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# **Developer's Guide to Developing Land affected by Contamination and the Risk Assessment Process**

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Contents

|            |   |           |
|------------|---|-----------|
| <b>1.0</b> | <b>Introduction.....</b>  | <b>3</b>  |
| <b>2.0</b> | <b>Background Information.....</b>                                  | <b>3</b>  |
| <b>3.0</b> | <b>Contaminated Land Requirements at the Application Stage.....</b> | <b>8</b>  |
|            | 3.1 When is a Land Contamination/PRA Required... ..                 | 8         |
|            | 3.2 What is Required in a Phase 1 Assessment.....                   | 9         |
|            | 3.3 What Happens Next... ..   | 10        |
| <b>4.0</b> | <b>Developers Responsibilities.....</b>                             | <b>12</b> |
|            | <b>Appendix 1 – Land Contamination Assessment: Flow Chart.....</b>  | <b>17</b> |

## **1.0 Introduction**

- 1.1** The purpose of this guidance is to make developers aware of what information the Council requires in order to assess an application for planning permission on land, which may be affected by the presence of contamination, and in particular when submitting a Preliminary Risk Assessment.
- 1.2** It is the responsibility of the developer to ensure that potential land contamination issues are considered and that the land will be suitable for the proposed use. It is also the responsibility of the developer to ensure that investigation and remediation of the site if require is undertaken by a suitably qualified professional person having a sufficient experience in contaminated land such as an environmental consultant. **Any unacceptable reports submitted as part of the application, which are not in accordance with Council guidance could lead to delays in the application process and incur additional development costs.**
- 1.3** This is an overview of the procedure and is not an exhaustive list although it includes guidance on the minimum requirements for investigations, reports etc.
- 1.4** Full details of the specific requirements for a Phase I Preliminary Risk Assessment and a Phase II assessment are available on request:

## **2.0 Background Information to Contaminated Land Requirements**

- 2.1** Government guidance recognises land contamination as a material planning consideration and that the development phase is the most cost-effective time to deal with the problem.
- 2.2** Typical causes of land contamination include previous industrial or commercial use, mining, and land filling of waste. Land can also be contaminated due to its proximity to contaminated areas and contaminated in its natural state.
- 2.3** In response to increasing contamination issues the Government introduced new legislation in April 2000 (Part 2A of the Environmental Protection Act 1990) requiring all local authorities to inspect their areas for potentially contaminated land and, if necessary, to ensure that any contamination is 'cleaned up' (remediated). In Part 2A the legal definition of 'contaminated land' is:

*"any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that -*

- (a) significant harm is being caused or there is a significant possibility of such harm being caused; or*
- (b) pollution of controlled waters is being, or is likely to be, caused."*

**2.4** A key element of the Part 2A regime is the pollutant linkage concept: -

#### CONTAMINANT – PATHWAY – RECEPTOR

- A “contaminant” is a substance which is in, on or under the land and which has the potential to cause significant harm to a relevant receptor, or to cause significant pollution of controlled waters.
- A “receptor” is something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property, or controlled waters
- A “pathway” is a route by which a receptor is or might be affected by a contaminant.

**2.5** All 3 elements (contaminant, pathway, receptor) of the pollutant linkage, need to be identified in order to classify land as “contaminated” under the regime.

- (a)* As part of these 2A requirements, all councils had a duty to produce a ‘Contaminated Land Strategy’ by July 2001 with the main aim to identify all areas of land that are potentially contaminated within each local authority’s boundaries.

In December 2001 Gateshead Council published its original Contaminated Land Strategy. Since 2001 changes have been made to contaminated land law and to the huge volume of guidance that is associated with it. This updated strategy document provides a review of the progress that has been made to implement the Contaminated Land Strategy and sets out what Gateshead Council will

continue to do to carry out its' statutory duties to identify and deal with "Contaminated Land" issues. It also reflects the major revisions to the Statutory Guidance introduced in April 2012 and replaces the previous Strategy published in 2001 and 2013. Gateshead Council's Contaminated Land Strategy can be viewed or downloaded at:

[https://www.gateshead.gov.uk/media/2500/Contaminated-Land-Strategy-2020/pdf/Contaminated\\_Land\\_Strategy\\_2020.pdf?m=637341156485100000](https://www.gateshead.gov.uk/media/2500/Contaminated-Land-Strategy-2020/pdf/Contaminated_Land_Strategy_2020.pdf?m=637341156485100000)

- 2.6** Ultimately the planning process is the main driver for dealing with and identifying land contamination issues in conjunction with this strategy. Subsequently it is crucial that appropriate assessments are made to confirm the site is suitable for use.

