

Development on Land affected by Contamination: Guidance for Developers

Introduction

Sheffield City Council is receiving an increasing number of planning applications for developments on previously used land. In many cases these sites are affected by the presence of contamination from historic industrial uses.

The purpose of this guide is to make developers and their advisors aware of the information the Council will require in order to assess applications for planning consent on land which may be affected by contamination.

Land affected by the presence of contamination has the potential to cause harm to human health and the wider environment. Therefore land contamination, or the possibility of it, is a material planning consideration when making decisions on planning applications.

National Planning Policy Framework

The National Planning Policy Framework (NPPF) states that 'Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development'. (Department for Communities & Local Government, 2018).

The Developer's Responsibility

NPPF also makes clear that it is the developers' responsibility to ensure that the investigation and remediation of land contamination is carried out by a competent person with a recognised relevant qualification and sufficient experience in contaminated land.

When commenting on contaminated land reports and proposed remediation strategies, Sheffield City Council will not accept responsibility for the effectiveness of the design, completion of remediation measures and the safety of future occupiers. At all times this is the responsibility of the developers and their advisors. Developers should therefore fully appreciate the importance of competent professional advice, supported by sufficient professional indemnity insurance.

Land Contamination and Planning

Given the NPPF requirement in respect of competency, we consider it counterproductive to fully detail all that will be required to satisfy Local Planning Authority requirements in respect of land quality, as it is expected that such detail will be known by the appointed consultancy. Rather, we provide a very brief outline of

the key stages to assist the layperson in their search for and early discussions with consultancies that may meet the competency standard required.

In all new development cases it will be necessary to determine whether there are likely to be any contamination issues on site before submitting an application for planning consent. On large scale developments a pre-application enquiry may determine any necessary investigations that will be required prior to submitting a planning application.

The Local Planning Authority's Development Management Service will consult with the Environmental Protection Service once an application has been validated, to determine whether potential health and environmental impact risks relating to the previous land use need to be assessed, and again throughout the development process to check that any reports submitted by an applicant are satisfactory, to ensure that the development will be suitable for its proposed use. The Environmental Protection Service will also consider other matters which may give rise to disturbance during the development such as smoke, noise, odours and dust.

Where (on initial consultation) it is determined that the land has had a potentially contaminative former use, the Environmental Protection Service will recommend that conditions requiring land contamination to be properly evaluated are applied to any favourable planning consent. Such conditions cover the following stages:

Phase 1 – Preliminary Risk Assessment – includes a desk study and site walkover, and should result in a conceptual site model. It should be noted that the standard EnviroCheck type report alone will not be considered sufficient to satisfy the requirements of a Phase 1. Where the conclusions of the Phase 1 identify risk to human health, the environment, or property, Phase 2 will be required.

Phase 2 – an intrusive site investigation and risk assessment, based upon the conceptual site model derived under Phase 1. Where the conclusions of the Phase 2 identify risk to human health, the environment, or property, Phase 3 will be required.

Phase 3 – Remediation Strategy Report – fully detailing all proposed remedial measures to mitigate the risks identified in Phase 2.

Phase 4 – Verification Report – documenting and evidencing that all proposed remedial works have been undertaken in accordance with an approved Remediation Strategy.

Phases 1, 2 and 3 are all termed pre-commencement conditions, that is, they must be satisfied prior to any development commencing.

All work in respect of phases 1 to 4 must be undertaken in accordance with current best practice guidance, both national and local. Copies of regional and local guidance are available to download through the Council's website.