



Prifysgol Cymru
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Trinity Saint David

CONVEYANCING **UNIT 4:** PLANNING AND BUILDING REGULATIONS



UNIT 4: PLANNING AND BUILDING REGULATIONS

Amplified requirements

- Planning law
- Development
- Planning permission
- Conservation areas and listed buildings
- Building regulations
- Restrictions affecting development

UNIT 4: LEARNING OUTCOMES

- Outline the law relating to planning and building regulations and their relevance to conveyancing transactions
- Identify sources of information relevant to planning and building regulation approvals
- Identify risks for clients arising from breaches, and potential solutions
- Apply the law to factual scenarios

INTRODUCTION

- Unit 5 explores precontract searches in more detail, but before considering these, consideration needs to be given as to planning affecting the property
- local searches include a list of planning applications, approvals, conditions and building regulation approvals
- These need to be crossreferenced with the property information form, and other reports on property, e.g. survey, marketing materials, descriptions etc.
 - i.e. cross referencing may expose that building works have been undertaken without required approvals and sign off.
 - this could be material to value and expose buyer to risk

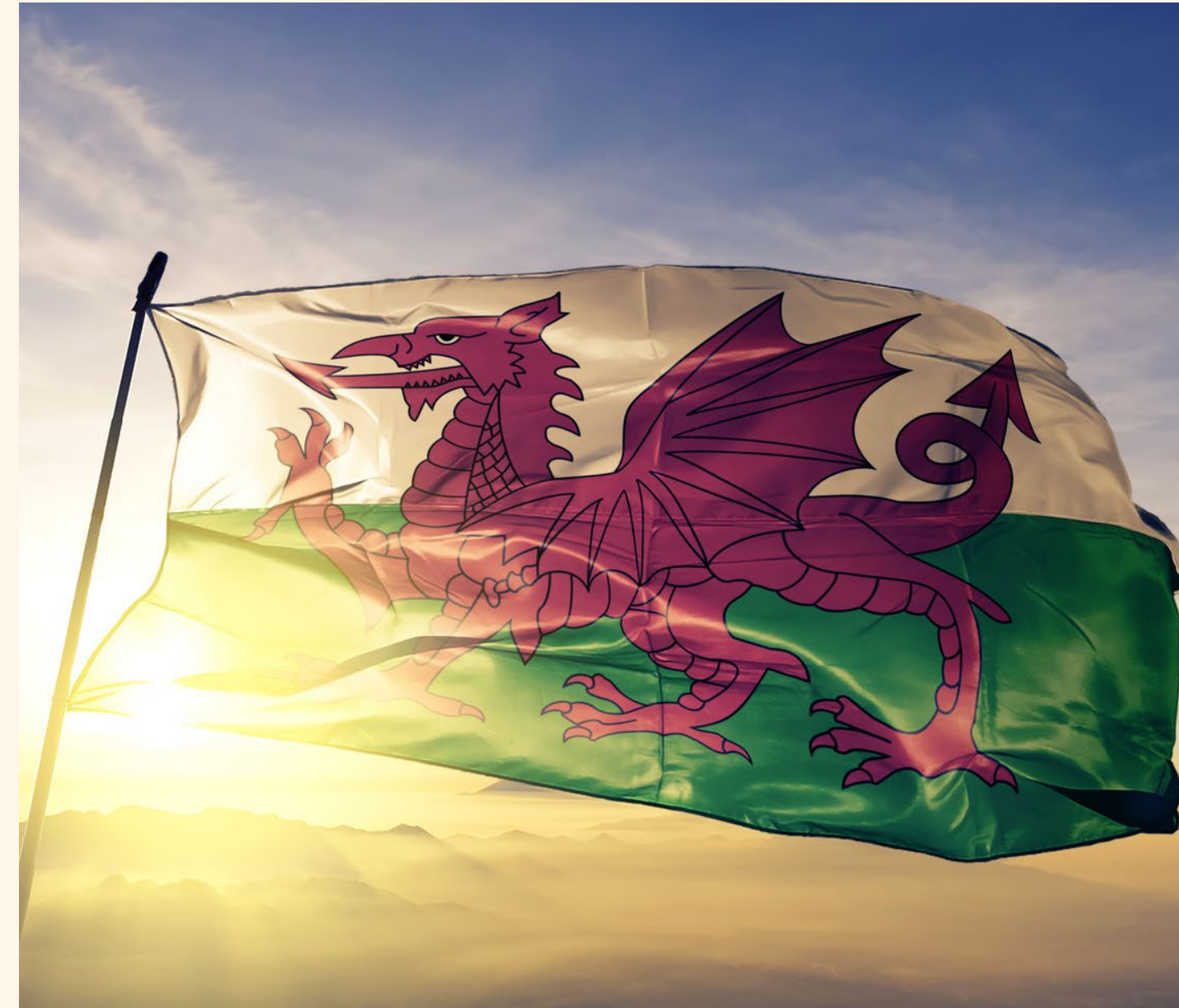


PLANNING OVERVIEW

- Key legal framework:
 - Town and Country Planning Act 1990 (TCPA 1990) (as amended)
 - Planning Act 2008: sought to streamline and speed up system, especially for major infrastructure projects
 - Localism Act 2011: [National Planning Policy Framework](#)
 - streamline and replace previous guidance
 - (1) Developers have a duty to consult with local communities before submitting plans for certain types of major development (specified in regulations).
 - (2) Planning authorities are given power to refuse to determine retrospective planning applications where an enforcement notice has been served.
 - (3) Planning authorities are given increased powers to take enforcement action where a planning breach has been deliberately concealed.
 - (4) A system of neighbourhood planning has been introduced, involving communities in the planning process; and
 - (5) There are further changes to the planning regime for nationally significant infrastructure projects.

PLANNING WALES

- Devolved matter
- Need to be aware of differences in law which applies in Wales
