

WHAT EXACTLY CONSTITUTES A LATENT DEFECT?

You buy a house and find out after transfer, that council is starting to build a double lane highway right behind your property next year, or that it plans to erect a low cost 10 storey block of flats across the road in a month's time. You also find out that the seller was aware of this at the time of sale but never disclosed this to you. Does this constitute a latent defect? The crisp answer is no. A latent defect is one which attaches to the property itself. For decades now the courts have held that the defect must be one that "either destroys or impairs the usefulness of the thing sold for the purpose for which it has been sold or for which it is commonly used". In other words, it must affect the property itself - such as a leaking roof or structural defects. Neither of the above examples given, meet the requirement.

But that is not the end of the matter. If a seller is aware of such issues, there could be an argument that failure to disclose this, is a material misrepresentation, and that the buyer could sue the seller on this basis, i.e. that the seller intentionally failed to make a material disclosure. The claim therefore has nothing to do with defects. And, if you as the agent are aware of such things, then you could definitely be sued, if you did not disclose this. Reason being that the Code of Conduct requires you to disclose everything you know, or reasonably should know about a property, and which may be of material importance, to a buyer. In these examples given there would definitely be a legal duty of care to disclose, if you do know, of such plans.