

Advice to Developers

Historically industrial activities during the 1800s and 1900s have left a substantial legacy of contaminated land. The Government has come to recognise the scale of contamination and has introduced measures to deal with it. At the same time the Government is seeking to protect greenfield sites and to encourage re-development of brownfield sites, many of which are contaminated to some degree as a result of previous uses. The contaminated land provisions contained in Part IIA of the Environmental Protection Act 1990, introduced on 1 April 2000, gave local authorities new powers and responsibilities to identify contaminated land and to ensure it is returned to a condition suitable for its current or proposed use.

The Council's Development Control Section increasingly has to deal with planning applications for development on or adjacent to contaminated and potentially contaminated land. The presence of contamination is a material planning consideration.

Building Regulations require that reasonable precautions shall be taken to avoid danger to health and safety caused by contaminants on or in the ground covered, or to be covered by a building and any land associated with the building. 'Contaminant' means any substance that is or may become harmful to persons or buildings including substances that are corrosive, explosive, flammable, radioactive or toxic. The Council has developed a guidance note which seeks to assist developers and their agents by explaining:

- the Council's approach to dealing with planning applications for development on or adjacent to contaminated or potentially contaminated land
- the Council's requirements in terms of site investigation

The Council's approach

Whilst the Council wishes to encourage effective use of land, it is important that the development of land that may be affected by contamination does not endanger public health and safety. This reflects the advice given in Planning Policy Statement PPS 23: Planning and Pollution Control (2004) and the requirements of the Building Regulations 2000.

Where it is known or suspected that a site is contaminated to an extent that could adversely effect the proposed development, the developer will normally be required to submit an investigation of the risks and proposals for any necessary remedial measures at the same time as the planning application. Any subsequent grant of planning permission will include a condition requiring the remedial measures to be carried out in order to render the site suitable for its proposed use or any other use within the same use class.

Where there is only a suspicion that the site might be contaminated, or where evidence suggests that there may be only slight contamination, planning permission may be granted but conditions will be attached to make it clear that the development will not be permitted to start until a site investigation and risk assessment has been carried out and that the development itself will need to incorporate all the measures shown by the assessment to be necessary.

Even where there is only a suspicion of contamination the Council will still encourage developers to undertake a site investigation and risk assessment prior to any grant of planning permission since there are advantages to both parties. For the developer, an early site investigation and risk assessment can avoid unnecessary expense in the longer term and may help in negotiating a purchase price for the site. For the Council, there can be reassurance that in granting planning permission, the proposed development is feasible. PPS 23 encourages such an approach at the pre-application stage in all cases

where land has been subject to or is adjacent to previous industrial use and also where uses are being considered that are particularly sensitive to contamination - e.g. housing, schools, hospitals, children's play areas.

At present the Council have identified several thousand sites where there is a suspicion that there may be contamination.

It should be noted that a development site might be affected by contamination migrating from an adjacent site, which is contaminated. In such cases the Council will exercise its judgement in deciding what, if any, investigation is required.

In addition, some areas may be affected by a natural occurrence of potentially hazardous substances, such as arsenic, lead, copper or radon gas, which are the product of the underlying geology and bear little relation to previous or current land use.

The above approach will apply to both outline and full applications for planning permission. Where planning permission is granted for a site that is suspected or known to be contaminated, a notice will be issued to the applicant stating that the responsibility for safe development and secure occupancy of the site rests with the developer. It will also warn that the Council has determined the application on the basis of the information available, and that the grant of permission does not imply that the problems have been resolved.

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