- Law Commission has been consulting on proposals to simplify and consolidate planning law in Wales
- Intent to consolidate 30 Acts and secondary legislation, will lead to new Planning Code
- Nj_11 g e &U _jc q' 0. /3
 - Not relevant to residential conveyancing: strategic use of land
 - Obligation on Welsh Ministers to prepare a national land plan and to make provision for production of strategic development plans re housing supply and areas of economic growth



'DEVELOPMENT'

- Under Planning law, certain activities upon land can only be undertaken with permission
 - prospective buyer will want to know whether their intended use of the land will be permitted.
 - where buyer intends to continue the use of the property without changes they will want establish the present use of the property, and any alterations in the past, have been authorised by the Local Authority.
 - i.e. LA will not take enforcement action to remedy a previous breach of planning control
- Attention needed where:
 - where buyer is buying an empty plot of land in order to build on it
 - where a buyer is buying an existing building but plans some alteration or change of use after completion, e.g. build extension or change residential house into commercial property
 - where a buyer is buying a building which has recently been erected or altered.
- Necessary to identify which changes require permission. TCPA 1990, s55 defines development as being:
 - *the carrying out of building, engineering, mining or other **operations** in, on, over or under land; or*
 - *the making of any **material change** in the use of any buildings or other land.*

OPERATIONS AND MATERIAL CHANGE OF USE

Operations

- New buildings
- Structural alterations
- Extensions affecting external appearance
- Underground space increases
- Demolition (subject to planning controls)

Material Change of Use

- Significant change in use
- One dwelling converted into multiple flats
- Change within or between Use Classes
- Use Classes Order 1987

KEY PRINCIPLE: Development may occur through either physical building operations or a material change in the use of land or buildings. Both can require planning permission.

ACTIVITY 1 USECLASSES

- Access Schedules 1 and 2 of Town and Country Planning (Use Classes) Order 1987. Identify the broad classes - (A)
- Then explain how C3 and C4 are defined. What is the difference between these provisions?

