

## Episode 170

# The process of buying land

The show notes: [www.houseplanninghelp.com/170](http://www.houseplanninghelp.com/170)

**Intro:** Michael Campbell is an associate at Spratt Endicott Solicitors. He's got decades of experience when it comes to the legal side of buying land and we're going to look at this process today. I'm also going to share with him some of the challenges that arose from my own plot search and subsequent land purchase.

I'm started by asking Michael to tell me a little bit about his background.

**Michael:** I'm Michael Campbell. I'm an associate solicitor here at Spratt Endicott, dealing with residential development mainly but also some commercial development.

By background, I've always been in the residential development game, as it were. I spent nearly twenty years at a national house builder, as their in-house lawyer, dealing with all their acquisitions, sales, affordable housing sales, infrastructure agreements, planning agreements, anything really that gets a site from a bare piece of land to a finished housing development.

**Ben:** How different is it from self-build to volume house builders acquiring land?

**Michael:** The principles are essentially the same, in that there are a number of factors that, when you buy any parcel of land for the purpose of development, you need to take into account.

I think you can probably break those down simplistically into probably four or five different aspects. You've got your title that you need to be certain of, access, services and drainage and you've got your planning.

I say services and drainage combined so, it's four or five separate topics that you need to be concerned with.

Ben: When we're dealing with our solicitor, what are the actual legal steps that you're going through? This may have been what you just covered but I engage my solicitor, what happens next if this was a smooth purchase or land?

Michael: Your solicitor would obtain the title, he would also put in hand searches.

I didn't really mention searches in the pre-amble there because they happen on any transaction. They will be things like your local search, drainage search, chancel repair search. They will be the things that he will carry out as a matter of course and if any issues arose in relation to those then you would either insure against an issue or if it was that drastic, you wouldn't be able to proceed with your purchase.

I think in terms of an additional search that he would carry out, particularly when you're buying a plot of land and it's where I mention the access point, you would carry out a highways search because you need to be certain that the adopted highway abuts the land that you're looking to acquire. There's no point having a lovely parcel of land that you're going to build a house on if you can't actually get to it.

So, that's one of the searches he would carry out and access is a very important aspect of any purchase.

It may not be quite as simple in terms of access as it abutting the highway. It may be that you're buying a piece of back land, maybe somebody's rear garden, something of that nature. Behind a farmhouse, whatever it might be. That's where the title comes into play because you need to be certain that the title allows the access to take you from the adopted highway to where you want to go.

It may be that within the title deeds, for example, there's a restriction that says the access that you've got can only be used for the purposes of one dwelling. Well, if it's already being used for a dwelling, using it for your additional dwelling that you're about to build would actually be a breach of a covenant that exists on a title, something that you're either able to insure against or could be something that means you can't proceed with the purchase of the parcel.

Ben: We had three titles that formed our overall piece of land. That obviously is a little bit confusing to start with. Now, one of them was a different band to the absolute. I believe that's what you want, isn't it? A title possessory.

Michael: Yes. The best class of title that you can have is absolute title. With possessory title, you always run the risk that someone with a better title than you will be able to come along and claim the title to the land in place of yourself. Which, of course, if you're building on that particular parcel of land, could be a disastrous scenario.

You would normally back-up your possessory title with an insurance policy so that if in that scenario, insurance would either cover compensation to the person who's been 'dispossessed' of their land or alternatively would be paying you back the costs that you've incurred in purchasing and whatever development you may have carried out at that point on the land.

Ben: How do things become possessory? I can't quite understand it. Do deeds just go missing? The deeds check in to the Land Registry. Have I got that right?

Michael: They do, but they only check in once there's been a transfer of land. That became compulsory in 1987 in England. But there are still large areas of land which have never changed hands in the last thirty, forty, fifty years and are still unregistered.

If title deeds get lost but somebody believes they own a parcel of land, they will submit their statutory declaration to say 'I've always used this piece of land' and at that point, it becomes registered with possessory title.

Ben: And the title can change after a period of twelve years?

Michael: Yes. You can apply for it to be then upgraded to absolute title on the basis that nobody has made any claim better than your claim to be the owner of that parcel of land.

Ben: Are there any other titles that we should know about?

Michael: There are no other titles to know about but in terms of your title, when you're buying a piece of land, you want to be certain that the title doesn't have any rights or covenants on it which would affect your ability to build the development that you're looking to build.

