

REPORT

Relating to

48 Jade Gardens Colchester CO4 5FG



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Seller : **Jason Anthony Sweeney and Hannah Lisa Sweeney**

Buyer : **Vipul Goel and Ankita Aggarwal**

Property : **48 Jade Gardens Colchester CO4 5FG**

Purchase Price : **£322,500.00**

Title Number : **EX925002**

1. Introduction

The purpose of this report is to summarise for you the basic details of the transaction, to provide you with further information and to explain the remaining procedure that will be adopted. The next stage in the process will be to exchange Contracts. This is something we will do on your behalf. Once Contracts have been exchanged, both parties will be legally bound to proceed with the transaction and you will not be able to withdraw from the transaction without extremely serious consequences. A failure to complete the purchase on the due date could prove very costly as penalty clauses will come into force and almost certainly, you will lose your deposit.

If there is anything you wish to raise with us, then you should do so before Contracts are exchanged – once Contracts are exchanged, it will be too late to change anything.

2. Documents

There may be documents enclosed with this report or documents that we have previously supplied to you. If you have mislaid any documents referred to or have any doubt about which documents are being referred to please tell us and we will provide copies.

3. The Contract

The Contract (sometimes called the Agreement) incorporates the Standard Conditions of Sale. These conditions, which govern the legal formalities of the transaction and are incorporated into virtually every Contract for the sale of residential property in England and Wales. They are designed to strike a fair balance between the interests of the seller and the buyer and we do not propose to comment on them in detail. If you would like a copy of them, please ask us.

The Contract is intended to form the whole agreement between the seller and you. If there is any other arrangement between the seller and you, which is ancillary to this purchase, then you should tell us so that it can be incorporated into the Contract. If you do not do this, then it has the potential of rendering the entire Agreement void.

4. The Property

The property is shown edged red on the Land Registry title plan, which has previously been supplied to you. You should satisfy yourself that the boundaries of the property as shown on the plan match the physical boundaries on the ground and let us know of any discrepancies. Please be aware that Land Registry plans do not show precise boundary locations – they show the general boundary position only. You must inspect the property to establish these. We have not inspected the property – it is your responsibility to ensure the boundaries are correct.

5. The Completion Date

The completion date is the date when the balance of the money changes hands through the parties' conveyancers and is the date when you will be entitled to possession of the property. It is also called the 'moving date'.

The completion date will be fixed at exchange of Contracts. Normally, the completion date is about two weeks after the date of exchange – but within reason, it can be whatever date the parties agree. Sometimes the parties want to exchange and complete simultaneously but we would not recommend this – nothing is certain until Contracts are actually exchanged. It requires advance planning and can easily go wrong, leading to disappointment and wasted expense. Having a short period in between exchange and completion is possible but it is a particularly stressful way of moving house and increases dramatically the prospect of additional abortive costs being incurred. A two-week gap is a sensible time scale as this allows time for the final searches to be carried out and for the parties to make their removal arrangements, safe in the knowledge that the transaction is legally binding.

6. The deposit – amount

The deposit is usually 10% of the purchase price and we will need this from you in order to exchange Contracts. If you are not able to provide 10% please tell us as sometimes, it is possible to negotiate a lower amount. However, if the deposit actually paid is less than the 10% required under the Standard Conditions of Sale, and you are late in completing your purchase, the difference between 10% of the purchase price and the lower amount actually paid will become payable immediately.

In the event that the deposit paid on exchange of Contacts is less than 10% and such circumstances arise whereby the deposit is forfeited then you will forfeit a full 10% (i.e. you will have to make up the difference). This is only one consequence of failure to complete – there are other penalties.

On exchange, we pay the deposit to the seller's conveyancer. The seller's conveyancer is entitled to use the deposit as a deposit in connection with the purchase of another property in England and Wales being bought for the seller's residence, but must otherwise hold the money in their client account until completion takes place. Often the deposit is passed on a number of times where there is a chain of transactions involved. Apart from this, only in the unlikely event of the deposit being forfeited due to your failure to complete the purchase within a specified period after the completion date can the seller's conveyancer pay the deposit funds over to the seller. If the seller fails to complete and you take action to recover your deposit, then you may have difficulty in doing so if it has been previously paid to another party in the chain of transactions.