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- If development either building operations or change of use then need =

- Deemed permission under **General Permitted Development Order OR**

- **ENGLAND: Town and Country Planning (General Permitted Development) (England) Order 2015 (TCP(GPD)O 2015**
- **WALES: Town and Country Planning (General Permitted Development) Order 1995**

- Express Planning permission (approval) from LA

- *Some examples of permitted development are:*
 - *development within the dwelling house i.e the erection of extensions and porches;*
 - *minor operations i.e the erection of gates, walls and fences;*
 - *changes of use between different Use Classes*
- [Guide to practice information](#)

ACTIVITY 2: PLANNING PERMISSION

- Gerald would like to build a single story extension to his terrace house in Swansea by 5m to the rear (into his garden).
- Look at the [planning portal website](#) and identify whether this extension would be considered within permitted development.

LIMITATIONS ON PERMITTED DEVELOPMENT

- Permitted development has been modified in some areas e.g. National Parks and World Heritage Sites
- May be further restrictions which do not allow the permitted change of use, e.g. property within conservation area, or property is a listed building
- Some changes of use are also subject to prior approval e.g. relating to parking, flooding and highways.
- LA does not have to adopt TCP(GPD)O 2015 throughout its district and can pass an Art 4 direction that TCP(GPD)O 2015 will be restricted in whole or in part in relation to its area.
- Article 4 Directions are a good example of the significance of the local search when considering planning issue
 - can be discovered by local search, e.g. entry in LIC1



NEIGHBOURHOOD DEVELOPMENT ORDER

- Under LA 2011, planning permission can be granted without express order an NDO
- Principle = local communities should have the chance to be involved in the planning process
 - Benefit: less confrontational, focused on wider objectives rather than individual proposals, local people know the area best
- NDOs can grant full or outline planning permission, with or without conditions, for development that complies with the order.
- Some matters are excluded from neighbourhood planning, such as nationally significant infrastructure projects, mining-related development and waste development.
- If neither PD or NDO, express planning permission needed



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APPLYING FOR PLANNING PERMISSION

When is Permission Needed?

- Required if development is not automatically permitted
- Outline Permission: acceptable in principle
- Full Permission: detailed proposal

Before Applying

- Ask the LA for a determination if unsure whether a proposal is development

Who Can Apply?

- Anyone with an interest in the land
- Must own the land or notify the owner

How Does the LA Decide?

- Local Development Plan
- Other material considerations
- 8 weeks (13 weeks for major applications)

KEY PRINCIPLE

Successful permissions appear in LLC1 and CON29 searches.

Expires: 3 years (England) / 5 years (Wales).
Work must commence in time.

RESERVED MATTERS

- Outline permission is granted subject to certain “reserved matters”. These are specific details about the permission that can be confirmed later. Reserved matters can include:
 - **Appearance** –aspects of a building or place which affect the way it looks, including the exterior of the development.
 - **Means of access** –covers accessibility for all routes to and within the site, as well as the way they link up to other roads and pathways outside the site.
 - **Landscaping** –the improvement or protection of the amenities of the site and the area and the surrounding area, this could include planting trees or hedges as a screen.
 - **Layout** –includes buildings, routes and open spaces within the development and the way they are laid out in relation to buildings and spaces outside the development.
 - **Scale** –includes information on the size of the development, including the height, width and length of each proposed building.
- Outline planning permission does not act as consent for development to begin.
- After granting OP a “reserved matters” application must be made within three years of the consent (or less if specified).

Details of the application must be consistent with the outline approval, including any conditions attached to the permission.

Development must commence within two years from the latest reserved matters approval.

PLANNING CONDITIONS

- Planning can be refused or granted with or without specific conditions
- LA can grant **'such conditions as they think fit'**
 - power needs to be interpreted in light of material considerations (NPPF), Gov supporting guidance on the use of conditions, and relevant case law.
- **Para 56, NPPF** planning conditions should be kept to a minimum, and only used where:
 - necessary;
 - relevant to planning;
 - relevant to the development to be permitted;
 - enforceable;
 - precise; and
 - reasonable in all other respects.

