

Acquiring your wood

The legal minefield



WOODLAND
TRUST

THE LEGAL MINEFIELD

You've found your wood, and it looks perfect – but have you checked it really is suitable for your grand plans? It would be folly to put pen to paper on a purchase or lease without investigating what legal and environmental hiccups might afflict the place.

Many of the pitfalls listed in this chapter should be flagged up by your solicitor in making their standard searches – aim to appoint one who's handled woodland transactions before. But it's vital you comb your wood carefully before taking it on, walking all over it with eyes peeled for potential problems. If possible, look to meet the landowner or vendor at the wood, rather than his land agent, so you can quiz them about the history of the wood, its physical characteristics, any issues with neighbours and the like.

Here's a checklist to help ensure you've everything covered...

Access: If access to the site from the public highway runs across someone else's land, check there is a documented legal right of way to it, on foot and (if you'll need to get machinery and equipment on site) by vehicle. Ideally there will be a statement to the effect that 'access is permitted at all times for all purposes'. If you do need to use a shared track or cross another party's land, are you legally obliged to help maintain the route?

Will you want visitors' vehicles to be able to reach the site? Is there parking for them? And are the wood's internal tracks up to scratch for your purposes: will it be possible to improve them or create new ones to tackle the work you have in mind?

Boundaries: Walk the wood and check the legal boundaries shown on the deeds actually match up with what's on the ground. Are the physical boundary features (hedges, banks, ditches) owned by you or your neighbour, and who's responsible for maintaining them? Pay particular attention to any livestock fencing, as repairs can be costly.

Rights of way: Check with your council's rights of way department for statutory footpaths or bridleways through your wood: you've a legal duty of care for these, and they can't be blocked or planted over. That rule doesn't apply to 'permissive' tracks, though, offered at the discretion of the landowner.

Also, does anyone else retain rights on your wood – perhaps to cross with farm vehicles or livestock, or to run water pipes through? That too could hamstring your activities. If there's an old gate giving onto a neighbour's property, or signs of drainage or an old septic tank in the wood, alert your solicitor.

Utilities: Are there pipes and cables running through your wood? If so, you may need to leave an area free of trees either side. Find out early, as they could hamper your plans for the site, or even be hazardous. Your solicitor should carry out local authority searches as part of normal conveyancing, but it's worth contacting the public utility providers (electricity, gas, water, sewage, telecommunications) to check for unknown or below-ground pipes and equipment. If they exist, you'll need to ensure they are documented, and that the company pays you a fee for the privilege of using your land.

Sporting and mineral rights: Are sporting (shooting, hunting and/or fishing) rights included with the property as well as mineral rights? If you don't own all these, it can lead to arguments with third parties. Your solicitor should also get confirmation that there are no existing leases or other legal interests have been granted over the property. If acquiring farmland to plant a wood, check you're getting 'vacant possession' – land without livestock or crops on it.

Covenants and statutory designations: Do any legal constraints (known as 'restrictive covenants') limit what you can do with your wood – and are there any statutory conservation or heritage designations? If your land has been named a Site of Special Scientific Interest (SSSI) to protect an especially valuable habitat, for example, or contains a scheduled ancient monument, it might limit what you can change on the ground. You'll find more on all this in the chapter 'A baseline survey', in the 'Planning your wood' section of this site.

Development threats: Your solicitor's searches should scan the local development plan and highlight existing planning proposals or road schemes that might affect your wood. But it's sensible to contact your local authority directly to check whether anything planned for the wider area might impact on the site. If, on the other hand, you plan to instal a permanent building, a new entrance or parking area at your wood, you should get planning consent for that before completing the acquisition – especially if the work is key to your project's success (for more on this, consult the 'Planning your wood' advice section of this site).

Physical hazards: Walk your wood and assess obvious liabilities, such as large trees overhanging roadside boundaries, exposed cliff-faces or steep paths. Can these be easily rectified to ensure people's safety? What about man-made dangers like quarries, mine shafts, wells or ruined buildings? Will you need to fence them or otherwise make them safe? Think about commissioning a survey on any structures in your wood: it might be houses, barns, walls, boundary banks or ancient monuments such as limekilns. If they're in dangerous condition, you might face up-front costs making them good, especially if the public will be visiting your wood.

Where there is potential land instability – unstable rock faces or very steep slopes – a desktop 'stability study' can be obtained from the British Geological Survey. This may suggest you need further on-site research, especially if other property or a public road or path is endangered. If your wood is close to an old mining area, meanwhile, arrange for a search with the Coal Authority to check for hidden or covered mine shafts and other features.

Contamination: The Environment Agency and your local authority will keep records of any landfill, tipping or contamination at your wood – as a landowner you can be held responsible for contamination caused by a previous, untraceable owner.

Flood risk: If there's a river or lake in your wood or nearby, ask the Environment Agency whether it lies in a flood plain, and whether that places any special constraints on your use of the land. Will you need to maintain any watercourses or ditches to avoid flooding your wood or neighbouring land?

What about insurance?

Pretty much every community woodland group needs insurance, and it should cover both your members and anyone visiting the site you own or lease, whether for work or play. Public Liability Insurance will generally cover all public activities in your wood: make sure any particular hazards on the site are covered by your policy.

If you plan to work in the wood, and most community groups do, that should explicitly include cover for using chainsaws, chippers and other machinery. And if you plan to employ contractors, or invite companies to attend public events there, make sure they produce insurance that covers both themselves and the public.

Make sure your wood is insured from the moment your sale contract or lease is exchanged. If needs be, also check the wood's access gates are secure – change the locks if vandals are likely to be a concern.