Taking the point I made earlier about buying a piece of somebody else's garden, for example, to build another house, again if the title was to state that no more than one dwelling can be built then obviously, your second dwelling is in breach of that covenant.

In those circumstances, again you'd be looking to obtain insurance to cover off that potential risk.

Ben: In terms of insurance then, is it easy to obtain? They've got to manage against their risk, haven't they?

Michael: Yes, it's relatively easy to obtain. You can't always obtain it but generally speaking, you can obtain insurance.

What an insurer is most likely to do in those circumstances is . . . you're looking presumably to buy this parcel of land, get planning and build a house on it. They will often do their insurance on a subject to planning basis i.e., they're saying if you go through the whole planning process, you get planning permission and no-one has come forward to claim that you can't build your house because of the covenant, then they will give you insurance based on the quote that they've given you, which is based on a value.

Like all insurance, it's based on a value. A Ferrari is more expensive than a Mini to insure. It's the same principle with a house. The bigger the house, the greater the risk, the greater the insurance.

Ben: Can we rewind back to the searches that we talked about early on? When we received the searches back, it was almost a little bit confusing that they were saying 'nothing's come up as far as we're aware but we can't say any more than that.' Is that quite common, that they're saying 'well, it's a sort of tick but I'm not going to put my word on it'?

Michael: Well, the searches are on the property that you're acquiring. It's not telling you something that might occur a hundred yards away, for example. It is purely related to the property. As long as that is clear, then you should be happy with that.

If you want to know more, then you make further investigations of the local authority.

Ben: I'm going to bring up a few examples of things that have happened as we went and tried to appraise various different pieces of land. It'll be interesting to get your comments.

On one, we were very close to buying it until we found out about this uplift of value. So, let's say it was a garden plot. We thought we'd done our due diligence and really knew what we were getting ourselves into. Is it called overage?

Michael: Yes. Overage occurs where somebody who sold the land that you were seeking to develop on had, in the past, recognised that there was a potential for development in the future and therefore requires

an uplift in the value of that land once it has got planning permission for that development.

If you take an agricultural value, that might be worth six, eight thousand, something like that, an acre. But with planning permission for residential development, it's suddenly worth two-hundred-thousand, five-hundred-thousand, a million, depending on how large the parcel of land it.

Ben: This one was quite interesting because it actually wasn't the existing owner. It was the people beforehand. So, it would just go on and on?

Michael: No. It will be a previous owner who would have sold the land to the existing owner but he would have recognised at the time he was selling it, that there was potential for either the new owner or an owner in the future to get planning gain in respect of that parcel of land by getting planning permission for something other than its agricultural use. That is not unusual.

The overage could be put on for ten years, twenty years, fifty years even. There's no limit on how long the overage can last for.

Ben: There's always a trail back? Fifty years is a long time.

Michael: Well, the trail is there because there is a restriction put on the title by that initial owner that alerts anybody who is about to purchase the property that their consent is essentially needed to that sale taking place by way of a payment being made to them or their successors in title, as the case may be at that appropriate time.

Ben: Another piece of land was a very odd one that actually turned out to be a leasehold. The leasehold was about twenty-five, thirty years long.

I think this was probably a very unusual case because it dated back five-hundred years or something along those lines, and the whole village operated like that. We steered clear of it but would there be any sense at all of going into that?

Michael: If there's only twenty-five years to run then not really because you wouldn't get a mortgage on it.

Ben: You probably could've got quite a good deal. It was an acre plot in a nice village but it's about the sale afterwards, isn't it?

Michael: Of course. It's about resale. You might be buying it for a pound but if you're going to spend a hundred-thousand, two-hundred-

thousand, whatever, building a house, looking after that house for the next twenty-five years, only for it to not be yours in twenty-five years' time, then is that really a gamble worth taking? There's no resale value in it.

Ben: This was something that actually came about during Henry VIII's era and had this five-hundred year leasehold on it. So, what would happen when that expires, if a lot of these people are in that boat?

Michael: If it's Henry VIII, it will go back to the Crown.

Ben: Fascinating.

We talked a little bit about covenants earlier. Are there any other common case covenants that you might encounter?

Michael: If you're talking about purchasing a plot for the purposes of development, the most common you'll come across is whether you can build more than one dwelling.

The other one that you may come across is a covenant which requires your plans and drawings to be approved by a previous owner or indeed, the current owner, as to whether you can build what you're looking to build.

