upon where the property is situated or what you intend to use the property for. For example a Flood Search may be appropriate in Flood Risk Areas.

Local Search

This is carried out with the local authority. It would be against our advice to proceed with a purchase without having the results of this search and if you are purchasing with the benefit of borrowing your lender will insist upon this.

The search will confirm whether the road adjoining the property is a publicly maintained highway and will give details of any Article 4 Directions, Planning Consents, Planning enforcement notices, Tree Preservation Orders, Conservations Areas, Listed Building Consents for financial charges affecting the individual property. It will also reveal matters such as road schemes within 150 metres of the property.

However you should be aware that the information in this search is very specific to the property and will not reveal information about neighbouring land or properties. If you require information about neighbouring land you may want to consider a Plansearch.

The Local Search is accurate as at the date it is produced and as such it is possible that the information may change the day following the search and you would not be made aware. For this reason it is important that an up to date Local Search is undertaken on the property rather than relying upon a historic search.

Environmental Search

The Environmental Search will report on contaminated land issues, flood risk, radon risk, ground stability and energy and infrastructure.

The Environmental Protection Act 1990 brought into effect a new Contaminated Land regime, and it is retrospective – i.e. it covers both existing and future contamination. Under the Act Local Authorities must inspect and identify seriously contaminated sites. They can then issue Notices requiring action to remediate such contamination. Compliance can be costly, and can result in expenditure to clean up the site, which could exceed the value of the property.

Whilst liability falls primarily on those who cause or knowingly permit the contamination, if the Local Authority cannot identify such a person, liability can fall on the current owner or occupier of the land. This could result in you, as the present owner, being liable to clean up the contamination, where the person who originally caused the contamination cannot be found or identified.

Our advice is that you have this search for all purchases. This will detail past and present contaminating and polluting processes, landfills, waste treatment sites, floodplains, the probability of Radon Gas, plus the risk of some other matters. Whilst it cannot claim to be a definitive and complete record, it should identify any known problems.

Water and Drainage Search

This will confirm whether foul and surface water drainage from the property are ultimately to the public adopted sewers. It is important to check this to ascertain your potential liability for repair and maintenance. All properties that drain to the public system are linked to it by lengths of private drain and/or private sewer, and it is your responsibility with any other users of these private drains to share the cost of maintenance. Obviously there are additional cost implications where a property drains to a septic tank, and it is important to know what these are before you are committed to purchase. The search also gives an indication as to where the public system sewers are, which may be of interest to you.

Flood Search

A Flood Risk search will give an indication of the likely risk of flooding to a property. We will undertake this search if the property is within an area subject to flood risk or if you have other reasons to believe one should be undertaken.

In addition you may wish you may wish to look at the Environment Agency Flood Map <https://flood-map-for-planning.service.gov.uk/> which will give you information about the flood risk to your property.

You may have seen information in the press in recent years about Flood Re which is scheme whereby there is an agreement between the government and the insurers to

ensure that owners of high risk properties are able to obtain insurance cover for the risk of flooding. However you should be aware that there are eligibility rules for this scheme and you may like to view the information on the Flood Re site which can be found at: <https://www.floodre.co.uk/homeowner/eligibility/>

You should also be aware that some properties will not be eligible for Flood Re details of these can be found on the above website but include:

- B & B's paying business rates;
- Block of more than three residential flats;
- Properties built after the 1st January 2009;
- Company houses/flats;
- Farm outbuildings;
- Properties used by freeholders/leaseholders in deriving commercial income insuring blocks/large number of properties in a portfolio;
- Multi use properties under commercial or private ownership;
- Residential "buy to let" properties which do not otherwise meet the eligibility criteria;
- Static caravans site owners (for commercial gain).

You need to be sure that you will be able to obtain insurance for the risk of flooding both now and in the future on terms acceptable to you. You should speak to your insurer and ensure you can get cover for flooding on terms acceptable to you and your lender before you exchange contracts.