Prospective buyers should check enquiries from LA to determine if there have been any planning applications, and the outcome of them.

Buyer should also see the decision and check any conditions have been followed

Key sources: Town and Country Planning Act 1990, ss70, 72, 73, 73A and Sch 5

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- A buyer who identifies that there has been some development without planning will want to know if LA can take action
- LA may issue enforcement notice where there has been a breach of planning control
- May also provide a stop notice
- In some cases, enforcement notice cannot be served where development carried out more than 4 years ago
 - Some people try to manipulate this limit: *Fidler v SS for Communities and Local Gov* [2010] EWHC 143 (Admin)
 - LA 2011 addresses deliberate concealment
 - Also: courts take view where deliberate concealment, normal enforcement time limits do not engage until the breach has been discovered
- 4 year rule applies to: unauthorised operations (e.g. building work) and unauthorised change of use to a single private dwelling-house. For other works - 10 years.

PLANNING AND COMPLETION ACT 1991

- The Planning and Compensation Act 1991 also provided the LA with extended enforcement powers. Although the enforcement notice is the main method, other methods of enforcement include the planning contravention notice and the breach of condition notice.
- Where there has been a breach the buyer's conveyancer should:
 - identify the non-compliance;
 - assess the risk of enforcement action being taken;
 - advise on the solution.
 - Retrospective planning?
 - Lack of planning permission indemnity insurance policy?



CONSERVATION AREA

- Property located in a conservation area will be revealed by LA search, but seller should indicate on TA6
- Conservation areas exist to manage and protect the special architectural and historic interest of a place.
- Designation of CA imposes extra planning controls and considerations
- LA can impose an Article 4 Direction which restricts work that can normally be done without planning permission.
- If cutting down tree, must notify LA 6 weeks before intended work (different from TPO)

Differences for Permitted development rights in conservation areas. E.g.

- (1) Detailed residential changes like two-storey extensions, dormer windows and stone cladding.
- (2) Extensions to retail premises (smaller floorspace increases; appearance should match the existing; limitations to click and collect facilities).
- (3) Industrial and warehouse buildings (smaller floorspace increases).
- (4) Controls on materials for buildings on the site of a school, college, university or hospital.
- (5) Limitations on change of use such as retail or agricultural to dwelling house.

TREE PRESERVATION ORDER (TPO)

- Order made by LA to protect specific trees, groups of trees or woodlands in interests of amenity. TPO prohibits:
 - cutting down
 - topping
 - lopping
 - uprooting
 - wilful damage or destruction without LA's written consent - which may be conditional
- Owners of protected trees must not carry out, or cause or permit the carrying out of, any of the prohibited activities without the written consent of the local authority.
- LA can't require maintenance work to be done to a tree just because it is protected. But can encourage good tree management when granting planning consent

Buyers may want to obtain arboricultural advice from competent contractors and consultants, or the LA to understand their obligations.

Trees must be regularly inspected and maintenance undertaken to make sure they remain safe and healthy.

Local search will reveal if TPO applies, TA6 should indicate too

LISTED BUILDINGS

- Special architectural or historic interest
- Relevant to conveyancing as enforcement provisions relating to contravention of the listing requirements are serious. Buyer needs to understand risks/obligations.
 - **Grade I buildings** : of **exceptional interest** (2.5% of LBs)
 - Grade II* buildings: particularly important buildings of **more than special interest** (5.8% of LBs).
 - **Grade II buildings** are of **special interest** (91.7% of LBs)
- Listing intended to identify and protect the nation's architectural heritage: ensure buildings properly protected from neglect, inappropriate alteration, extension or demolition.
- All of building is listed, including interior and any object or structure fixed to the building or sited within its curtilage older than July 1948.
- Though we tend to think about large expensive houses, farmhouses or townhouses, listed buildings can include diverse structures e.g. windmills, bridges, walls and even letterboxes.
- As with all other planning issues, whether a property is listed and any associated listed building consents will be revealed on the local search. Seller should indicate whether property is listed on TA6.