### **Definition of 'suitable for use'**

- 2.7** UK policy is that land affected by contamination should be controlled and remediated based on the "suitable for use" principle. This principle allows a decision to be made as to whether there are unacceptable risks to people or to specific parts of the wider environment, including property, from the actual or intended use of the site. In other words, each case is assessed on a site- specific basis and an assessment of risk used to determine the extent of the remedial works needed. Developers should not put off remediation for fear that they will be required to do more work than is required under current legislation – cleanup to residential development standards would not be required if an industrial development was being proposed.

Guidance relating to contamination and planning was previously contained in Planning Policy Guidance 23: "Planning and Pollution Control" (PPS23). In March 2012, the Government announced that nearly all PPS's were to be replaced by a single document, the National Planning Policy Framework (NPPF). The NPPF was then updated in 2019.

The NPPF introduces a presumption in favour of sustainable development if a proposed development is in accordance with local policy. Planning decisions will be taken in accordance with the Local Plan, unless material considerations suggest otherwise.

- (a) All planning applications have to be considered for potential

contamination issues to ensure compliance with the Town and Country Planning Act 1990, the NPPF and the Councils Local Plan or Local Development Framework.

The NPPF states that land contamination, or the possibility of it, is a material planning consideration in taking decisions on planning applications, “Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rest with the developer and/or landowner.”

*Planning policies and decisions should:*

*give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;*

*Planning policies and decisions should contribute to and enhance the natural and local environment by:*

*preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability*

*The NPPF states that “Planning policies and decisions should ensure that:*

*a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);*

*b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990;*

*and c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.*

**2.8** It should be noted that “contaminated land” is used to mean land which meets

the Part 2A definition of contaminated land. Other terms, such as “land affected by contamination” or “land contamination”, are used to describe the much broader categories of land where contaminants are present but usually not at a sufficient level of risk to be contaminated land.

- 2.9** The principle difference between Part 2A and the NPPF is that under the planning system risks have to be assessed based upon the **new or intended use** (notably sensitive end uses) of the land rather than the existing use, upon which risks are based in the Part 2A regime.
- 2.10** Failure to appropriately address risks from land affected by contamination at the time of development may result in later enforcement action being taken as well as action under Part 2A of the Environmental Protection Act 1990. Advice on how contamination issues are dealt with through this mechanism is described in ‘Contaminated Land Statutory Guidance’- Department for Environment Food and Rural Affairs (DEFRA), April 2012 (CLSG 2012). The Statutory Guidance supports the Act and sets out the UK Government Policy on contaminated land.
- 2.11** It is important to remember that it is firstly the developer’s responsibility to ensure that the development is safe and that the site is suitable for its proposed use and then the Local Planning Authority’s (LPA) duty to ensure that the developer undertakes this assessment and implements any remedial requirements in a responsible and effective manner.
- 2.12** All aspects of investigations into potential land contamination should adhere to the guidelines within relevant British Standards and current UK guidance e.g. BS 10175:2011+A2:2017, BS 5930:2015, BS 8576:2013, BS 8485:2015+A1:2019 and Land Contamination: Risk Management (Environment Agency, 2020) in accordance with current best practice.
- 2.13** Failure to comply with this guidance is likely to result in delays in your planning application being processed or in your planning application being refused.
- 2.14** This guidance addresses land contamination only, but please be aware that investigation and remediation work can sometimes require permits or consents from the Environment Agency or the Local Planning Authority.

### 3.0 Contaminated Land Requirements at the Planning Application Stage

#### 3.1 When is a Land Contamination/Preliminary Risk Assessment Required?

3.1.1 Section 14 of the 1APP form introduced in April 2008 by the government department for Communities and Local Government (CLG) to replace all existing planning application forms within England, asks whether the proposal involves any of the following:

- Land which is known to be contaminated?
- Land where contamination is suspected for all or part of the site?