7. Failure to Complete

In the event that you are not able to complete the purchase on the date that you agree to complete then you will be in breach of Contract. The first thing that is likely to happen is that the seller's conveyancer will serve on us a Notice requiring you to complete – if this happens it makes 'time of the essence' which means that if the transaction is not completed by the end of that Notice period then the seller will be entitled to rescind the Contract, keep your deposit and sell elsewhere. The Notice period is usually 10 working days but sometimes this is reduced in the Special Conditions of the Contract – particularly if you are buying a new build property or a repossessed property.

If you complete during the Notice period then generally you would need to pay the seller's costs incurred in dealing with the late completion, interest on the purchase monies and other damages for other losses the seller can demonstrate flow from your default.

8. Vacant Possession

The property is sold with vacant possession on completion. This means that the seller must move out of the property on the completion date, removing all furniture, belongings and rubbish – leaving only those items, which the seller has agreed to leave as set out in the Fittings and Contents Form. You will be entitled to have the keys on the completion day as soon as the seller's conveyancer has received from us the remainder of the purchase price. The money is usually transferred bank to bank by what is known as a CHAPS transfer. Sometimes this is instant and sometimes it can take a few hours and on the completion day we will be in the hands of the banks. Obviously if you have a related sale transaction then we have to wait until the CHAPS from your buyer's conveyancer is received before we can instruct our bank to transfer the funds to complete your purchase. There is no express handover time on the completion day, but is quite common for the parties to aim for the handover to take place around midday. Generally, this allows sufficient time for the money to be transferred. You should normally expect to collect the keys from the estate agent's office (if the seller is selling through one) although sometimes arrangements can be made for direct collection.

You cannot occupy the property before completion nor can you put items in the property until completion.

9. Physical condition

You accept the property in the same condition as it is in at the date of the Contract. The seller gives no assurance that the property is in good condition and is under no obligation to inform you of any defects. We would recommend you arrange to view the property again immediately before Contracts are exchanged in order to ensure it has not been damaged since you previously inspected it.

Broadly speaking, there is no duty on the part of the seller to disclose defects in the physical condition of the property. For all practical purposes, you must therefore rely on your own surveyor or valuer. It is also wise to make sure that the services (including any central heating system) are in good working order and have them checked by an expert. You should do this before Contracts are exchanged. Sometimes sellers produce copies of receipts for servicing of a boiler or similar – whilst this may be interesting it is not a guarantee that the appliance in question is in working order. Any servicing receipts or similar supplied by the seller would be from an engineer employed by or on behalf of the seller. It is doubtful that any such engineer would have a duty of care to you and for this reason we would recommend you have any appliances or services checked by an engineer appointed by you before exchange of contracts.

If may be that Guarantees have been disclosed to you during the course of the transaction which may relate to appliances at the property or in relation to works which may have been carried out in the past. You should bear in mind that such Guarantees can sometimes be hard to enforce. You should not assume that they are valid. If you have any concerns, you should contact the company that issued the Guarantee to ensure that they still exist and continue to accept liability. Sometimes Guarantees have specific requirements regarding being given Notice on a change of ownership and sometimes for payment of Notice fees. It is your responsibility as the buyer to ensure that any such requirements are adhered to if you wish to take the benefit of such Guarantees.

You are strongly recommended to commission a survey of the property. This may disclose to you defects that you were not aware of which may give you cause to consider whether you should seek to renegotiate the purchase price. At the very least it may help you budget for future repairs. It is your responsibility to review any report you obtain. We are not able to advise on or interpret such reports for you.

