

# THE DEVELOPERS GUIDE TO LAND CONTAMINATION IN STAFFORDSHIRE

December 2015



# CONTENTS

1	INTRODUCTION .....	1
	1.1 WHO IS THIS GUIDE FOR? .....	1
	1.2 BACKGROUND .....	1
	1.3 IS LAND CONTAMINATION AN ISSUE FOR MY DEVELOPMENT? .....	2
2	THE PLANNING PROCESS.....	3
	2.1 PLANNING ROLES.....	3
	2.1.1 The Developer .....	3
	2.1.2 The Planning Officer.....	4
	2.1.3 The Contaminated Land Officer .....	4
	2.1.4 The Environment Agency .....	4
	2.1.5 Others.....	4
	2.2 PLANNING APPLICATION.....	5
	2.3 PLANNING CONSENT AND CONDITION APPROVAL .....	5
3	WHO SHOULD CARRY OUT THIS WORK? .....	10

APPENDIX 1 - USEFUL WEBSITES AND REFERENCES

APPENDIX 2 - USEFUL CONTACTS

# 1 INTRODUCTION

## 1.1 WHO IS THIS GUIDE FOR?

Contamination in or on land can present risks to human health and the wider environment. This can adversely affect or restrict the beneficial use of land, but often development presents the best opportunity to successfully deal with these risks. The planning system therefore has a key role to play in facilitating the development of land affected by contamination.

This guide has been prepared for those looking to develop land in Staffordshire where the presence of land contamination is known or suspected.

It aims to provide a step by step guide to what the council will typically require to ensure that any land contamination issues are addressed and that the development will be safe for future occupiers.

This guide is intended to be an informative and helpful source of advice. Readers must note that legislation, and best practice may change. Whilst all reasonable precautions have been taken to ensure that the information in this guide is correct, the council, its officers, servants or agents, will not accept any liability for loss or damage caused by any person relying on this information, or for any errors or omissions in the information provided.

## 1.2 BACKGROUND

The role of the planning system is to control future development and land use. The actual or possible presence of land contamination is a material planning consideration. Indeed, the majority of land in the UK that is affected by contamination is addressed during development.

Current government planning policy is that following development, as a minimum, land should not be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990 (National Planning Policy Framework (NPPF)). The development, after remediation, should be demonstrated to be 'safe' and 'suitable for use'.

Failure to adequately address land contamination could cause harm to human health, property and the wider environment. It could also:

- Limit or prevent subsequent development.
- Result in difficulties with the conveyancing process.
- Result in future liabilities for remediation under the Environmental Protection Act 1990 Part 2A.

The responsibility for securing a safe development rests with the developer and/or landowner.

### 1.3 IS LAND CONTAMINATION AN ISSUE FOR MY DEVELOPMENT?

Land contamination is usually associated with brownfield sites, where past industrial activities might have negatively impacted land quality, but it cannot be ruled out in other locations including in the countryside (e.g. by inappropriate spreading of materials such as sewage sludge).

Some areas may be affected by the natural or background occurrence of potentially hazardous substances, such as radon, methane or elevated concentrations of metallic elements.

As precaution, the possibility of contamination should always be assumed when considering developing sites on or near former industrial land or where the proposed end use are particularly sensitive to contamination such as housing, schools or children's play areas.

Planning approvals on brownfield sites will usually have conditions attached requiring an investigation of land contamination.