Note: this is not restricted to former industrial land but also includes agricultural land

- A proposed use that would be particularly vulnerable to the presence of contamination.

**15. Existing Use**

Please describe the current use of the site:

Is the site currently vacant?  Yes  No

If Yes, please describe the last use of the site:

When did this use end (if known)?  
DD/MM/YYYY   
(date where known may be approximate)

Does the proposal involve any of the following:

Land which is known to be contaminated?  Yes  No

Land where contamination is suspected for all or part of the site?  Yes  No

A proposed use that would be particularly vulnerable to the presence of contamination?  Yes  No

If you have answered Yes to any of the above, you will need to submit an appropriate contamination assessment.

3.1.2 In accordance with these stipulations if any of the answers are yes, a Phase 1 Land Contamination Assessment (often referred to as a Preliminary Risk Assessment (PRA) will specifically be required to validate the application as a minimum. To clarify, this includes:

- a) Development proposed on land that has been identified as being contaminated or potentially contaminated based on historical land use or land that is adjacent to an affected site
- b) Development which is identified as being a sensitive end use.

3.1.3 Land uses considered to be sensitive include:

- All residential development (Including single dwellings)
- Allotments
- Schools
- Nurseries
- Playgrounds
- Hospitals
- Care Homes

Where a proposed development involves a sensitive land use and the development site could be affected by a former potentially contaminative land use, the possibility of land contamination should always be considered.

3.1.3 The Planning Officer will consult with the Council's Contaminated Land Officer where the proposed development site could potentially be affected by land contamination or involve proposed sensitive land use. The Contaminated Land Officer will then review the application and may advise that further application information is required or planning conditions be imposed to ensure the site is suitable for future use. You may want to contact the Contaminated Land Officer for advice before submitting your application. Further information can be found using the following link

<https://www.gateshead.gov.uk/article/13835/Contaminated-land-and-risk-assessments>

## **3.2 What is Required in a Phase 1 Assessment?**

3.2.1 The Phase 1 Land Contamination Assessment should include a desk top study, site walkover, conceptual site model the preliminary risk assessment (PRA) and conclusions of assessment.

***Please note for clarification purposes Phase 1 Land Contamination Assessments are sometimes referred to as Preliminary Risk Assessments at the validation stage but it is important that irrespective of the terminology used a desk top study, site***

**walkover, conceptual site model and a specific Preliminary Risk Assessment are provided.**

3.2.2 The purpose of a Phase 1 Land Contamination Assessment or Preliminary Risk Assessment (PRA) is to establish the previous uses of the land under consideration or land nearby or adjacent to, and to initially identify potential sources of contamination, receptors and pathways.

3.2.3 Gateshead Councils Planning Support Service can provide PRA's on request.  
<https://www.gateshead.gov.uk/article/13829/Planning-Support-Service>

3.2.4 As part of the desktop study and site walkover it is important to identify all past uses of the site, and adjacent or nearby sites, since pollutants have the potential to travel away from the source, depending on the geology, groundwater and surface water of the area.

3.2.5 The desktop study and the site walkover should be the first stages of any site assessment and should enable a 'conceptual site model' of the site to be produced that provides a clear interpretation of all plausible pollutant linkages at the site.

3.2.6 The Preliminary Risk Assessment compiled following the completion of the conceptual model will assess whether a Phase 2 Intrusive Site Investigation is required. However where a Phase 2 Assessment is required this can be conditioned as part of the planning application.

3.2.7 Where significant contamination is known or is likely to be present, it may be necessary to carry out some site investigations before determining an application, as significant contamination may limit the allowable land uses.

### **3.3 What happens next?**

3.3.1 Once produced, all Phase 1 Land Contamination Assessments should be sent directly to Gateshead Councils Development Control Department for consideration as part of the application. For each application at least 3 copies of each report should be submitted.

3.3.2 Preferably any Phase 1 Land Contamination Assessment will have been submitted for pre-application discussion prior to the application being submitted.

