

## Good Growth

### **Good Practice Note - Dealing with contaminated and polluted sites**

#### **Overview**

Land can be contaminated by things like; heavy metals, such as arsenic, cadmium and lead; oils and tars; chemical substances and preparations, like solvents; gases; asbestos; radioactive substances.

#### **What counts as contaminated land**

Land is legally defined as 'contaminated land' where substances are causing or could cause:

- significant harm to people, property or protected species
- significant pollution of surface waters (for example lakes and rivers) or groundwater

#### **Special sites**

Some types of contaminated land are classed as 'special sites'. This includes land that:

- seriously affects drinking waters, surface waters or important groundwater sources
- has been, or is being, used for certain industrial activities, such as oil refining or making explosives
- is being or has been regulated using a permit issued under the integrated pollution control or pollution prevention and control regimes
- has been used to get rid of waste acid tars
- is owned or occupied by the Ministry of Defence
- is contaminated by radioactivity
- is a nuclear site

Once a local council has decided that an area is a special site, it is regulated by the Environment Agency in England. The Environment Agency has technical guidance on special sites.

#### **Who decides if land is contaminated**

Your local council or Environment Agency will decide if land is contaminated. Land could be investigated for several reasons, including when:

- land is sold, let, used or otherwise transferred
- land is proposed for development
- local councils inspect land in their area
- an application is made for an environmental permit or other licence
- land is polluted

#### **Contaminated Land Register**

Local councils have a duty to maintain a public register of sites that have been formally determined as contaminated land within the borough. This land is either regulated by the council or the Environment Agency.

Under the GLA Act, the Mayor has no responsibilities or enforcement powers over development on contaminated land or land remediation.

### **Dealing with contamination**

The rules for who's responsible for contamination and how to deal with it depend on whether the land is *legally considered 'contaminated land'*.

If the land isn't legally considered 'contaminated land', you could be responsible for dealing with the contamination if you're:

- responsible for causing it
- the landowner

You may face legal action if you don't deal with contamination that you're responsible for.

If the land is legally considered 'contaminated land', the person who caused or allowed the contamination to happen is responsible for dealing with it, unless:

- they can't be identified
- the local council or Environment Agency investigating the issue decides they're exempt

The council or agency will then decide who's responsible for dealing with it instead. This may be the landowner, or the person who uses the land. The council or agency will:

- decide how the land should be dealt with
- ask the responsible person to deal with the contamination
- tell them how they should take care of it (clean it up or fence it off, for example)

If the person doesn't deal with the contamination, the council or agency will send a 'remediation notice', setting a deadline by which they must take care of it.

You can agree a voluntary scheme with the council or agency if you're responsible for part or all of the clean-up. You must tell them what steps you'll take to clean up the land.

If you're developing the land, you'll have to deal with the contamination either before you get planning permission or as part of the development as set out in planning conditions.

### **Planning applications and contaminated land**

The NPPF requires assessment of risks associated with contamination and remediation proposals, placing the responsibility on the landowner/developer.

There are also strong regulatory mechanisms, such as the Environmental Protection Act 1990, Building Regulations and Environmental Permitting Regulations, to control the development of contaminated sites.

### **Steps to be taken by developers and Local Planning Authorities (LPAs)**

- The developer must ascertain if the site is contaminated and by what;

Is the site on the Contaminated Land Register?

If not is there other evidence that might point to contamination, previous land uses, historical and local records and historical maps?

- If there is evidence of contamination developers need to undertake a rigorous site inspection including soil and groundwater testing.

- At the pre-application stage LPAs, should raise the issue of site contamination and the need to deal with it.
- Urban Developments for more than 150 dwellings, industrial estate developments of sites greater than 0.5 hectares and urban developments of more than 1 hectare which is not a residential development require developers to prepare Environmental Impact Assessments. LPAs when determining the scope of the developer's Environmental Statement need to explicitly identify contamination as an issue to be addressed.
- The Environmental Statement accompanying the planning application must describe in detail the nature of the contaminations and its likely environmental impacts. The Environmental Statement will also need to set out in detail how those impacts will be mitigated and a methodology to do so.
- The assessment of the Planning Application will require a thorough interrogation of the applicant's Environmental Statement by council officers to ensure all contamination has been identified and that the methodology to mitigate is sound and will work.
- If the Council considers it does not have adequate resources to undertake the necessary tasks it should use Planning Performance Agreements to recover the costs of carrying out the work including the costs of having to use external consultants and experts.
- Planning conditions and s106 obligations should be used to require further technical reports, studies and mitigation measures. Care should be taken with the drafting to ensure they can be enforced by the LPA if the developer fails to comply.
- To monitor compliance with planning conditions and s106 obligations, LPAs should secure financial contributions from the developer through the s106 to cover the costs of the extra officer resources that will be needed to monitor compliance and if necessary to gather evidence of non-compliance to support any enforcement action that maybe required. The contributions can cover the costs of extra council officers or if necessary the costs of third party consultants and experts required to advise and assist the council.

**Further Information**

<https://www.gov.uk/government/publications/contaminated-land-statutory-guidance>

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

<https://www.gov.uk/guidance/environmental-impact-assessment>