It may even be that the person that you're buying the parcel of land off wants to be able to approve your plans and drawings because if he's going to be living next door, he might not want you building something which he doesn't consider to be in keeping with his own property and his aspirations.

Ben: Easements?

Michael: Easements are a different thing. Easements take many forms but the most common are going to be either easements for services running across the site or potentially an easement for a right of way or a footpath.

The local search will have thrown up whether there are any public footpaths that run across the site but you also need to be careful that a footpath hasn't come about by what is known as prescription, which is twenty years' use, or there isn't something within the deeds that gives a certain group of people or area of people the right to walk across your parcel of land, particularly if it happens to be through your front door and out your back door.

So, you do need to be careful of that. Your solicitor should check the title to ensure that's not the case. Your own investigations when

you're looking at the plot itself should be able to indicate to you whether you think there are any footpaths which cross the site and if there are, you would raise an appropriate enquiry of the current owner to say 'have people walked across it? Have you ever had to stop people walking across? What's the position generally with regard to that footpath?'

A clue sometimes is, on larger sites admittedly, is where people have put gates in their own back gardens which take them across your site to walk their dog or something of that nature.

So, footpaths and drainage easements are things you need to be concerned about. They should be noted on title but you would raise an enquiry in relation to whether there are any easements that arise which may not be noted.

Ben: When I bought my piece of land, a lot of upfront work was trying to see have I got everything. And then when you hire the solicitor, it's almost clarification. Can you do all this work yourself to get prepared or is the solicitor just part of the process?

Michael: It's part of the process, the solicitor. I think most people could pick up a title and see a covenant that says 'no more than one house', for example. You can do your own research to a limited extent. But taking your easement point, I think that's a little bit more complicated to understand as a layperson and also sometimes the nuances themselves of covenants. A covenant doesn't always mean what it appears to say.

Ben: That's actually quite an interesting point as well and down to the terminology because often – and this is where you get involved I suppose – that one sentence can be read two ways.

Michael: Yes, I think that's right. And you can read it but you do need the solicitor to either confirm that your interpretation is correct or actually say to you 'that's not the correct interpretation, you have to read it this way.'

Ben: How much of what you used to do was in terms of looking at budget or at that point, had they said 'this is the piece of land that we want. Here's the budget' and then you start the process? Or is that all tied in with the planning and so on? Because it's all connected, isn't it?

Michael: It is all connected. I think if you're going into this process, you need to understand how much your planning is going to cost.

You can work out your build costs. You will go to somebody or you'll have a pretty good idea of how much it's going to cost you to

actually physically build the house itself. What people sometimes don't appreciate is how much the planning itself can cost them.

It's often not just a case of submitting a planning application and saying 'thanks very much' to the local authority. You often will need supporting documentations. For example, an ecology survey, perhaps a survey for contamination, ground investigations, all sorts of different surveys, depending on the nature of the site. And those are not cheap.

You could end up with a flood report or a noise report or a traffic impact assessment. Anything of that nature which the local authority may request as part of your application. It's that type of thing which can boost the costs.

Ben: Are there any other challenges, stories or things that might come our way when buying land?

For me, I've experienced a lot of these through land that I haven't bought and then the one that I have bought, I'm trying to think very carefully has it got everything I need, have we thought through this as well as we possibly can.

Michael: I think the basic process is always the same but no two parcels of land are the same. I think it'd be very difficult for me to say this will always happen or this will always happen.

There is a process that will always occur and that process is you'll do your searches, check the planning, check the title, check the access, check the services et cetera, but there will be all types of things that might arise within that investigation which is different to the parcel next door. That's just how it is.

Ben: When we get to the point of exchanging, maybe you could explain what that process is and why it's separated out from completion?

Michael: The exchange is one of those things that has a sort of mystique around it.

An exchange is literally what it says. As part of the documentation, your solicitor will have put in front of you a contract which will say the seller's name, your name, the details of the property, the purchase price, it'll probably have at that point a blank completion date to be filled in, it'll say whether there's anything else included within the sale itself. You will sign that document and once you've signed it and the seller has signed it, in this particular scenario, then the solicitors will literally exchange those contracts.

They will have a telephone conversation, they will agree that both parties are entering into the agreement, they will date the agreement, they will insert a completion date and then they will each send each other, the other's part of that agreement. Your part as the buyer will go to the seller's solicitor, the seller's part will come to the buyer's solicitor. That is effectively what an exchange is.