3.3.3 Providing the submitted reports meet the criteria of the Tyne and Wear validation checklist full list available at:-,

[https://www.gateshead.gov.uk/media/6692/Tyne-and-Wear-validation-list-2019/pdf/Validation\\_of\\_Planning\\_Applications.pdf?m=636970634485030000](https://www.gateshead.gov.uk/media/6692/Tyne-and-Wear-validation-list-2019/pdf/Validation_of_Planning_Applications.pdf?m=636970634485030000)

3.3.4 The Planning Case Officer will then forward reports on to the appropriate statutory consultees, where necessary, for consultation comments as part of the application process.

***A flow chart of the contaminated land procedure is attached to Appendix A1, although at this stage applicants only need to address Phase 1.***

3.3.5 This list of consultees includes the Environment Agency and the Councils Built and Natural Environment team who will comment on risks posed to Controlled Waters and Human Health respectively and assess the acceptability of the assessment.

3.3.6 Once the relevant consultations have taken place and the Phase 1 Assessment is considered acceptable, providing all other material planning considerations are satisfied, the Local Planning Authority may look to attach planning condition(s) to Planning Approvals to ensure appropriate works are carried out.

These conditions may request:

- Works to be carried out in accordance with recommendations set out in the Phase 1 Land Contamination Assessment.
- Phase 2 Investigation required with results submitted to LPA for consideration.
- Any gas monitoring requirements undertaken and results submitted.
- Verification Report to demonstrate the works have been carried out satisfactory.
- Request to stop if any un-identified contamination is discovered and remediation strategy amended accordingly.

3.3.7 Please be aware that irrespective of whether the submitted Phase 1 Land

Contamination Assessment is acceptable for validation purposes, if it does not adequately address the contamination issues associated with the application site, the planning application may be refused due to in-sufficient information.

***The scope of submitted reports and necessary level of investigation must reflect the size and complexity of the site, as well as the likely hazards posed by any contamination, the risks involved, and the sensitivity of the proposed development.***

**All supporting evidence should be produced by appropriately-qualified professionals.**

3.3.8 When commenting on contaminated land reports and proposed remediation strategies, Gateshead Council will not accept responsibility for the effectiveness of the design and completion of remediation measures. The responsibility for providing this information remains at all times with the developers and their advisors. Developers should therefore fully appreciate the importance of competent professional advice, supported by sufficient professional indemnity insurance.

3.3.9 Further advice on contaminated land can be found on the Environment Agency's website - <https://www.gov.uk/government/collections/land-contamination-technical-guidance>

In addition, more specific details on compiling a Phase 1 Land contamination assessment/ preliminary risk assessment can be found in Gateshead Council's supplementary guidance, Phase 1 Land Contamination Assessment/Preliminary Risk Assessment,

**A flow chart is also available in Appendix A1 which sets out the full Land Contamination Assessment procedure.**

#### **4.0 Developer's Responsibility**

4.1 The site investigation procedure involves specialist technical knowledge and it is essential that competent and experienced personnel who should preferably hold recognised and appropriate qualifications conduct all phases of the site investigation procedure. Where a geotechnical study and a contamination study are combined within one report the consultant should be able to demonstrate that he is competent and has expertise to provide advice on both.

**4.2** In the past the Built and Natural Environment team have received reports submitted on behalf of developers that have not used a proper scientific or appropriate sampling strategy in order to assess risks from land contamination. It is essential that developers carry out their site investigations in accordance with current good practice.

**4.3** Examples of current good practice can be found in the following documents:

- British Standards Institution (2015). BS 8485:2015+A1:2019: Code of Practice for the Characterisation and Remediation from Ground Gas in Affected Developments. BSI, London
- British Standards Institution (2015). BS 5930:2015: Code of Practice for Site Investigations. BSI, London
- British Standards Institution (2013). BS 8576:2013: Guidance on Investigations for Ground Gas – Permanent Gases and Volatile Organic Compounds (VOCs).
- BS 10175:2011 British Standard Institute Investigation of Potentially Contaminated Sites - Code of Practice, British Standard Institute. London.
- CL:AIRE (2016). Control of Asbestos Regulations 2012: Interpretation for Managing and Working with Asbestos in Soil and Construction & Demolition Materials: Industry guidance (CAR-SOIL). CL:AIRE, London.
- Construction Industry Research and Information Association (2018). CIRIA C773: A Guide to Small Brownfield Sites and Land Contamination. CIRIA, London.
- Construction Industry Research and Information Association (2014). CIRIA C733: Asbestos in Soil and Made Ground: A Guide to Understanding and Managing Risks. CIRIA, London.
- Construction Industry Research and Information Association (2007). CIRIA C665: Assessing Risks Posed by Hazardous Ground Gases to Buildings. CIRIA, London.