If you are obtaining a mortgage, you should note that the mortgage company's valuation has been carried out for your mortgage company and not for you. Whilst there have been cases whereby borrowers have been able to rely to some limited extent on a mortgage company's valuation report it would be safer to assume that if the mortgage company's valuer has made a mistake you will not have recourse against him. In any case, the mortgage company's valuer is only engaged by the mortgage company to consider whether the property is worth more than the amount to be advanced by the mortgage company and not whether the property is worth what you are proposing to pay for it. Remember that a valuation is not the same thing as a survey.

10. The Title

The title to the property is freehold and registered at the Land Registry with title absolute under the title number specified at the beginning of this report. This means that the Government has guaranteed the seller's ownership of the property.

You will have previously received a copy of the register of title and documents. This sets out details of such restrictions or covenants that the deeds impose on the use of the property and sets out details of easements (third party rights) benefiting or burdening the property.

11. Planning

We will have provided you with copies of Planning Decisions (if any) disclosed to us. We can only provide copies of those documents that are disclosed to us. If you consider that, there have been alterations or extensions to the property that have been carried out without consent, then you must tell us so that we can make further enquiry.

Some general points to bear in mind –

- If the local authority wishes to take enforcement action for breach of planning then they have to do so within 4 years for physical work, within 10 years for change of use and within 10 years for breach of a condition on a Planning Permission. If the property you buy has been in existence and used in its current form for in excess of 10 years then, generally speaking, it is immune from enforcement action.
- Most properties have general development rights, which mean that some works are deemed to have Planning Permission without any express application being made. Sometimes though the Planning Permission for the original erection of the property will contain a condition removing that general right so that planning is required for even a small extension or addition. The local authority has rights to make local regulations affecting whole areas that take away those general development rights. If you are intending to make alterations, you should consult the original Planning Permission to check this.
- If the property lies in a Conservation Area or is a Listed Building, then there will be restrictions that are more stringent so that consents are required even when Planning Permission is not needed.

Bearing in mind the points mentioned above we will only seek copies of Planning Permissions dated within the last 10 years. If you wish us to take a different view and seek copies of older documents, then you should let us know before Contracts are exchanged.

12. Building Regulations

Building Regulations are not the same as Planning Permissions. Some alterations require both Planning Permission and Building Regulation Approval, some require just Planning Permission and some require just Building Regulation Approval. Failure to observe Building Regulation Approvals can be enforced by the following means –

- a. The local authority has powers to prosecute the person who carried out the work by way of criminal proceedings within 24 months of the work being completed – a magistrates' court can impose a fine of up to £5,000 plus a further £50 per day during which the contravention continues after conviction
- b. Within 12 months of completion of the works the local authority can serve enforcement proceedings on the owner of the property (it is irrelevant who carried out the work) and require that person to either remove the works or alter them so that they do comply with Building Regulations. If the owner fails to comply, the local authority has power to enter and carry out the works and recover the cost from the owner
- c. The local authority can issue injunctive proceedings against the owner of the property (it is irrelevant who carried out the work) and require that person to either remove the works or alter them so that they do comply with Building Regulations i.e. there is no time limit for this.

In most circumstances, as long as the work was carried out more than 12 months ago there is no risk of enforcement action. Irrespective of the age of the work, though there is always the risk of injunctive proceedings. As a matter of practice, the local authority is not likely to take injunctive proceedings over something that was carried out many years ago – unless there is the possibility of it being dangerous or unsafe. This does not mean they will not do so. If any work at any time has been undertaken to, the property without compliance with Building Regulations there is a risk.

We will be aware of alterations carried out to the property, which have been disclosed to us in the Property Information Form or similar that would ordinary be supplied to us by the seller. If you are aware of any other alterations to the property either from your inspection of it or from the result of your survey, then you should notify these to us.

Current Building Regulations derive out of the Building Act 1984 (as amended by various subsequent regulations). On a technical level all alterations requiring Building Regulations back to 1984 should be documented with a Certificate from the local authority (or other competent authority) to the effect they are compliant. This is difficult as homeowners and/or local authorities do not always keep records.

