

THE DEVELOPERS GUIDE TO LAND CONTAMINATION IN STAFFORDSHIRE

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1 INTRODUCTION

1.1 WHO IS THIS GUIDE FOR?

You may be considering developing on, or near to, brownfield (previously developed) land, or a landfill. Such land may be affected by land contamination, particularly where the previous use was of an industrial nature.

Land contamination can present a risk to human health and the wider environment. Development presents an opportunity to understand and, where necessary, address those risks.

This guide has been prepared for those looking to develop land in Newcastle-under-Lyme, where the presence of land contamination is known or suspected.

It aims to provide a step by step guide to what Newcastle-under-Lyme Borough Council (NuLBC) will typically require to ensure that unacceptable risks from land contamination are addressed.

This guide is intended to be an informative and helpful source of advice. Readers must note that legislation and best practice change over time.

Whilst all reasonable precautions have been taken to ensure that the information contained in this guide is correct, the local authority will not accept any liability for loss or damage caused by any person relying on this information, or for any errors or omissions.

1.2 BACKGROUND

The role of the planning system is to control development and land use. Land contamination is a material planning consideration. Indeed, the majority of land in the UK that is affected by contamination is addressed through 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 demonstrably 'safe' and 'suitable for use'.

Failing 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.

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 – for instance, near to brownfield land, old collieries, or a landfill.

Some areas may be affected by the natural or background occurrence of potentially hazardous substances, although this is relatively rare.

As precaution, the possibility of land 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 or schools.

Where land contamination is known to be present or suspected, planning approvals will usually be conditioned to require the potential risks from land contamination to be addressed.

2 THE PLANNING PROCESS

2.1 PLANNING ROLES

2.1.1 THE DEVELOPER

The developer is responsible for demonstrating to NuLBC that any risks from potential land contamination are fully understood and, where necessary, managed.

This will usually require the commission of a desk study and site walkover at the application stage; it may also necessitate a site investigation and remediation, in order to address significant risks that land contamination might pose.

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

2.1.2 THE PLANNING OFFICER

The Planning Officer (PO) administers the planning application for the local planning authority.

When a planning application is submitted, the PO will consult a range of professionals on various issues which are relevant to the application.

For issues concerning land contamination, the consultation will include the Contaminated Land Officer (CLO) and, on occasion, the Environment Agency (EA).

All formal requests for the approval of planning conditions must be submitted to the PO, who will co-ordinate with the CLO and the EA.

NuLBC is the planning authority for the majority of applications, although Staffordshire County Council (SCC) may assume this role for planning applications associated with waste or mineral extraction.

2.1.3 THE CONTAMINATED LAND OFFICER

The Contaminated Land Officer (CLO) resides within Environmental Health. The CLO will consider the potential impact of land contamination on the health of future site occupiers.

The CLO may also consider the potential impact on controlled waters in certain circumstances, such as when the EA declines to respond to a planning consultation.

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2.1.4 THE ENVIRONMENT AGENCY

The Environment Agency (EA) consider the potential risks posed by land contamination on controlled waters (groundwater or surface water bodies), especially when sensitive water bodies (such as those which supply drinking water) are at risk.

2.1.5 OTHERS

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

- Natural England.
- English Heritage.

2.2 MAKING AN APPLICATION FOR PLANNING PERMISSION

2.2.1 INITIAL APPLICATION AND RISK ASSESSMENT

Where land contamination is suspected, the developer should submit a preliminary risk assessment (also known as a desk study or phase 1 report) with their planning application.

The first step in the preparation of a preliminary risk assessment is to collate any available information on the site. Sources of information include:

- Historic Ordnance Survey mapping.
- An environmental database report, which contains information on groundwater, flooding, pollution incidents and business registers.
- Geological mapping.
- A Coal Authority report (in areas at risk from coal mining).

Good practice also dictates that a site walkover should be undertaken, to provide information on the current site condition, including obvious signs or sources of potential contamination.

Whilst the above information is the minimum on which a preliminary risk assessment should be based, NuLBC may hold additional valuable information, such as:

- Additional mapping (particularly around Newcastle-under-Lyme town centre)
- Records of previous developments and site use.
- Site investigation reports.

This information is available from NuLBC on request (a fee may be charged for this service).

