

Should Contamination Risk Assessment Continue to be Frontloaded in the Planning Process under the NPPF:

Considering the Implications of a Recent Planning Appeal Decision



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The Coalition Government – A Culture Change for Planning

David Cameron (Tory Party Conference 2011):

“we’ve got to beat off this suffocating bureaucracy once and for all”



Erik Pickles (CBI 2011):

“How many proposals disappear into the planning system, never to be seen again? Millions of pounds are wasted. Many months and years are lost to delays. We need a system which supports growth: not shuts it down”



Nick Boles (Jan 2013)

“We are determined to cut away unnecessary burdens and paperwork and provide a simpler, swifter planning system for all...[the application process]... for too long has been weighed down by the need to provide irrelevant information and detail.”



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Changing Planning Policy Landscape - From an Era of Detail:

PPS23 Annex 2

- Where contamination is known or suspected or the proposed use would be particularly vulnerable, LPAs should require the applicant to provide with the application [a desk study and site reconnaissance].
- Where the desk study and site reconnaissance does not provide sufficient information to assess the risks and appraise remedial options, further investigations will need to be carried out before the application is determined.
- The LPA will need first to be satisfied that the proposal will deliver an appropriate development and that the risks are sufficiently well known that there is a viable remediation option. If it is so satisfied, it may be appropriate to grant permission subject to conditions relating to the condition of the land.

To an Era of Interpretation: National Planning Policy Framework

- **Para 120: “Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner”**
- **Para 121: “Planning Decisions should ensure that the site is suitable for its new use taking account of ground conditions and land instability, including pollution arising from previous uses”**
- **Para 121: “Planning Decisions should ensure that adequate site investigation information, prepared by a competent person, is presented.”**
- **However “Investment in business should not be over-burdened by the combined requirements of planning policy expectations.”**

Local Plan Policies: An Opportunity

Planning Our Future



- Local policies should not duplicate national planning policy but can provide locally based approaches to development management.
- An authority could adopt a more precise local policy in relation to the circumstances in which land contamination will be deemed to be a material planning consideration.

Local Plan Policies: Limitations

- Planning policies must be reasonable and consistent with the overall national approach set out in the NPPF:
‘The sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened’
- Only around 50% of Local Authorities have an-up to date Local Plan in place.
- There are many different interests competing for representation in local plan policies, i.e. house builders, regenerators, CPRE, naturalists/ ecologists, local action groups, etc.



Local Plans provide an opportunity for the contaminated land community to contribute to setting out detailed local frameworks for assessing contaminated land within the Planning System therefore engagement is vital.

Local Plan Policies – Bradford's Emerging Local Plan

- **Policy EN8 - Environmental Protection: B. Land**

‘Proposals for development of land which may be contaminated must incorporate appropriate investigation into the quality of the land. Where there is evidence of contamination, remedial measures must be identified to ensure that the development will not pose a risk to human health and the environment. Investigation of land quality must be carried out in accordance with the principles of best practice.’

Planning Legislation:

Development Management Procedure Order 2010

- A contaminated land assessment is not an explicit national validation requirement.
- However it is an implicit requirement by virtue of the wording of Q14 of the standard planning application form.
- This question indicates that an ‘appropriate contamination assessment’ is required in circumstances where either:
 - The land is known to be contaminated;
 - Contamination is suspected;
 - A use is proposed which would be particularly vulnerable to the presence of contamination;
- However the application form does not specify what would (and would not) constitute an ‘appropriate contamination assessment’

Planning Legislation: Local List of Validation Requirements

- It is open to Local Authorities to specify the circumstances in which a contamination assessment will be required to accompany planning applications and also to define a standard for such assessments through the Local List.
- However there have been recent legislative changes to reign in Local Lists:
 - Further information requirements must now be ‘reasonable’, having regard, in particular, to the nature and scale of the proposed development, and cannot relate to matters which will not be a material consideration in the determination of the application.
 - Local Lists must be reviewed and republished every 2 years.
- Effective implementation of local list requirements is reliant upon technical knowledge and consistency of approach by planning dept administrative officers.

Planning Legislation: Bradford's Local List

Local List Item	Type of Application	What Information is Required	Further Information
Land Contamination Assessment – Desk Top (Phase I) Report	<ul style="list-style-type: none"> The site has previous manufacturing or industrial activity Chemical or fuel storage Treatment or disposal of waste The application site is within 250mm of a landfill site Where it is suspected the land may be contaminated due to its uses now or in the past 	<p>A desk top report should:</p> <ul style="list-style-type: none"> Appraise the previous uses of the site assess the environmental setting, including hydrology, geology and pollution incidences provide a risk assessment using the source pathway receptor model Conclude if the contamination is such that it could adversely affect the proposed development and/or create new pollutant linkages. 	<ul style="list-style-type: none"> Development on land affected by contamination Development on Land Affected by Contamination: Technical Guidance for Developers, Landowners and Consultants, YAHPAC 2010
Land Contamination Assessment – Site Investigation (Phase II) Report and Risk Assessment	<ul style="list-style-type: none"> Where it is known or “suspected” that the application site is contaminated to an extent that it could adversely affect the proposed development and/or create new pollutant linkages A Desk Top (Phase I) report has identified that contamination is evident on the site 	<p>A site investigation report should Include:</p> <ul style="list-style-type: none"> Any remedial measures required to prevent harm from the contamination. 	<ul style="list-style-type: none"> Guide to Submitting Planning Applications for Development on Contaminated Land (Bradford Council)

