

# A Developers Guide to Dealing with Contaminated Land

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## **1.1 Introduction**

This guidance has been developed for use by land owners, developers and their Agents to assist in the submission of information in support of planning applications when dealing with land that is either known and/or suspected to be contaminated or where the proposed use is particularly sensitive and/or vulnerable to land contamination

Generally land contamination is generally associated with previous industrial/commercial use on the site or on an adjacent site.

The possibility of presence of land contamination should always be considered where the proposed development is particularly sensitive and/or vulnerable to land contamination.

It is the responsibility of the developer to ensure that a development is safe and suitable for use for the purpose of which it is intended.

Please note that the requirements for remediating land under the planning process are not the same as remediation standards under Part 2A of the Environmental Protection Act 1990. This guidance document does not cover the requirements under Part 2A of EPA 1990.

The contaminated inspection strategy details the Council's approach in dealing with land contamination under Part 2A of the EPA 1990. The Council's adopted contaminated land inspection strategy can viewed at Council Offices or by following the link on the Contaminated Land pages of our website.

This document is only intended to provide generic guidance. We are aware that the contents of any site report will vary due to site specific conditions such as historical land uses, nature and extent of any contamination and proposed end uses. For site specific advice, we would recommend that developers seek advice with appropriately qualified and experienced Environmental Consultants and the Council's Contaminated Land Officer where land is known or suspected to be contaminated.

## **1.2 Contaminated Land in Runnymede**

Our Contaminated Land Strategy was adopted in June 2001 and tells you how we will find contaminated land within the Borough and take action where needed. We are in the early stages of identifying potentially contaminated land sites and are beginning to investigate them to see if they require further action.

Contaminated land is investigated either proactively, by the Council, or through the Planning process, through investigations undertaken during the development of areas.

### **Investigation by the Council**

Legislation known as Part 2A (Part 2A of the Environmental Protection Act 1990) is used to look at land which will not be redeveloped through planning

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applications. We will identify potentially contaminated areas and seek to investigate if they represent any risk to the Borough. We have a database of areas in the Borough which we gather contaminated land information on.

### **Investigation through the planning process**

Under The Town and Country Planning Act 1990, consideration must be given to contamination issues on land being developed, because of previous uses of that land.

The majority of contaminated sites are cleaned up in this way, during the planning redevelopment process, encouraging bringing Brownfield land back into use.

Under the National Planning Policy Guidance (the NPPF), you are required to consider the possibility of contamination issues affecting or affected by your applications. Responsibility for ensuring the land and development is fit for purpose and does not represent contaminated land, lies with you, the applicants and developers.

## **1.3 The Council's Approach**

In accordance with the requirements of NPPF, the Council's planning officers view land contamination as a material consideration when deciding planning applications. It is the responsibility of the developer and/or applicant to establish the suitability of the land for the intended use.

It is the Council's duty to ensure that land owners and developers/applicants carry out appropriate investigations and where necessary, develop and implement appropriate remediation measures dealing with land contamination in an effective and responsible manner.

You and your appointed Environmental Consultants will need to assess the potential risks from land contamination on the basis of proposed use and local circumstances. This should normally be done before formal planning permission is sought and given for the development. Only conditional planning permission may be granted if the Council is not satisfied with your assessment of land contamination. In other cases, failure to comply with this guidance may result in refusal of your planning application.

If your assessment of land contamination identifies potential risks at the site, suitable risk management measures must be designed and/or implemented before commencement of the development. You must obtain written agreement from the Council to indicate this.

## **1.4 Liaison with the Council**

The Council promotes NPPF guidance in respect of pre-application discussions between the developer/applicant and the Local Planning Authority. We recommend that the developer/applicant contacts the Contaminated Land Officer before submitting the planning application where a developer is proposing to develop land that is known or suspected of being contaminated. You will find this approach useful as the Council officers may provide you with additional information, which you may be unaware of and may be able to answer other burning site specific questions you may have.

Our Contaminated Land Officer may wish to visit sites during site investigation works and remediation/verification/monitoring works, where these are necessary. We would urge developers/applicants to provide works schedule details to the Council prior to implementing works. Such site visits provide another opportunity for resolution of additional issues that may have been discovered. It is more economical, less time consuming and more effective to address contamination issues prior to development than after completion.

Figure 1 below provides a summary of the planning process when dealing with land contamination.