The information is used to develop the risk assessment; land contamination may present a risk when the following elements are identified:

- A **source** of contamination in, on or under the land.
- A route (**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 humans, controlled waters, ecological systems or property) which may be harmed by contamination.

The CLO and, where applicable, the EA will be formally consulted on the preliminary risk assessment.

The preliminary risk assessment should be prepared by competent persons as defined in Annex 2 of the NPPF and must be of an acceptable standard.

If a preliminary risk assessment is not submitted, or is not of the required standard, the CLO and/or EA may object to the planning application.

2.3 PLANNING CONSENT AND CONDITION APPROVAL

If land contamination issues are potentially significant, the CLO and/or EA will recommend that conditions be attached to any planning consent.

The developer will need to satisfy these planning conditions during the course of development.

The approval of land contamination conditions will be subject to consultation with the CLO and/or the EA.

Sample conditions are reproduced, with comments, below:

1. Site Characterisation

Development should not commence until sufficient site investigation works have been undertaken to adequately assess the nature and extent of any land contamination on the site.

The scope of site investigation works should be submitted to, and approved in writing by, the local planning authority. The works must be undertaken by competent persons and in accordance with the requirements of:

- BS10175 (2011) + A2 (2017) Investigation of Potentially Contaminated Sites - Code of Practice.
- BS8576 (2013) Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds.

The findings of the site investigation should be used to assess the potential risks from land contamination to:

- Human health.
- Controlled water.
- Property.
- Ecological systems.
- Archaeological sites and ancient monuments.

A report of the results of the site investigation works, together with a risk assessment, should be submitted to, and approved in writing by, the local planning authority.

The developer will need to commission a site investigation. This is often referred to as 'phase 2'.

The aim of the site investigation is to obtain information about the actual ground conditions, which is used to refine the risk assessment.

The site investigation should be undertaken by competent persons as defined in Annex 2 of the NPPF and be of an acceptable standard, in line with national guidance to satisfy the CLO and EA.

The CLO will be happy to discuss the scope of any proposed site investigation and review draft reports, free of charge. The EA also provides a review service, although a fee may be payable.

2. Submission of a Remediation Scheme

Development shall not commence until a detailed remediation scheme to bring the site to a condition suitable for its intended use by removing unacceptable risks has been submitted to, and approved in writing by, the local planning authority. The scheme must include:

- All remediation works to be undertaken.
- Proposed remediation objectives and remediation criteria.
- Site management procedures.

This condition requires the developer to provide details of how they will manage any unacceptable risks from land contamination that have been identified from the phase 2 investigation.

This may mean that land contamination needs to be treated, or that works are undertaken to ensure that it does not pose an unacceptable risk to receptors.

The developer will also need to detail how they will demonstrate that the management of land contamination has been successful.

3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with the approved remediation statement prior to the commencement of development, 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 the approved remediation scheme, a verification report that demonstrates its effectiveness must be submitted to, and approved in writing by, the local planning authority.

The developer will need to submit a report that demonstrates that they have successfully managed land contamination risks at the site to the agreed standard.

4. Report of Unexpected Contamination

Prior to commencement of the proposed use of the site written confirmation that no contamination was found or suspected should be submitted to the local planning authority.

In the event that contamination is found, or is suspected to be present, at the site when carrying out the approved development, then development shall be halted and the suspicion reported in writing to the local planning authority.

If required by the local planning authority, an investigation and risk assessment of the suspected land contamination must be undertaken by appropriately qualified and experienced persons and in accordance with the requirements of:

- BS10175 (2011) + A2 (2017) Investigation of Potentially Contaminated Sites - Code of Practice
- BS8576 (2013) Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds
- CLR 11 Model Procedures for the Management of Land Contamination, issued by The Environment Agency

The findings of the investigation, an appropriate risk assessment and, if required, any proposed remediation measures, together with a scheme of validation, should be submitted to, and approved in writing by, the local planning authority.

If remediation is required, then the agreed works must be carried out, together with independent validation of the same (in accordance with the approved validation proposal), the report of which should be submitted to and approved in writing by, the local planning authority.