If we have not been able to supply, you with a Building Regulation Completion Certificate (or equivalent) in respect of works carried out to the property then the following points should be borne in mind –

- a. Just because there is no Certificate does not mean it is not compliant with Building Regulations – it just means there is no document to demonstrate it
- b. The local authority's power to issue enforcement proceedings are time limited
- c. The local authority's power to issue injunctive proceedings are not time limited - but not likely to be enforced unless there is a significant reason
- d. If there is no Building Regulations Completion Certificate then there is nothing to demonstrate that the work has been carried out in a way that is compliant with building standards, that is safe or is energy efficient. This is something that should be referred to your surveyor.

It is not practical for us to seek copies of Building Regulation Certificates for all alterations carried out to the property since 1984. As a matter of policy, we have taken the view that we will only seek information about alterations, which have been notified to us as having been carried out to the property within the last 15 years. This is intended as a compromise between the technical position described above and the practical view taken by a reasonable buyer. If you wish us to take a different view, then you should let us know before Contracts are exchanged.

It is sometimes possible to take out an Insurance Policy to cover against the risks of enforcement action. This is not a substitute for a Building Regulation Completion Certificates but it can assist on some occasions. Such a Policy, if taken out is not an insurance against the cost of repairs. Please note that contact with the local authority may limit the possibility of taking out such a Policy. **Please do not contact the local authority without discussing this with us first.**

Most extensions or alterations to the habitable space of a house require Building Regulations. In addition to that, there are some specific works that require Building Regulation Approval as follows: -

- a. Installation of boiler since 1st April 2005;
- b. New windows/doors since 1st April 2002;
- c. Electrical work since 1st January 2005;
- d. Installation of solid fuel heating appliances since 1st October 2010

As an alternative to a Building Regulation Completion Certificates, there is a scheme in place whereby appropriately qualified installers are able to issue Certificates themselves to the effect that the work is compliant with Building Regulations. If this is done, then a record of the works notified to them is kept by the local authority. Please remember that even if such works have a Certificate this is not a Guarantee of any sort – it simply means that the local authority has received a notification from the installer that the original installation was compliant with Building Regulations at the time. If you have any concerns about the safety or quality of any alterations or installations at the property, then you should have this checked by your own surveyor or suitably qualified engineer.

13. Local Search

We have supplied you with a copy of the local authority search against the property and have reported to you on the content of this.

The search does not extend to adjoining or neighbouring properties and we do not know whether there are any proposals for a change of use or construction works on such properties, which may affect the use and enjoyment of the property. If you have any specific concerns, please let us know. Please also feel free to contact the local authority to ascertain whether there is any local development.

Please note that the search only shows the information in the local authority records on the date it is processed so something might have been added the following day.

14. Property Information Forms

The seller and the seller's conveyancer have completed Property Information Forms, which contain replies to a series of questions about the property, which a buyer would usually expect to have answered before making a decision to purchase. Copies of these forms have been supplied to you. Prior to exchange of Contracts, you have the opportunity of raising whatever enquiries you wish – after Contracts are exchanged then that opportunity is lost. If there are any additional questions you wish us to raise, then you must tell us before Contracts are exchanged.

In most cases, you are able to rely on the information supplied in the Property Information Forms – but that would not apply to anything, which you know to be incorrect. If you consider any of the answers given are incorrect, you should tell us. If there are any specific concerns or any additional information, you require then please tell us as soon as possible.

A general principle of English land law is 'caveat emptor' which means 'buyer beware'. The result of this is that it is up to the buyer to find out about the property. The seller should answer questions honestly but if the questions are not asked, there is no general duty requiring the seller to disclose information. If there is any additional information you want us to obtain then you should tell us before Contracts are exchanged

15. Insurance

It will be your responsibility to take out your own buildings insurance. The insurance policy must be in force **from the date of exchange of Contracts**. This is because the risk passes to you from exchange of Contracts – if the property is damaged between exchange of Contracts and completion then you still have to complete and would have no recourse against the seller.