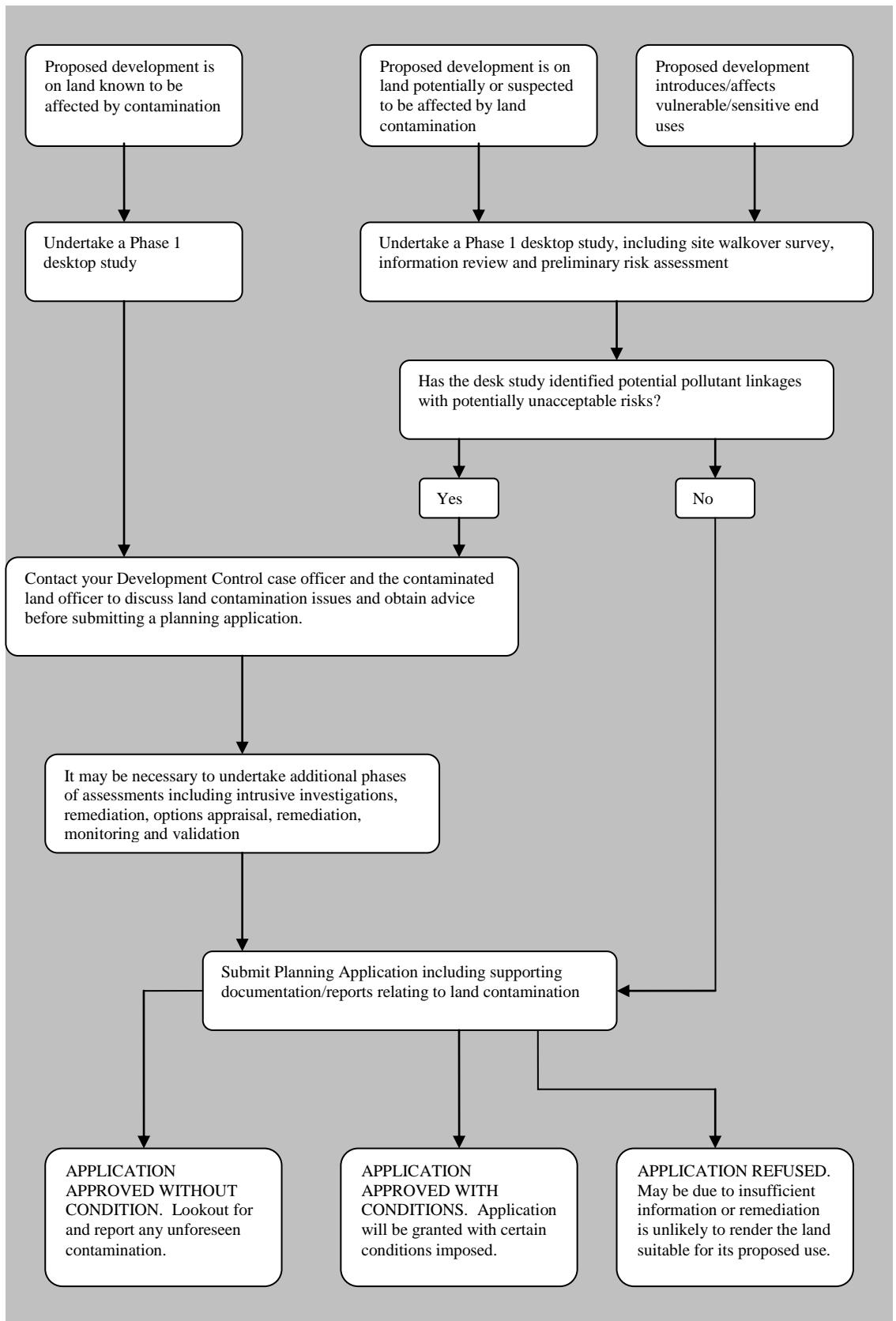
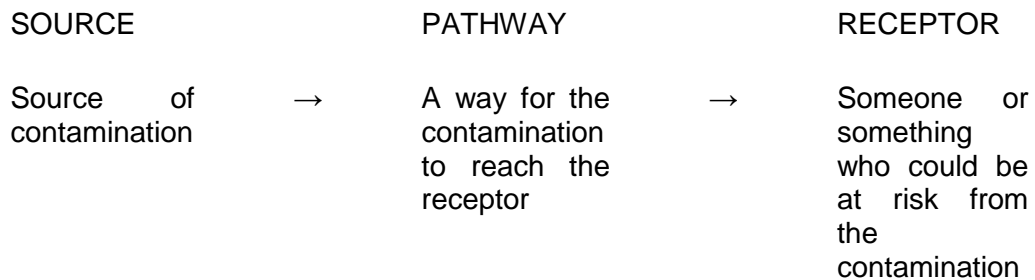


Figure 1: Planning Application Process

## 1.5 What is land contamination?

Land affected by contamination is land where the actual or suspected presence of substances in, on or under the land may cause risks to people, human activities or the environment.