On some sites, there are areas that are potentially contaminated, but go unidentified. An example might be an underground fuel tank that is not shown on 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. Importation of Soil/Material

No soils (or soil forming materials) 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:

- The sampling frequency
- Soil analysis schedules
- The criteria against which the analytical results will be assessed

The agreed methodology shall then be carried out, the results of which should be submitted to, and approved in writing by, the local planning authority.

If the developer needs to import soil to the site (for use in gardens or for landscaping), they will need to demonstrate that those soils come from a reputable source and are not contaminated.

The developer should confirm their intended source of soil with the local planning authority.

The developer will also need to demonstrate that the imported soils are fit for purpose by undertaking soil sampling after their import.

3 WHO DO I APPOINT?

3.1 APPOINTING A CONSULTANT

The assessment of risk from land contamination should be undertaken by a competent person. A competent person is defined in the NPPF as:

A person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation.

NuLBC may reject a report if the author cannot demonstrate that they have sufficient experience and knowledge to carry out work to an acceptable standard.

NuLBC is unable to recommend specific consultants or organisations to carry out work.

Internet search terms for organisations or individuals that may be able to prepare a land contamination assessment include:

- 'environmental consultant'.
- 'contaminated land consultant'.

It is advisable to discuss your specific requirements with potential consultants, and to obtain a number of quotes, before proceeding. The consultant will often be able to offer advice on development constraints associated with other issues such as abandoned mine workings or difficult ground.

Indications of professional competence include:

- Appropriate qualifications. These may include:
 - ✓ Bachelors degrees in environmental science, geology or other natural sciences.
 - ✓ Masters level qualifications, particularly those in environmental engineering/geology or hydrogeology.
- Appropriate experience of dealing with land contamination.
- Chartership through an appropriate professional body, such as:
 - ✓ [Chartered Institution of Water and Environmental Management](#) (CIWEM).
 - ✓ [Institute of Environmental Management and Assessment](#) (IEMA).
 - ✓ [Institution of Environmental Sciences](#) (IES).
 - ✓ [Geological Society of London](#) (Geol Soc).
- Registration as a [Specialist in Land Condition](#) (SiLC).
- Registration as a 'suitably qualified person' under the [National Quality Mark Scheme](#) (NQMS) for Land Contamination Management.
- An accredited member of the [Society of Brownfield Risk Assessment](#) (SoBRA).
- Registration with the [UK Register of Ground Engineering Professionals](#).

3.2 THE NATIONAL QUALITY MARK SCHEME

The National Quality Mark Scheme (NQMS) for Land Contamination Management is a voluntary scheme which was established in January 2017.



To obtain a 'Quality Mark' a report needs to be:

- Registered with the scheme.
- Approved by 'Suitably Qualified Person' (SQP) who themselves are registered with the scheme.

A Quality Marked report should:

- Be prepared in line with established good practice.
- By competent people.
- Set out conclusions and recommendations that are substantiated by the underlying data and based on reasonable interpretations of that data.
- Identify uncertainties and limitations in the data, and set out the possible consequences to the conclusions and recommendations.

A fee is levied to make a declaration (that a report is adequate) under the NQMS.

This section is provided for information on the NQMS only.

The NQMS is a relatively new scheme which has been developed to improve standards in the investigation and assessment of land contamination.

The process of becoming a SQP is rigorous – currently, a SQP will also be a SiLC. Applicants for SiLC must be chartered and pass an open book exam and interview.

In principle, reports bearing the Quality Mark should be prepared to a high standard and regulatory reviews should not identify any significant shortcomings – thus, the risk of delays as reports pass through the planning process should be minimised.

Developers should be aware that NuLBC will not exempt reports prepared under the NQMS from review, nor will it automatically accept any conclusions or recommendations.

The reader is advised to liaise with the EA to confirm their current stance on the NQMS.

APPENDIX 1 – USEFUL WEBSITES AND REFERENCES

Planning Guidance

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

[National Planning Policy Framework](#)

Government Guidance

[Contaminated Land](#)

APPENDIX 2 – USEFUL CONTACTS

Newcastle-under-Lyme Borough Council (Environmental Protection)

Contaminated Land Officer - Hal Sambrooke
Email - Hallan.sambrooke@Newcastle-staffs.gov.uk
Council switchboard - 01782 717717

Environment Agency

Email - enquiries@environment-agency.gov.uk
General enquiries - 03708 506506