If you are obtaining a mortgage, then we will need to give full details of your policy to your mortgage company and this information must reach them at least **seven days before** the completion date. Please let us have a copy of your Buildings Insurance Policy Schedule/confirmation from your insurer setting out as a minimum the name and address of the insured, the policy number and the sum insured. Some mortgage companies have additional requirements – we will contact you separately about that if this becomes necessary.

16. Stamp Duty Land Tax

A Return must be sent to HMRC within 14 days of completion and any tax due paid. We cannot submit this on your behalf without an SDLT Form signed by you being in our possession. Serious financial penalties will be incurred if the Form is sent after the 14-day time limit – starting with an automatic charge of £100.00 if the Form is even one day late! It will also not be possible to register a change of ownership of a property at the Land Registry until HMRC have issued a Certificate that the Land Transaction Return has been processed and the Stamp Duty Land Tax paid.

We will supply the SDLT return to you completed by us based on the information you have supplied to us. If you require specific SDLT advice from us then you need to expressly request this so that we can consider the circumstances of the transaction or refer you to a specialist tax adviser.

Please remember that responsibility for completion of the SDLT Return correctly lies with you as the taxpayer. It is for you to check that the information supplied is full and correct. Our only interest is to obtain a submission receipt sufficient to enable the transaction to be registered at the Land Registry – we are not responsible for anything beyond that. Tax advice is not part of the conveyancing process. It is for you to ensure that the correct rate of tax is paid. If you need advice on the rate of tax or any reliefs that may be available, then you should consult an accountant or other tax specialist.

17. Tax

We shall not be liable to you for the giving of advice outside the ambit of specific instructions received and in particular we do not offer advice on taxation (including without limitation Stamp Duty Land Tax, Annual Tax on Enveloped Dwellings, Value Added Tax or Capital Gains Tax) or financial implications of transactions. It is your responsibility to obtain or verify taxation and financial implications with your accountants, financial advisers or other suitably qualified specialists. If you are a company or other non natural entity buying a residential property with a value of more than £500,000 then we specifically recommend you seek advice from your accountant as to impact of Annual Tax on Enveloped Dwellings (ATED).

18. Fraud

Property fraud exists. We will take care to ensure that the conveyancers who represent the sellers are genuine. What we cannot do is ensure that the conveyancers who are representing the seller are representing the genuine owner of the property. It is possible they may have been duped. If we in good faith pay the purchase money to the seller's conveyancer and they pay it to their client who is fact a fraudster then you will not get title to the property and your money will be lost. Such instances are rare but they are real and you should take care to alert us to anything that makes you suspicious.

19. Limitations of this report

This report is intended to cover the issues relating to legal matters surrounding your proposed purchase of the property. You will appreciate that we have to set limits as to the extent that this report may be relied upon. The limitations of this report are:

- This report has been prepared exclusively for you and may not be relied upon by any other party.
- We have not inspected the property and cannot report on any matters, which are just evident from inspection.
- We have not reviewed any survey report that you may have obtained even if you have sent a copy to us
- We are not responsible to you for any advice on taxation (including without limitation Stamp Duty Land Tax, Annual Tax on Enveloped Dwellings, Value Added Tax or Capital Gains Tax) or financial implications of the transaction. It is your responsibility to obtain or verify taxation and financial implications with your accountants, financial advisers or other suitably qualified specialists.
- We have made the following assumptions
 - That you are proposing to buy the property solely as a residential dwelling
 - That you are happy with the physical condition of the property
 - That if you propose carrying out works to the property you are aware of any requirement for Planning Permission and other consents that may be required in relation to those works
 - That you have understood and accept the matters stated in this report.

20. Our conclusion

Based on the assumptions set out above our conclusion is that the legal title to the property is good and marketable and that there is nothing in the title preventing the property from continuing to be used as a residential dwelling in its present form.

Please feel free to contact us if you have any questions arising from this report or from any other aspect of the conveyancing transaction.

12 February 2021
Hayward Moon