

West Midlands Area – Guidance Note for Local Planning Authorities - Sites Affected by Land Contamination



- This advice applies to sites where we are not making bespoke comments.
- This advice relates to the protection of ground and surface waters ('Controlled Waters', as defined under the Water Resources Act 1991). For Human Health matters Planning Authorities should consult with the Council's Public Protection / Environmental Health Department

LAND CONTAMINATION

We would make no comment on land contamination matters associated with this planning application. However you are advised to seek the comments of your Public Protection / Environmental Health team and refer to the following advice:

The principles of dealing with land contamination at the planning application stage – NPPF and NPPG

The NPPF takes a precautionary approach to land contamination. Before the principle of development can be determined, land contamination should be investigated to see whether it could preclude certain development due to environmental risk or cost of clean-up (remediation). For sites where land contamination may be present as a result of previous or current land use, the planning application should include appropriate information about this and demonstrate how the development will deal with any contamination present. This is so that the development does not cause or exacerbate contamination, and to ensure that it, future users and the environment are not at unacceptable risk from contamination.

This is a requirement of the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG). See paragraphs 120, 174, 183, and 188 of the NPPF, and the 'Land Affected by Contamination' section of the NPPG, available at: <http://planningguidance.planningportal.gov.uk/blog/guidance/land-affected-by-contamination/land-affected-by-contamination-guidance/>

Sites that may be affected by land contamination

The applicant should identify whether the site has known or suspected contamination associated with it. Certain types of previous / current land uses are likely to have caused contamination. These include uses such as gasworks, landfills, industrial uses, petrol filling stations or land where fuel tanks have been sited, cemeteries, abattoirs, vehicle servicing garages, and land adjacent to major infrastructure routes such as railway cuttings and motorways. Intensive agricultural uses may also have caused contamination from chemicals and pesticides. See the tables at the end of this document. For further information you may wish to refer to:

- The Council's Public Protection / Environmental Health Department – for historic records of landfilling or waste activities, and to ascertain whether the site has been determined as Contaminated Land under Part 2A of the Environmental Protection Act 1990.
- Historic land use maps

- GIS layers showing closed/historic landfills and open /current landfills - your Council has previously been provided these GIS layers from the Environment Agency, but to ensure they are up to date, and for online access, they can be obtained via the DEFRA Data Services Platform at: <https://environment.data.gov.uk/>

Information that should be submitted with the planning application

Preliminary Risk Assessment: As a minimum the applicant must submit a Preliminary Risk Assessment. (This is also known as a Phase 1 Desk Study, and may include a site walkover.) The Preliminary Risk Assessment should include a '*conceptual site model*'. This model considers firstly all potential sources of contamination (i.e. information on all previous land uses that may have given rise to contamination), secondly any likely receptors (e.g. proposed future users of the site and ground or surface water on or off site) and thirdly any possible pathways between them (such as through the ground or along pipes as a result of development). Where all three exist this is defined as a pollutant linkage.

The conclusions of the report should contain recommendations on how the contamination, if present, will be dealt with through the development so that the site can be made safe for users and the environment and will not cause or exacerbate pollution.

In some cases this information may be sufficient to determine whether the principle of development is acceptable subject to planning conditions to secure the conclusions of the report, such as further detailed investigation, site remediation and validation (see conditions section below).

In other cases there may be insufficient information at this stage to make a decision on the application, and more information may be required prior to determination. This is more likely to be the case if the site is particularly contaminated, the site setting is more sensitive or the end use proposed is particularly sensitive to contamination. In these cases the applicant will need to submit more detailed information.

Site Investigation Report: The next stage of more detailed information is a Site Investigation Report. (This is also known as a Phase 2 Detailed Site Investigation.) The 'Detailed Investigation' phase is the on-site validation of the conceptual model. Through intrusive investigation, chemical testing and quantitative risk assessment, the Phase 2 study can confirm possible pollutant linkages. It should also provide appropriate remediation options, if these are required.

