



Focused on mines and minerals

The issue

Whilst you may own land on the surface, do you own the mines and minerals underneath and what risks are you exposed to if you do not?

He who owns the soil will usually own up to the heavens and down to the centre of the earth. However, ownership of land can be severed vertically into separate layers or strata.

In many parts of England and Wales ownership of land on the surface was severed from ownership of the underlying mines and minerals in feudal times; with ownership of the mines and minerals being retained by the relevant Lord of the Manor.

This divergence in ownership between the surface and underlying mines and minerals provides an opportunity for owners of underlying mines and minerals to claim that development by a surface owner trespasses upon their interest.

No damage needs to have been suffered as a consequence of the trespass, unlike a claim in nuisance, and the extent of the trespass is, strictly speaking, irrelevant - an inch is as good as a mile.

The threat of a trespass claim is of concern for developers as the mines and minerals owner can threaten an injunction to prevent the development from proceeding and/or claim damages as compensation for the trespass suffered.

Owners of underlying mines and minerals interests typically want a financial payment in return for providing their consent to any proposed development. However, threats of legal action may impact on a developer's timeline, project costs, ability to source finance and/or the project's viability as a whole.

What can you do to mitigate your exposure risk?

Forearmed and forewarned is the best defence.

Most, but not necessarily all, mines and mineral interests should now be registered at the Land Registry and appropriate enquiries should therefore be made when purchasing a property.

A detailed review of the property's historic title deeds should also be undertaken to establish whether there is any indication of ownership of the surface land and the underlying mines and minerals being severed.

Once you have carried out the above reviews, it is generally advisable to explore the availability of indemnity insurance to protect against the cost of a claim from a

mines and minerals owner (albeit that it will not protect against the grant of an injunction).

If a mines and minerals owner ultimately makes or threatens a claim, you will want to consider:

- whether the alleged mines and minerals owner can satisfactorily evidence their title
- whether there are actually any underlying mines and minerals, by obtaining a geological report
- the property's history and the nature of the proposed development
- whether an actionable trespass has been or will be committed
- whether there is scope for claiming adverse possession

What happens next?

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