## 2 THE PLANNING PROCESS

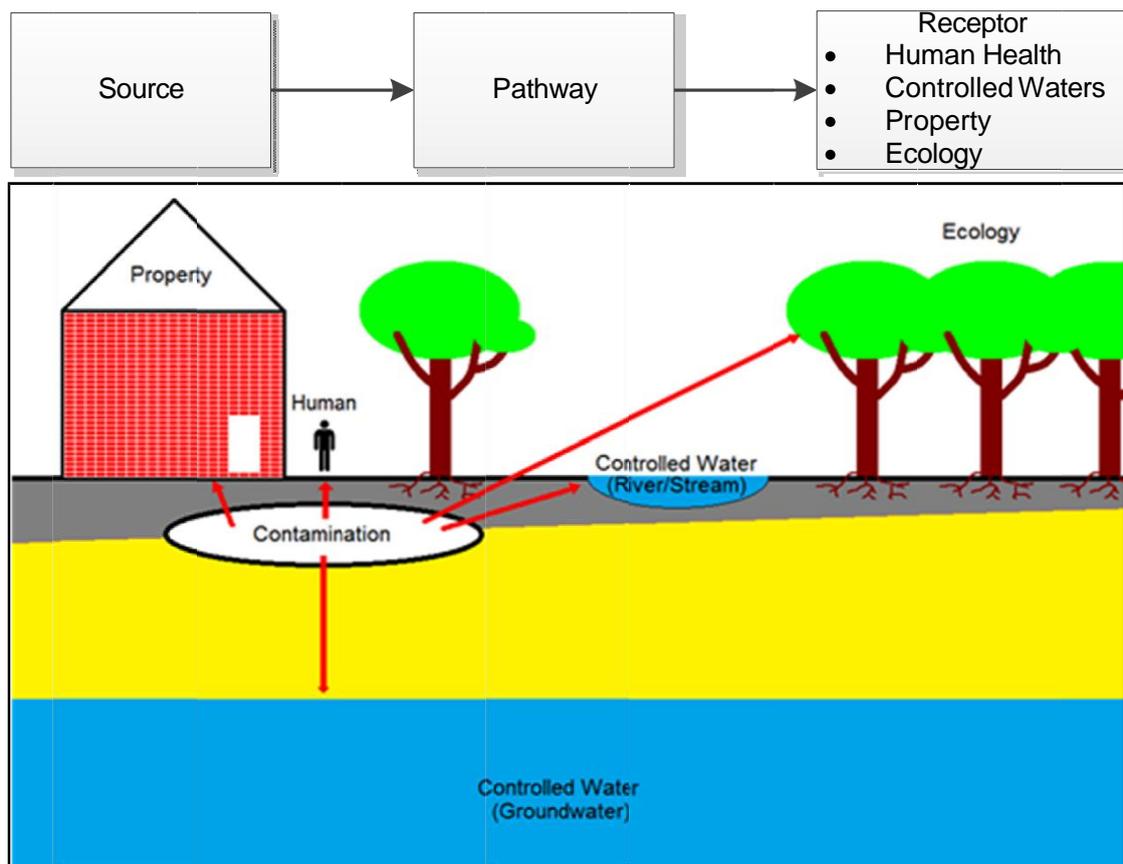
### 2.1 PLANNING ROLES

#### 2.1.1 THE DEVELOPER

If there is a reason to believe land contamination could be present on site, the developer should ensure that they carry out adequate investigations and risk assessments to ensure that any associated risks are fully understood and can be remediated to an acceptable level.

Whilst the full risk assessment process can be detailed (Appendix 1) the aim of assessment is essentially to identify if there are the following three criteria present at the proposed site (known as a pollution linkage):

- A source of contamination in, on or under the land
- A route or pathway or by which the contamination may reach the receptors (for example, by a child putting contaminated soil in their mouth).
- Any existing or proposed receptors (defined as living organisms, controlled waters, ecological systems or property) present which may be harmed by the contamination.



### **2.1.2 THE PLANNING OFFICER**

The planning officer administrates the planning application for the Local Planning Authority.

When a planning application is made, the planning officer will seek the opinion of various professionals on a wide range of issues which are relevant to the application. For land contamination, this will usually be the Contaminated Land Officer and the Environment Agency (EA).

All formal requests for the approval of land contamination conditions should be made through the planning officer.

Lichfield District Council is the Local Planning Authority for the majority of applications, although Staffordshire County Council may assume this role for planning applications associated with waste or mineral extraction.