Contaminated land risk is based upon the principles of risk assessment and the concept of a pollutant linkage where there is a:



Only if all three stages of the pollutant linkage are present can the land can be formally determined 'contaminated land'.

## 1.6 When should land contamination be considered?

The Council's Development Control and Contaminated Land Officer ask land owners, developers and their agents to undertake land contamination assessments where the proposed use of the land will be most sensitive/vulnerable to any past contamination.

Examples of sensitive/vulnerable land use include residential developments, allotments, schools and nurseries, hospitals and children's play areas.

Current circumstances or past use of the land/surrounding land suggests that contamination may be present. Examples of past uses that can give rise to land contamination include:

- Industrial or commercial
- Mineral workings and quarries or landfill waste disposal
- Defence land and buildings
- Agricultural buildings

Other relevant information suggests contamination may be an issue, such as historical chemical spill, illegal waste disposal/fly tipping, where land has been reclaimed or re-contoured and even natural contamination (including radon and methane).

These assessments can be carried out as part of pre-application discussions, as part of the original application documents or as part of a planning Condition.

### **1.7 What information is required to be submitted?**

The land will have been identified for investigation due to its past potentially contaminative use or evidence of contamination.

- Phase 1 investigation to be able to inform the history of the site and issues / areas of concern should be the initial action for any development.
- If required a Phase 2 Investigation involving soil, water and gas samples being retrieved from the area to be tested for contamination. This may involve digging test pits or boreholes. The results of the testing will indicate if contamination is present, a risk assessment will then be conducted to find out if there is risk from the contamination at the site to the users of the site. If there is found to be a pollutant linkage, remediation may be required.

### **1.8 Who should be carrying out land contamination assessments?**

The person or consultancy carrying out the work must have the experience, qualifications and skills to do so and must meet the following criteria:

- They should be a competent person – either an environmental scientist/engineer, chemist or geologist.
- They must belong to an accredited body and must be able to demonstrate that they operate within a quality assurance system.
- They must use an accredited and quality assured laboratory (UKAS) with MCERTS methods (where possible) to analyse samples and prepare reports.
- They must be aware of current legislative requirements including health and safety and the relevant codes of practice.
- They must be able to carry out risk management assessments and produce clear reports on the findings.
- They must have and maintain appropriate professional indemnity insurance.

### **1.9 Why might the Council deem a report to be inadequate?**

There are several reasons why a Planning Authority may reject a report, including the following examples:

- It does not contain all information required;
- Some of the information is not presented clearly and requires clarification;

- Important maps/plans are missing; and
- The report does not sufficiently address the concerns of the Planning Authority.

The Planning Authority will then write to you with details of why it has been rejected and ask you to re-submit an amended copy. If you are unclear about anything, you should make an appointment to meet with the relevant Council Officer dealing with your case.

If you have been advised by a planning condition to install a gas or vapour protective membrane to a development, please refer to this technical document for advice Developer gas membrane installation guidance - pdf document

### **Additional Consultations**

Depending on the circumstances specific to your site, it may be appropriate to contact other statutory consultees including Environment Agency, relevant Water Companies and English Nature.

### **Guidance and References**

A list of guidance and reference material is presented below. All persons involved in site investigation are encouraged to have regard to their contents and make use of the sources of information during their work. The list is not exhaustive and further advice is available from the Contaminated Land Officer and the Council's Planning Officers.

*British Standards Institute, 2001. BS 10175:2011: Investigation of Potentially Contaminated Sites*

*British Standards Institute, 1999. BS5930: 1999+A2:2010: Code of Practice for Site Investigations*

*The National Planning Policy Framework, NPPF*

*Defra and the Environment Agency, 2004. Model Procedures for the Management of Land Contamination. Contaminated Land Report 11.*

*Environment Agency, Guiding Principles for land contamination, GPLC*

*NHBC and Environment Agency, 2008. Guidance for the Safe Development of Housing on Land Affected by Contamination. R&D Publication 66: 2008, Volumes 1 & 2.*

### **Disclaimer**

This guidance document is intended to serve as an informative and helpful source of advice. However, readers must note that legislation, guidance and practical methods are inevitably subject to change. This note should therefore be read in conjunction with prevailing legislation and guidance, as amended, whether mentioned herein or not. Where legislation and documents are summarised this is for general advice and convenience, and must not be relied upon as a comprehensive or authoritative interpretation. This document



does not replace site specific interpretation you may get from employing suitably qualified and experience practitioners. It remains the responsibility of the developer/applicant and their appointed consultant/agent to apply up to date working practices to determine the contamination status of a site and the remediation requirements.