- Construction Industry Research and Information Association (2001). CIRIA C552: Contaminated Land Risk Assessment: A Guide to Good Practice. CIRIA, London.
- Department of the Environment (1995). Industry Profiles (Various Titles). DoE, London (available from: <https://www.claire.co.uk/useful-government-legislation-and-guidance-by-country/198-doe-industry-profiles>).
- Environment Agency (2020). Land Contamination: Risk Management (LCRM). Environment Agency, Bristol.
- Environment Agency (2000) Technical Aspects of Site Investigation (2 Vols.). Research and Development Technical Report P5-06517R. Water Research Centre, Swindon
- Environment Agency/NHBC R&D Publication 66 - 'Guidance for the Safe Development of Housing on Land Affected by Contamination', 2008
- Environment Agency (2001) Secondary Model Procedure for the Development of Appropriate Soil Sampling Strategies for Land Contamination. R&D Technical Report PS-066/7R. Water Research Centre, Swindon

## MANDATORY GUIDANCE

- The Contaminated Land (England) Regulations 2000
- Contaminated Land (England) (Amendment) Regulations 2012.
- The Environment Act 1995
- The Environmental Protection Act 1990
- Department for Communities and Local Government, 2019. National Planning Policy Framework.
- Department for Environment, Food and Rural Affairs, April 2012. Environmental Protection Act 1990, Contaminated Land Statutory

## ADVISORY GUIDANCE

- BS8485: 2015, Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings
- CIRIA C735, Good Practice on the testing and verification of protection systems for buildings against hazardous ground gases, 2014
- CLEA software version V1.07
- CIRIA C659, Assessing risks posed by hazardous ground gases to buildings, 2006
- Chartered Institute of Environmental Health: The Local Authority Guide to Ground Gas, 2009
- Environment Agency, Human health toxicological assessment of contaminants in soil (Science Report Final SC050021/SR2), 2009
- Environment Agency, Updated technical background to the CLEA model (Science Report Final SC050021/SR3), 2009
- Environment Agency (2015). Contaminated Land Exposure Assessment (CLEA): Software and Relevant Publications. Environment Agency, Bristol.
- Environment Agency, 2006 Remedial Targets Methodology, Hydrological Risk Assessment for land contamination
- Gateshead Council Guidance on Phase I Land Contamination Assessments/Preliminary Risk Assessment.
- Gateshead Council Guidance on Phase II Land Contamination Assessment
- Wilson, Card, Haines, 2009: Ground Gas Handbook. Whittles Publishing

- Ministry of Housing, Communities & Local Government. National Planning Policy Framework (2019) and associated National Planning Practice Guidance on Land Affected By Contamination (2019). Ministry of Housing, Communities & Local Government, London (available from: <http://planningguidance.planningportal.gov.uk/>).
- National House Building Council, Environment Agency & CIEH (2008). R & D Publication 66: Guidance for the Safe Development of Housing on Land Affected by Contamination. NHBC & Environment Agency, London.
- National House Building Council (2007). Guidance on Evaluation of Development Proposals on Sites where Methane and Carbon Dioxide are Present. NHBC, London.
- Yorkshire and Lincolnshire Pollution Advisory Group (2017). Verification Requirements for Cover Systems: Technical Guidance for Developers, Landowners and Consultants. Version 3.4. YALPAG, UK (available to download from most council websites in the region).
- Yorkshire and Lincolnshire Pollution Advisory Group (2016). Verification Requirements for Gas Protection Systems: Technical Guidance for Developers, Landowners and Consultants. Version 1.1. YALPAG, UK (available to download from most council websites in the region).

# Appendix A1 – Land Contamination Assessment Flow Chart