### **2.1.3 THE CONTAMINATED LAND OFFICER**

This person will consider the potential implications of any land contamination on the health of those who will occupy or use the land after it has been developed.

For a housing development, this will be the future residents.

### **2.1.4 THE ENVIRONMENT AGENCY**

The EA will consider the potential implications of land contamination on controlled waters (groundwater or surface water bodies). The EA would also be responsible for issuing any environmental permits which may be needed to undertake remediation.

### **2.1.5 OTHERS**

Other statutory bodies and relevant local authority departments may also be consulted as necessary, including:

- Natural England
- English Heritage
- Departments covering building control, conservation, archaeology and engineering.

## 2.2 PLANNING APPLICATION

If the presence of land contamination is suspected, then the submission of a preliminary risk assessment will be required as part of the application.

This stage is often referred to as 'a desk study' or 'phase 1'. The aim is to collate and review the available information on a site and would typically include:

- Historic Ordnance Survey mapping.
- An environmental database report.
- Geological mapping.
- A Coal Authority report (in coal mining areas).
- A reconnaissance of the site (which provides information on the current status of the site, including any obvious signs of contamination).

The information is then used to assess whether land contamination is likely to be present and the possible risks that this poses to the proposed development (through the development of a conceptual site model).

An overview of the requirements of the preliminary risk assessment is presented in Appendix 1.

The Contaminated Land Officer and, where applicable, the EA will be formally consulted on the preliminary risk assessment; comments and recommendations are returned to the Planning Officer for consideration.

The preliminary risk assessment should all be prepared by competent persons as defined in Annex 2 of the NPPF and must be of an acceptable standard to satisfy the Contaminated Land Officer and EA.

**If a preliminary risk assessment is not submitted, or is not up to the required standard, the Contaminated Land Officer and/or EA may object to, or recommend refusal of, the planning application.**

## 2.3 PLANNING CONSENT AND CONDITION APPROVAL

If land contamination issues are considered to be a potential issue, the Contaminated Land Officer will recommend that conditions are attached to the planning consent.

The developer will need to satisfy these planning conditions before any properties can be occupied.

The model conditions that are usually used are reproduced, with comments, below:

## 1. Site Characterisation

*An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:*

- (i). *a survey of the extent, scale and nature of contamination;*
- (ii). *an assessment of the potential risks to:*
  - *human health,*
  - *property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,*
  - *adjoining land,*
  - *groundwaters and surface waters,*
  - *ecological systems,*
  - *archeological sites and ancient monuments;*
- (iii). *an appraisal of remedial options, and proposal of the preferred option(s).*

*This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.*

This condition requires the developer to undertake a full contamination risk assessment. In addition to the requirements of the preliminary risk assessment, the developer will typically be required to undertake an intrusive site investigation to obtain soil/water samples from the site for laboratory analysis. This is often referred to as 'phase 2'.

The aim of phase 2 is to obtain enough information that all the associated contamination risks from the site are fully understood and an appropriate remediation approach can be developed.

The phase 2 risk assessment should all be prepared by competent persons as defined in Annex 2 of the NPPF and must be of an acceptable minimum standard, in line with national guidance to satisfy the Contaminated Land Officer and EA.

The Contaminated Land Officer will be happy to review the scope of any proposed site investigation, as well as any draft reports, free of charge. The EA also provides a review service, although a fee is payable.

**The site investigation and revised risk assessment must be accepted by the Contaminated Land Officer and (if applicable) the EA before the condition can be recommended for approval**

## **2. Submission of Remediation Scheme**

*A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.*

This condition requires the developer to provide details of how they will remediate the site so that contamination present does not pose an unacceptable risk after the site has been developed.

The developer will also need to provide details of how they are going to demonstrate that the treatment has been successful.

**The remediation scheme must be accepted by the Contaminated Land Officer and (if applicable) the EA before the condition can be recommended for approval.**

## **3. Implementation of Approved Remediation Scheme**

*The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.*

*Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.*

The developer will need to provide a report to demonstrate that they have successfully remediated the site, to the standard that was previously agreed with the council and (if applicable) the EA.