Coal Mining and similar searches

In certain areas of the country, coal or other mining searches are recommended by the Law Society, and we would let you know if your property falls within such an area. (If you are aware of any mining activity in the area of the property then let us know in order that we can make further investigations.

Chancel Repair Search

Chancel Repair Liability is an ancient liability which dates from the time of Henry VIII. Chancel repair liability enables approximately 5,200 pre-Reformation Church of England and Church of Wales parishes to demand money from owners of particular properties on former monastery land, to fund repairs to their church buildings. These homeowners are called lay rectors, and they are liable for keeping the chancel - the space around the altar at the liturgical east end of the building - wind-proofed and water-tight.

Churches have begun pursuing claims since the House of Lords ruled that Andrew and Gail Wallbank had to pay £186,986, plus VAT, towards the upkeep of St John the Baptist church in Aston Cantlow, near Stratford-upon-Avon. They also had to stump up legal costs of around £220,000. They own a nearby farmhouse which brought with it the legal requirement.

It is possible to carry out a search to determine whether the property you are buying has a potential liability and if there is a risk to put in place Chancel Repair Indemnity Insurance. These searches merely check whether there is any potential liability and do not give a definitive answer.

You may have seen debate in the press about whether Chancel Repair Liability came to an end on the 13th October 2013. This liability did not cease to exist then but ceased to be what is called an overriding interest. This means that if there is no such liability registered against your title then it would not bind you. However it is possible that it may be enforceable against a future owner and as such may have an impact on the value and marketability of your property.

We do not undertake this search unless there are property specific reasons to believe there may be a risk and therefore if you would like us to carry out a Chancel Repair Search please let us know. If you have any reason to think that there may be a potential risk of Chancel Repair Liability for example the property is close to a Parish Church, please let us know.

Energy and Infrastructure

It is possible to undertake energy and infrastructure searches and Crossrail 1 and 2 searches. These will reveal certain information about the HS2 rail network, areas licenced for on-shore energy exploration and production and areas licenced for hydraulic fracturing (fracking), existing, planned and proposed wind farms and wind turbines, oil and gas exploration and drilling locations and renewable energy plants.

We do not undertake this search as a matter of course and therefore if you would like us to carry out this search on the property or require more information please let us know.

Planning and Neighbourhood Searches

A Plansearch Plus will provide planning and neighbourhood information about the area surrounding the property for example any plans to construct a telecommunications mast in the vicinity of the property, plans for a new development close to the property which may have noise, disturbance or ruin the view from the property.

The Information provided can range from a small alteration at a neighbouring house to the development of a large industrial site within close proximity of the property. It will also give details about the local area including School Performance Indicators, details of footpaths and rights of way and the location of telecoms masts. You may wish to consider this search if you are moving to a new area.

You should be aware that with regard to the planning applications this will only reveal formal applications and consents. This will not reveal speculative negotiations which a developer may have with the Local Authority prior to making a formal application.

It is also possible to undertake what is called a DevAssess which provides an assessment of the potential development of the property and the surrounding land which will include an assessment on the likelihood of future development risks within 75m of the property i.e. is it likely that a housing estate is likely to be built near by the property.

We do not undertake this search as a matter of course and therefore if you would like us to carry out this search on the property or require more information please let us know.

Company Search

Where the seller of the property is a Limited Company (often the case with builders) or there is Management Company, a Company Search may be necessary to check that the Company is still trading satisfactorily, and there are no charges registered against the land.

Other searches

We also carry out pre-completion searches against the seller and/or the Land Registry Title to the property. If you have a mortgage the lender requires us to carry out a bankruptcy search against you. There may also be other searches which could be relevant to individual properties or areas, and these may be suggested to you when we check through the paperwork.

CONCLUSION

The purpose of carrying out searches and surveys is to provide you with the best possible information for you to make your decision about the property. Once you have committed to the purchase by exchange of contracts, you are legally bound to proceed, irrespective of anything you may then find out about the condition of the property, or matters affecting the neighbourhood. If you have any queries about any of the above matters, please let us know.