OWNING LISTED BUILDINGS

- Listed building consent is needed for all works of demolition, alteration or extension to a listed building that affects its character as a building of special architectural or historic interest.
- The requirement applies to all types of work and all parts of those buildings covered by the listing protection. This includes buildings and other structures within the curtilage of the property.
- The curtilage of a building is in general terms any area of land and the buildings that is around and associated with the principal building. Not all buildings have a curtilage and the facts of the case will need to be considered carefully.
- An application for listed building consent is made to and determined by LA. Where works have an impact on the external appearance of the building, planning permission may also be required and if so, should also be applied for at the same time.

Planning permissions and the corresponding listed building consents will be revealed by the local search.

The local search will also reveal whether the local authority has taken or is taking any enforcement action for breach of planning control.

ACTIVITY 3: PLANNING PERMISSIONS

- Review your client's case folder and identify potential issues arising in relation to planning permission.
- Prepare a list of enquiries for the seller in relation to the planning permission.

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- Building regs and planning are often considered together but two separate issues to be checked: planning permission + building regs
- Developer needs more than just planning permission
- works carried out must comply with **Building Regulations** in force at time
- issued by suitably qualified companies or individuals to carry out building control work in England and Wales under the Approved Inspector' scheme.
- BR 2010 cover wide range of works:
 - construction and extension of buildings, alteration projects such as installing a bathroom where this will involve plumbing work, changing electrics near a bath or shower, replacing windows or replacing a central heating.



BUILDING REGULATIONS\$2)

- Application for BR approval should be made **before** work undertaken.
- A building inspector will oversee the work as it progresses and, once it is finished, **issue a certificate of compliance** to confirm that the requirements of the building regulations have been met.
- Occasionally, work can be selfcertified by a competent tradesperson
- There is a register of competent persons which can be checked by those wishing to undertake works and a separate register for electricians has been set up. The competent person will give the home-owner a certificate which can be used as evidence of compliance with the Building Regulations.
- Work carried out under the selfcertification scheme should be notified to LA by the contractor. The fact that work has been carried out under the scheme **will** appear on the local search result.
 - BUT, LA does not retain or issue copies of the certificates.

Common work: new windows and doors

- should be FENSA approved. Issue
certificate

Copies of certificates not always
needed if mentioned in results of
enquiries, or on relevant website, e.g.

[FENSA](#) (per Protocol, para 13)

BUILDING REGULATIONS (3)

- BR 2010 supplemented by technical guidance **Approved Documents** - explain how BR requirements satisfied
- Buyer of recently erected/ altered property should not only check whether the requisite planning permission has been obtained and conditions complied with, but also ensure that Building Regulations approval has been obtained.
- Important to remember that BR approval may be required even though the works do not amount to development for the purposes of planning permission.
- **Cottingham v Attey Bower & Jones [2000] Lloyd's Rep. PN 591**



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- BR enforced by LA but separate from planning control
- Once planning permission granted or deemed, building inspectors must still check the development was still undertaken under current BR before issuing certificate
- LA generally must take action for BR breach within 12 months, but exceptionally may take out an injunction later
- Possible to obtain a Regularisation Certificate from LA under BR, or alternatively obtain indemnity insurance to cover any possible enforcement proceedings outside the 12 month period. This insurance may be combined with insurance for lack of planning permission (e.g. lack of Planning and Building Regulations consent indemnity policy)



ACTIVITY 4: BUILDING REGULATIONS

- Prepare a list of enquiries for the seller in relation to the building regulations.

