



## **Diamond in the rough: is there a low-risk way to buy a property with some issues in Guernsey?**

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Notwithstanding a move to higher mortgage rates, Guernsey continues to experience a tight housing market and buyers continue to consider properties that might have otherwise been discounted for some reason or another. There are a host of reasons why a buyer might have previously been put off, whether related to the physical condition of the property or matters of title. Common physical issues include the presence of structural issues including subsidence, damp, the presence of asbestos or even Japanese knotweed, to name but a few.

Where a reputable contractor has carried out rectification work, the contractor will generally be prepared to "stand behind" their work and may be prepared to extend the benefit of any works guarantee to a potential buyer and their lender. There are a few ways this can be achieved but the well-established method would be for the contractor to provide either what is known as "a letter of reliance" or a collateral warranty.

The assurances of a professional contractor will usually be supported by professional indemnity insurance. Such insurance can be relied upon as a matter of last resort in the event that the contractor becomes insolvent and the buyer or their lender suffers any loss related to the contractor's failure to carry out the works as was required. Each lender's lending criteria will differ, but a well packaged solution may provide a lender with the comfort it requires to be able to lend outside of the usual parameters.

For those properties where major works may need to be undertaken the parties may be able to agree either an appropriate reduction in the purchaser price or a cash retention, where part of the purchase monies are held by the seller's advocates pending completion of the works to an agreed standard.

Another alternative is for a property to be "sold as seen" but with some known defect for which the seller has an active insurance claim in place. In such circumstances, it is possible for the seller to agree to pass on to the buyer the benefit of the seller's claim under their insurance policy for the damage suffered. There are, however, various traps for the unwary with this approach and

specialist advice should always be obtained when going down this route.

Aside from any obvious issues with physical condition, properties might also be subject to a legal issue such as a planning condition that restricts the permitted use or even a title defect. For some title defects, a defective title indemnity policy may be available. For properties with separate annexes to be let out for commercial gain, a traditional residential mortgage may not be available to a borrower, but with research it will often be possible to locate a lender who will consider lending against properties that don't fall within the parameters of usual lending products.

With a flexible approach from lenders and practical and commercial legal advice it is often possible for buyers and lenders to get comfortable with a property with some characteristic that might seemingly have presented an insurmountable hurdle.

Whether you are buying, selling or investing in property, our experienced and specialist property, planning and construction law team in Guernsey is well placed to assist with all potential scenarios.

## About Ogier

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