**The verification report must be accepted by the Contaminated Land Officer and (if applicable) the EA, before the condition can be recommended for approval.**

#### **4. Reporting of Unexpected Contamination**

*In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2, which is subject to the approval in writing of the Local Planning Authority.*

*Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 3.*

On many sites, there will be areas that are potentially contaminated, but not identified by the original risk assessment investigations. An example might be an underground storage tank that is not shown on any site plans.

The developer is required to inform the local planning authority if they encounter any suspicious features on the site in the course of development.

#### **5. Small Developments**

Unless otherwise agreed by the Local Planning Authority, no development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

The developer will need to provide a report to demonstrate that they have investigated, risk assessed and successfully remediated the site, to a standard agreed with the council and (if applicable) the EA.

**The verification report must be accepted by the Contaminated Land Officer and (if applicable) the EA, before the condition can be recommended for approval.**

## **6. Importation of Soils**

*No soils are to be imported to the site until information on their source, the results of any soil analysis, and an assessment of their suitability for use has been submitted to and agreed in writing by the Local Planning Authority.*

*Prior to their import onto site, a suitable methodology for testing soils following their import and placement on the site should be submitted to and agreed in writing by the Local Planning Authority. The methodology should include:*

- (i). The sampling frequency*
- (ii). Testing schedules*
- (iii). Criteria against which the analytical results will be assessed (as determined by the risk assessment)*

*The agreed methodology shall then be carried out and validatory evidence submitted to and approved in writing to by the Local Planning Authority.*

If soils are needed for garden areas, the developer will need to demonstrate that those soils are appropriate and not contaminated.

The only way to effectively demonstrate this is to carry out analysis of the soil following placement on the site, as this will account for any cross contamination that might have been introduced through poor handling.

There have been examples where a developer has remediated a site, only to import contaminated soil.

### 3 WHO SHOULD CARRY OUT THIS WORK?

As noted previously, all risk assessments should be prepared by competent persons as defined in Annex 2 of the NPPF and must be of an acceptable minimum standard in line with national guidance to satisfy the Contaminated Land Officer and EA.

The Council may reject a report from someone if they cannot demonstrate an adequate standard of professional competence.

The Council is unable to recommend any specific consultants.

An internet search for 'Environmental Consultant' or 'Contaminated Land Consultant' should highlight some consultancies.

It is advisable to discuss your specific requirements with each consultant, and to obtain a number of quotes, before proceeding.

The consultant may also be able to offer advice on other development issues, such as coal mining and ground conditions, at the same time as land contamination.

There are currently no formal registration schemes for contaminated land professionals, although indications of professional competence include:

- An appropriate chartership, such as:
  - ❖ Chartered geologist.
  - ❖ Chartered environmentalist.
  - ❖ Chartered engineer.
  - ❖ Chartered scientist.
  - ❖ Chartered member of the Chartered Institute of Water and Environmental Management (CIWEM).
- A Specialist in Land Condition (SiLC).

The engagement of a chartered professional, or someone registered on a professional scheme, offers no guarantee of the acceptance of their report by the Local Planning Authority.

## **APPENDIX 1 -USEFUL WEBSITES AND REFERENCES**

### **Planning Guidance**

[Planning Practice Guidance – Land affected by contamination](#)

[National Planning Policy Framework](#)

### **Legislation**

[Environmental Protection Act 1990 Part 2A](#)

### **Environment Agency**

[Check if you need an environmental permit](#)

### **Government Guidance**

[Contaminated Land](#)

### **Specialist in Land Condition**

[SiLC website](#)

## **APPENDIX 2 - USEFUL CONTACTS**

### **Environmental Health (Lichfield District Council)**

01543 308725  
pollution@lichfielddc.gov.uk

### **Planning Department contact details**

01543 308197 or 01543 308174  
devcontrol@lichfielddc.gov.uk

### **Environment Agency**

General enquiries - 03708 506506  
[enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)