There may be a deposit that changes hand. Ninety-times out of a hundred, there probably is a deposit that changes hands. That will go across from the buyer to the seller at the same time.

Completion is the date when essentially, you move. So, at that point, taking a parcel of land, the seller will ensure that the land has got vacant possession. For example, it may be that the next-door neighbour has been grazing his horse or something like that. So, he will ensure that the land has got vacant possession, your solicitor will hand over your purchase monies for the balance of your purchase price and completion then takes place at that point.

Ben: What would happen if something came adrift midway through that? Are there any penalties? Let's say you decide you don't want to go through with it but you've exchanged contracts. What happens then?

Michael: Once you exchange contracts, you are contractually bound. So, if you wish to withdraw, unless the other party is agreeable to you withdrawing then compensation would be payable.

If the seller wants to withdraw – well, in fact both ways around you could do this – but you as the buyer would almost certainly apply for specific performance and try and force the seller to sell you the land on that basis through the courts.

It's quite a drastic step, clearly.

Ben: It doesn't happen very often?

Michael: It happens very rarely.

Ben: What about timescales for this? Are there any times when you might be more inclined to hit a deadline? How does that work? I've seen some which seem to go on for ages and ages and others which need to be turned around in three weeks.

Michael: It depends. To be honest, it's driven by the parties to the transaction. Often there will be a need whereby one person wants it

done in a particular timeframe and it will be done, as far as is possible, within that timeframe.

There's no set rule to how long it's supposed to take but there probably is an average. If you were to do this, you would probably say three months as an average time. Some will take longer, some will be quicker. It's a swings and roundabouts type of situation.

As I said, no two transactions are the same. You might think it's a nice, straightforward transaction but, for example, if something arises on title where you have to think about an insurance policy, that may take a bit of time to sort out to everybody's satisfaction.

Ben: How often, when you're going through all of this legal work, and let's say your title example, something comes up that people then pull out?

Michael: Probably relatively rarely.

Ben: Most things you can solve?

Michael: Yes. Generally, you can solve most things. If the parties want to solve them then they generally can be solved, yes.

Obviously, the one that might not be solvable is if you can only build one house and it's quite clear one of the adjoining neighbours who has the benefit of that covenant is going to complain. That may not be solvable.

Ben: When we buy a piece of land, clearly, it's going to cost a bit of money. But on top of that, we've got stamp duty. Could you explain stamp duty and then any other costs that might be coming our way? We've got solicitors fees ...

Michael: You've got solicitors' fees; stamp duty land tax, which will be based on the value of the parcel of land; Land Registry fee which again is based on the value of the parcel of land; your search fees.

Different local authorities vary in their prices to an extent but you're probably looking on average somewhere between seven fifty and a thousand for your searches, when you carry those out, depending on what you want carried out. Some people, if they haven't got a mortgage, will say don't worry. Others will want the whole raft of searches. So, that depends but your solicitor can give you a breakdown of what they are before he undertakes them so, you can effectively pick and choose which ones you want to do.

If you've got a mortgage, you've got to have a local search. You'll have to have a drainage search. Almost certainly, they'd want the solicitor to be checking the highways, chancel repair. Those would be pretty standard searches which would need to be carried out if a mortgage is involved.

Other than that, unless unfortunately you've got to agree between the seller and the buyer who's going to pay for the insurance then they're really your costs.

Ben: I think I've just about gone through a lot of the things that were on my mind for this. Does it get easier over time?

Michael: No, actually. I think funnily enough, more and more things arise as the years go by. I'm not saying it's necessarily more difficult but I think there's certainly more complexity involved than there perhaps was twenty years ago.

Ben: Maybe finally you could help us with some advice. How do we find a good solicitor? You were recommended to me but how would you go about that process? What would you be looking for?

Michael: You can generally do this on websites these days. If you're buying a parcel of land, you'd be looking for somebody who does that as a day to day job. Lots of solicitors will do it on an intermittent basis and I'm sure they do a very good job but at the same time, you should be looking for somebody who does it all the time.

It's horses for courses at the end of the day. If you're buying a residential dwelling, you go to somebody who does residential dwellings all the time. It's the same with land. If you're looking for somebody to help you buy a piece of land, you look for that person.

Somebody who's more of a general practitioner, there's no reason not to use them but you have to question how many times do they actually buy a piece of land during the course of a year. Is the majority of what they're doing residential house purchases?

Ben: Michael, thank you very much for all of your information today. Really appreciate it.

Michael: Thank you. No problem.