For more complex sites, it is more likely by this stage that the applicant will have submitted enough information to establish that the site can be developed for the proposed use in a safe manner that will not lead to pollution or harm. At this stage therefore it is likely that a determination can be made. (There may still be some cases where additional information on the remediation measures / remedial actions – see below – is needed before permission can be granted). Where approval is given the decision notice should contain relevant conditions to secure the recommendations of the Preliminary Risk Assessment and Site Investigation Reports, such as site remediation, validation and any necessary monitoring (see conditions section below).

Discharge of conditions after permission is granted

Once permission has been granted subject to conditions, the developer will need to deal with the contamination on site. This is the remediation phase. The remediation phase of the process is generally split into two parts – remediation and validation. The developer will need to submit relevant Reports for these parts of the process at the right time as part of a discharge of conditions application.

Remediation Strategy: This is a document detailing the objectives, methodology and procedures of the proposed remediation works. (It may also be called a Remediation Method Statement or

Remedial Actions Statement or Report.) Where necessary it should also include a **verification plan** that provides details of the data that will be collected in order to demonstrate that the works set out in the Remediation Strategy are complete and identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. This should include any proposed phasing of demolition or commencement of other works to ensure development occurs in the right parts of the site in the correct sequence to ensure pollution is not caused. The developer should submit this information for approval before any works commence. Once this has been submitted and approved as part of the discharge of conditions application the development can proceed in the way the Remediation Strategy has set out.

Validation Report: Following completion of the works, the developer must submit a Validation Report as part of the discharge of conditions application. (It may also be called a Verification Report.) This document demonstrates that the works have been carried out satisfactorily in accordance with the Remediation Method Statement and that the remediation targets have been achieved. In most cases this will allow the planning conditions to be discharged in full.

Monitoring Programme: In some cases a programme of monitoring is required as part of the remediation phase, or as part of the validation to demonstrate the site has been satisfactorily remediated. Sometimes monitoring may be required for a longer time period after the development has been completed. The Remediation Method Statement (and possibly the earlier Preliminary Risk Assessment and Site Investigation Reports) should have made clear where this will be necessary and established in detail what will be involved.) Monitoring may be necessary for landfill gas, groundwater and surface water (such as taking samples from a watercourse on a regular basis over a set period of time). Where these measures are necessary the planning conditions should include this, and in some cases a Section 106 Planning Agreement may be a more appropriate mechanism for securing necessary monitoring, such as when monitoring from off-site locations is required or if it is required for a particularly long time period.

Re-use of materials and the Environmental Permitting Regulations 2016

The applicant should be made aware that remediation of contaminated land may also require an authorisation under the Environmental Permitting Regulations 2016. Further information can be found at the following links:

- <https://www.gov.uk/government/collections/standard-rules-environmental-permitting#materials-recovery-and-recycling>
- <https://www.gov.uk/guidance/check-if-you-need-an-environmental-permit>
- <https://www.gov.uk/government/publications/deployment-form-for-land-and-groundwater-remediation>

Under the CL:AIRE Code of Practice there are ways developers can re-use materials on site in a sustainable way. The CL:AIRE website ('Contaminated Land: Applications in Real Environments') contains useful information about this: <http://www.claire.co.uk/>

If contaminated / waste material needs to be removed from the site it should be deposited at an appropriate Permitted waste management facility. The developer should keep records of any transfer and deposit of waste for inclusion in the Validation Report.

APPENDIX:

Planning Conditions

As detailed above you may wish to impose appropriate conditions to secure any necessary further investigation, remediation, validation and monitoring. Other conditions may also be appropriate. The following list of conditions is provided to assist you, in consultation with your Public Protection / Environmental Health team. **This is advisory for your consideration and we would not wish to be party to any future discharge of condition application.**

Investigation, remediation and Validation Condition (known as a ‘standard’ land contamination condition):

CONDITION: No development, or phasing as agreed below, shall take place until the following components of a scheme to deal with the risks associated with contamination of the site are submitted to and approved, in writing, by the planning authority

1) A site investigation scheme, based on [**‘the preliminary risk assessment/desk study’ (title)**], [**author of report**], reference [**ref. ‘x’**], dated [**‘date of report’**], to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

2) The site investigation results and the detailed risk assessment (1) and, based on these, an options appraisal and remediation strategy, if necessary, of the remediation measures required and how they are to be undertaken.

3) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. This should include any proposed phasing of demolition or commencement of other works.

4) Prior to occupation of any part of the development (unless in accordance with agreed phasing under part 3 above) a verification (validation) report demonstrating completion of the works set out in the approved remediation strategy (2 and 3). The report shall include results of any sampling and monitoring. It shall also include any plan (a “long-term monitoring and maintenance plan”) for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the Planning Authority.

Any changes to these components require the express written consent of the Local Planning Authority. The scheme shall be implemented as approved.

REASON: To protect ground and surface waters (‘controlled waters’ as defined under the Water Resources Act 1991).

Unsuspected contamination condition:

CONDITION: If during development, contamination not previously identified, is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority, a Method Statement for remediation. The Method Statement must detail how this unsuspected contamination shall be dealt with. A verification (validation) report demonstrating completion of the works set out in the method statement shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of any sampling and monitoring. It shall also include any plan (a “long-term monitoring and maintenance plan”) for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action and for the reporting of this to the Local Planning Authority.

REASON: To ensure that any unexpected contamination is dealt with and the development complies with approved details in the interests of protection of ground and surface waters (‘controlled waters’ as defined under the Water Resources Act 1991).

Piling condition:

CONDITION: <Piling or any other foundation designs / investigation boreholes / tunnel shafts / ground source heating and cooling systems> using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

REASON: To protect ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991).

Infiltration drainage condition:

CONDITION: No infiltration of surface water drainage into the ground <insert location> is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

REASON: To protect ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991).

Condition for Oil interceptor use:

e.g. car park of more than 50 spaces, or Sensitive areas (SSSI) or SPZ or development type (*refer to Environment Agency Guidance "Groundwater Protection" (Previously known as 'GP3'), available at: <https://www.gov.uk/government/collections/groundwater-protection>)*

CONDITION: Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water drainage from parking areas and hardstandings shall be passed through an oil interceptor designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor.

REASON: To protect ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991).

Condition for Bunding of tanks/compounds:

CONDITION: Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of interconnected tanks or vessels plus 10%. All filling points, associated pipework, vents, gauges and sight glasses must be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank/vessels overflow pipe outlets shall be detailed to discharge downwards into the bund.

REASON: To protect ground and surface waters ('controlled waters' as defined under the Water Resources Act 1991).

Land contamination consultants

You should seek evidence to demonstrate that such investigations have been carried out to an acceptable professional standard. Advice on the assessment and development of land affected by contamination is contained in guidance published by the British Urban Regeneration Association (BURA), the National House Building Council (NHBC) and the Environment Agency. The BURA Guide includes checklists for the desk study, site investigation and remediation.

We do not recommend individual environmental consultants but the following website link is provided to search for environmental consultants that undertake contaminated land assessments <http://www.endsdirectory.com/>.

Sources of further information and guidance

Environment Agency technical guidance on land contamination:

<https://www.gov.uk/government/collections/land-contamination-technical-guidance>

Other information sources (the above webpage includes some of the following):

- Guiding Principles for Land Contamination
<https://www.gov.uk/government/publications/managing-and-reducing-land-contamination>
- [Land contamination: risk management \(LCRM\)](#) (previously known as 'CLR11')
- Planning Practice Guidance on Land Affected by Contamination
<https://www.gov.uk/guidance/land-affected-by-contamination>
- Pollution Prevention Guidelines (PPG27) – Installation, decommissioning and removal of underground storage tanks (withdrawn but available in the National Archives)
<http://webarchive.nationalarchives.gov.uk/20140328084622/http://cdn.environment-agency.gov.uk/pmho0402bqsh-e-e.pdf>
Environment Agency Guidance "Groundwater Protection" (previously known as 'GP3')
<https://www.gov.uk/government/collections/groundwater-protection>

DEFRA Guidance relating to Part 2 A of the Environmental Protection Act:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223705/pb13735cont-land-guidance.pdf and
<http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=18341>

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