



IT'S THE LAW: Look before you buy

Inspecting a development site before you buy it. Why bother?

A lot can be discovered about a potential development site from the comfort of a computer screen. We can investigate registered title at the Land Registry. The local authority search tells us if there's a Tree Preservation Order. We can look at London Underground maps to identify if the District Line is a problem. We can even call up satellite images via Google.

But, there are a number of reasons that it remains imperative that you visit the site before you exchange contracts to buy it. Even if that means pulling on the wellies. In this edition of IT'S THE LAW we look at some of the key things to be looking out for.

Boundaries: Usually, the land you are buying will be registered at the Land Registry. The Land Registry title will include a red line plan. But, the registry euphemistically calls its red lines 'general boundaries'. S60(2) of the Land Registration Act 2002 states that 'A general boundary does not determine the exact line of the boundary'. What they are saying is that the Land Registry plan is only a rough approximation. There is a 2011 case (*Drake v Fripp*) where the distance between the physical legal boundary and the position on the scaled Land Registry plan was over 4 metres! So, you need to check that the red lines on the Land Registry plan do, in fact, accurately reflect the boundary features on the ground.

Boundaries (II): Once you've established where the boundary is, you should be looking to see whether there is anything on that boundary feature that might be problematic. Are there any projections (e.g. eaves or gutters) or flues that your development will interfere with?

Access: It's important to establish that the site you are hoping to buy directly abuts the adopted highway so that you can bring service media in and so that you can access your land directly from the adopted highway. Normally, on development transactions, one would expect your solicitor (hopefully us) to contact the highways authority to get a plan showing the extent of the adopted highway. That can be checked against the Land Registry title plan. But, as referred to above, the Land Registry don't guarantee the accuracy of their red lines and, in any event, the highways plans are not always clear, particularly given their small scale. So, you should carefully inspect the line of the boundary 'on the ground' to check that the extent of the road and the extent of the site match up. Look out for warning signs such as grass verges, footpaths, ditches or hedges.

Rights of Way: A third party may have the right to walk or drive across the land you are buying. You may not have the right to stop or divert them. Such rights of way will often be revealed in the title documents. But not always. A person can acquire a legal right by what is known as prescription, simply by having used it for a long time. Such 'prescriptive rights' are just as legally binding as if they were granted by deed. You need to be looking to see if there are any physical signs of someone crossing the site like a road, a path of worn grass or just a hole in a fence that is being used as a shortcut.

Village Greens: If a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged, as of right, in lawful sports and pastimes on a piece of land for a period of at least 20 years then it may be susceptible to registration as a Village Green. Such registration will almost certainly throw a spanner into any development plans.



Neil Toner
Partner, Head of Real Estate
020 7065 1823
neil.toner@devonshires.co.uk



Lucy Woollard
Solicitor
020 7880 4410
lucy.woollard@devonshires.co.uk



Nick Hemus
Solicitor
020 7065 1867
nick.hemus@devonshires.co.uk

Applications can, subject to certain restrictions, be made up to a year after use has been stopped. So it's important that you check whether there are any signs that people are (or have been) using the land for recreational purposes.

Rights to light: If a building near to the boundary of your prospective site has windows (or other 'apertures') you may find that they have the benefit of rights to light. That means that there will be limits on how much your new development can block the light passing to those windows. Breaching those limits will put your development at risk. So, you should be looking around to see whether there are any nearby windows that might be adversely affected by your development.

Bad nature: The most common form of bad nature is Japanese Knotweed. JK was first introduced to the UK in 1850 as a gift by Mr Philippe von Siebold to the Royal Botanical Gardens. Big mistake. Big. Huge. It is hardy, quick growing and strong enough to cause damage to foundations. If you identify JK on your prospective site you will need to factor in the additional time and costs that it will take to eradicate it. You will need to ensure that whatever contractual arrangements you put in place for eradication will be sufficient to satisfy mortgagees (both yours and those of any plot purchasers). You will need to take into account whether the JK has or is at risk of migrating from your prospective site onto any adjoining land. Your inspection should be looking at both your prospective site and any nearby land. If you can see a healthy patch of JK next door – you will need to factor in how you are going to make sure that the adjoining owner takes the necessary action to eradicate it.

Good nature (which is also bad): Overgrown sites can hide a multitude of protected species. It's rare (although not unheard of) that these will stop development entirely. More frequently they can cause delays in terms of getting necessary nature disturbance licences and/or waiting for the right season when they will, themselves, 'fly away'. By way of example; all wild birds are protected under the Wildlife & Countryside Act 1981 whilst they are actively nesting. You are going to have real difficulties clearing bushes and trees that have nests in them during the nesting season (usually March to July). If nesting season is approaching it is not unheard of for sellers to be asked to clear the site of shrubbery to prevent the risk of birds nesting and so causing a delay to site clearance straight after acquisition.

Service media: Pipes and cables can be a real headache. One would expect your solicitor to undertake utility searches and if (as we hope) that's us, then we would usually do that as standard. Our search company approaches service providers in the area to secure plans of their network – which can be checked to see if anything runs under or too close to your prospective site. You might think that that is enough. But the utility companies refuse to guarantee the accuracy of their plans. So it's sensible for you also to check to see if there is anything physical on the site, such as manhole covers, that might indicate something lurking underground. Obviously, look up too. A telephone pole can be equally troublesome.

Occupiers: Often the existence of occupiers (e.g. a leaseholder under a long lease) will be registered at the Land Registry. But, generally speaking, leases of 7 years or less are not registerable. In addition, even if there is no lease at all, the Land Registration Act 2002 specifically protects "an interest belonging to a person in actual occupation, so far as relating to land of which he is in actual occupation". So if there is someone occupying the property and they have any rights in relation to it (e.g. they'd paid part of the original purchase price and are entitled to a share of the sale proceeds) then that right may continue to bind you after you have bought the land. So, it's important that you check that the site is vacant.

Profits a what? A 'profit a prendre' is a right to take something from another person's land. This could be part of the land itself (such as peat), something growing on it (such as timber) or wildlife killed on it (for example by shooting or fishing). These rights are fairly rare and when they exist are often documented at the Land Registry. But, not always. The Land Registration Act 2002 provides that they can, in certain situations, bind you even if you weren't told about them. If someone has such a right over a piece of land you are acquiring for development, it is quite possible that your proposed development will interfere with these rights. So look for signs of 'huntin & fishin'.

The unexpected: The above lists some of the more usual things you might be unlucky enough to discover. But the last thing you need to check for is 'anything else'. A quick survey round the office elicited the following war stories as to what clients had discovered:-

- An 86 year old woman living in a portacabin that the seller had thought was vacant (Southwark).
- A moored boat with a captain claiming mooring and access rights (Hackney).
- A petting zoo (two sheep, a pig and a pony) which had 'encroached' from a local school (Kent).

The trick is to inspect early on in the acquisition process, so that if anything is discovered there is time to deal with it. As a belt and braces we would always advise you to also quickly inspect shortly before exchange (to make sure that nothing has changed) and once again on the day of completion.

The tiny print

This is one of a series of leaflets published by Devonshires' Real Estate & Projects Department aimed at our property owning clients. No action should be taken on the matters covered by this leaflet without taking specific legal advice.

Find out more

Neil Toner
Partner, Head of Real Estate
020 7065 1823
neil.toner@devonshires.co.uk