PRIVATE RESTRICTIONS

- Planning considerations described in this unit so far are all **public restrictions**
- May also be **private** restrictions:
 - rights asserted by neighbouring landowners (restrictive covenants or easements)
 - the enforceability of covenants and easements was discussed in Land Law

CONTAMINATED LAND (1)

- EPA 1990, as amended by the Environment Act 1995 (EA 1995), makes provision regarding contaminated land.
- Intended that all land suspected of contamination be registered, but EA 1995 more restricted: aimed at identifying and remedying land known to be contaminated and likely to cause significant harm
- Since April 2000, local authorities have been under a duty to identify contaminated land.
 - LA will begin negotiations with responsible person for remediation. Could be original polluter, or someone who allowed pollution, or owner.
 - Buyer could therefore be at risk to rectify.
- ***Circular Facilities (London) Ltd v Sevenoaks District Council*** [2005] - EPA potentially makes later owner of site liable for land contamination even though it had not itself deposited the material on the land. Doesn't matter if contamination is natural or artificial (rotting vegetables in the case)



AMLR? K&? RCB J? LB &'

- If agreement reached, remediation statement drawn up, but otherwise LA will issue a remediation notice. These are maintained on public register.
- Prospective buyer should check register by raising LA enquiries
- The fact the local search does not reveal contamination does not confirm that the land concerned is not contaminated
- Land contamination risk may be identified from past uses
- Commercial search facilities exist to investigate past uses. More detailed investigations can be carried out by specialist surveyors
- Insurance may be considered, and now provided for new homes under NHBC for 10 years
- Law Society [guidance](#): Emphasis on considering whether contaminated land is an issue in conveyancing and undertaking necessary searches/enquiries



PARTYWALLS(1)

- When new building work is to be carried out, it may be appropriate to consider the provisions of the Party Wall etc. Act 1996 (as amended).
- Act relates to the construction of new walls and construction works within the property boundaries which may affect the stability of adjacent property and give cause for disputes between neighbours regarding maintenance of boundary walls.



PARTY WALLS (2)

Section 1: New Boundary Walls

- If both neighbours agree, the wall is built on the boundary at shared expense.
- If no agreement, the wall must be built within the land of the paying owner.

Section 2: Boundary Walls

- Covers both boundary walls and walls of buildings on a boundary.
- Owner planning repairs must serve a party structure notice (S3).
- Neighbour may respond with a counter-notice (S4) to impose restrictions.
- Aims to protect the neighbour from potential damage.

Section 6: Works Affecting Stability

- Applies to works like deep excavations or new constructions.
- Owner must serve notice to the neighbour before starting work.
- Owner may need to cover costs for structural improvements to protect neighbouring property.

Sections 8 & 10: Access & Disputes

- Allows entry onto neighbouring land for necessary works (with notice, except in emergencies).
- Owner must compensate for any loss or damage caused.

Key Takeaway: The Party Wall Act balances an owner's right to build with a neighbour's right to protection.

ACTIVITY 5: BUILDING REGULATIONS

- From your client case folder, review the TA6 form and local search, completed, and make a list of which questions may provide information on planning or building regulations.

HOMework

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- Outline the law relating to planning and building regulations and their relevance to conveyancing transactions
- Identify sources of information relevant to planning and building regulation approvals
- Identify risks for clients arising from breaches, and potential solutions
- Apply the law to factual scenarios

How confident are you that you can demonstrate these Learning Outcomes in your assessments?

Probably not fully after today alone. As you plan your independent study for this week, focus on these learning outcomes. Plan your reading and notes against these and work on building your confidence in achieving them before we start the next unit.

RECAP

UNIT 4: READING

- You should draw on the following materials to deepen your understanding of the topics discussed in this unit.
- Harris *et al.* (2024) chapters 7 and 17
- Law Society (2020) 'Contaminated Land'. Available at:
[https:// www.lawsociety.org.uk/ topics/ property/ contaminated-land](https://www.lawsociety.org.uk/topics/property/contaminated-land)