Interpretation by Planning Inspectors – Implications of a Recent Planning Appeal:

- Outline Application for residential development on a former 'inert' landfill site (30 dwellings).
- Refused on the grounds that:
The submitted information on the nature of the former landfill, the risk of contamination and implications for site stability and the possible need for remediation measures is insufficient to prove that the land is suitable for the intended residential development and will not pose a risk to the environment and neighbouring and future occupiers of the site. The site needs a full investigation and risk assessment and without such information the proposal is considered contrary to Policies P6 and P16 of the Replacement Unitary Development Plan and guidance in PPS23.

Appeal Site



Documentation Submitted by the Applicant:

- Historic landfill gas monitoring reports and other monitoring records.
- Site closure report.
- EA site closure acceptance letter.
- 'Phase 1 Desk Top Study and Site Investigation Report' - Authored by the Planning Agent

The Appellant's Argument:

- The application is in outline only.
- The submitted documentation demonstrates that only inert material was deposited and that the Environment Agency do not consider the site to present an environmental risk.
- This evidence is sufficient to conclude that the site should 'in principle' be appropriate for residential development.
- If further contamination risk assessment is necessary this can be reserved by condition.
- No remediation should be necessary but, nevertheless, the submission of a remediation strategy can also be reserved by condition.

The Council's Argument:

- The submitted documentation does not include a risk assessment based on a conceptual model which gives consideration to future residents as a potential pollutant receptor.
- The Desk Study report was not prepared by a competent person.
- Ground conditions could influence the amount of residential development capable of being accommodated on the site.
- Although the site may be suitable for residential development some form of remediation is likely to be required.
- It is not appropriate to grant planning permission without understanding the scope of remediation likely to be required and the potential environmental effects of those remediation works.
- The viability of the residential development scheme can not be understood without comprehending the likely development costs associated with remediation.

Limitations of Council's Argument:

- The CBMDC validation team had accepted the application as valid without a development specific risk assessment prepared by a competent person.
- The applicant had not been directed towards the YHPAC technical Guidance.
- The refusal had been pre-NPPF (the Era of Detail).
- The old UDP policy on land contamination had not been saved.
- Little weight could be attached to the emerging new local plan policy (pre-examination).

Appeal Decision:

- Para 13: 'It seems to me that an apparent requirement for a contamination assessment for housing development proposals of any significant scale, regardless of site history, is probably over-zealous. However, I agree with the Council that it is a sensible, precautionary approach where previous use of the site had at least the potential to leave contamination.'
- Para 15: 'nowhere has the available information been systematically brought together and evaluated and a risk assessment prepared. Nor (and I intend no disrespect to the Appellant's agent) has the information been prepared by a competent person in terms of advice in the NPPF9. In the absence of such a systematic assessment the possibility of contamination and ground stability, at least on parts of the site, cannot be ruled out.'
- Para 16: 'To leave any further investigations to the developer, as the Appellant suggests, would be at odds with the certainty that the planning system should provide. Given the scale of the proposed development, and the history of the site, it is not something that could be satisfactorily left to a condition; and although in the final analysis a planning permission that could not be implemented because of site conditions would be a matter for the developer, it would be the antithesis of good planning.'
- Para17: 'although the NPPF seeks to promote economic growth and remove unnecessary burdens on development, it does not seek to do so at any price. It stresses that development should be sustainable and I consider that to sanction development of a former waste disposal site without adequate investigation would not be sustainable in the broadest sense of the word.'

Key Conclusions of the Inspector:

- A requirement for a contamination assessment for all housing developments would be ‘over-zealous’.
- An adequate contamination assessment must include a development specific risk assessment informed by an evaluation of the available evidence.
- The assessment must be prepared by a *competent person*.
- Failing to gain a sufficient understanding of ground conditions during the application process ‘*would be the antithesis of good planning.*’
- To sanction development of potentially contaminated sites without adequate investigation ‘*would not be sustainable in the broadest sense of the word.*’

Should Contamination Risk Assessment Continue to be Frontloaded in the Planning Process under the NPPF?

- Yes!
- However the types of assessments required and the stages at which they are required is now far more open to interpretation.
- Therefore it is vitally important to ensure that the correct Local Mechanisms and guidance are in place:
 - Local Lists
 - Local Plans
 - Technical Guidance
- Local approaches should be pragmatic, reasonable and proportionate to the level of risk and the scale of development.

ANY
QUESTIONS
?

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