



ENTERPRISE AND DEVELOPMENT COMMITTEE

**SUPPLEMENTARY PLANNING GUIDANCE – DEVELOPMENT ON CONTAMINATED
LAND**

REPORT BY STRATEGIC PLANNING MANAGER

A. PURPOSE OF REPORT

The purpose of this report is to seek committee approval of supplementary planning guidance which will be used to inform developers of the council's requirements in relation to development on contaminated land.

B. RECOMMENDATION

It is recommended that committee approves the content of the supplementary planning guidance appended to this report for implementation with immediate effect.

C. SUMMARY OF IMPLICATIONS

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| I Council Values | Focusing on our customers' needs; being honest, open and accountable; making best use of our resources; and working in partnership. |
| II Policy and Legal | The proposed supplementary planning guidance on development on contaminated land is closely linked to policy NWR 22 in the Finalised West Lothian Local Plan 2005. The guidance will support the development control process and council contaminated land strategy. |
| III Resources - (Financial, Staffing and Property) | Nil. |
| IV Consultations | Development Control and Building Standards. |

D. TERMS OF REPORT

The Finalised West Lothian Local Plan 2005 states that there is a general presumption in favour of proposals for the rehabilitation of derelict and contaminated land, where there is no significant immediate or long-term threat to the local amenity, the environment, and where proposals are consistent with other policies.

A new contaminated land regime, implementing the provisions of Part IIA of the Environmental Protection Act 1990 (as inserted by section 57 of the Environment Act 1995) came into force on 14 July 2000. The regime places a duty on local authorities to inspect areas of land within their boundary and assess whether they may be classed as contaminated. Any land which is declared as "contaminated land" (according to the legal definition set out by Part IIA) can then be subject to a remediation notice. Generally, the costs of remediating the land will either be met by the person, or persons, who caused or knowingly permitted the contamination or, if they cannot be found, the owner of the land.

Although the council is using its contaminated powers to deal with land which is potentially causing harm in its current use, many brownfield sites are proposed for development incorporating a new use. The regeneration of brownfield sites is consistent with the council's policy on sustainability, and is often attractive to developers where development would enhance the value of the land and cover the cost of remedial work. It is the role of the developer and the council's Development Control and Building Standards unit to ensure that any development is suitable for its new use and, as such, contamination is a material planning consideration.

The planning guidance sets out what is required from developers during the planning process when contamination is suspected. This includes the stages of site investigation and risk assessment which are needed to determine the nature of the contamination; and the standard of remediation which is required to ensure the land is suitable for the intended use.

E. CONCLUSION

The supplementary guidance appended to this report is necessary to ensure that developers are aware of their responsibilities when proposing development on land which is potentially contaminated. The guidance clearly sets out what the council requires from developers throughout the development control process.

It is recommended that the guidance is approved for immediate implementation so that planning officers can issue the document to developers as planning applications are received.

F. BACKGROUND REFERENCES

Finalised West Lothian Local Plan 2005.
PAN 33 – Development of Contaminated Land.

Appendices/Attachments: None

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rnb3005 supp planning guidance



SUPPLEMENTARY PLANNING GUIDANCE - DEVELOPMENT ON CONTAMINATED LAND

1.0 INTRODUCTION

- 1.1 The purpose of this supplementary planning guidance is to provide developers with information on dealing with the planning process when development is proposed on land which is suspected to be contaminated. West Lothian has a rich industrial heritage, the legacy of which is that a number of sites across the district may be contaminated due to the nature of their former use.
- 1.2 This document takes into account the legislation regarding contaminated land and provides guidance on site investigation and risk assessment which will be required by the council's Development Control and Building Standards unit when determining planning applications and building warrant applications. If contamination is found to be posing a risk to human health or the environment, planning conditions will be attached to any consent to secure remediation of the land.

2.0 LEGISLATIVE AND POLICY CONTEXT

- 2.1 A new contaminated land regime, implementing the provisions of Part IIA of the Environmental Protection Act 1990 (as inserted by section 57 of the Environment Act 1995) came into force on 14 July 2000. The regime places a duty on local authorities to inspect areas of land within their boundary and assess whether they may be classed as contaminated. Any land which is declared as "contaminated land" (according to the legal definition set out by Part IIA) can then be subject to a remediation notice. Generally, the costs of remediating the land will either be met by the person, or persons, who caused or knowingly permitted the contamination or, if they cannot be found, the owner of the land. Often in cases of historic contamination, the polluter cannot be found, and liability for remediation of the contamination is decided by a legal process.
- 2.2 Part IIA defines land as "contaminated" if it appears 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) significant pollution of the water environment is being caused or there is a significant possibility of such pollution being caused.

Alongside the legislation which came into force in July 2000, the Scottish Executive published Statutory Guidance and the Contaminated Land (Scotland) Regulations. These documents provide assistance in defining and identifying contaminated land, as well as providing definitions of when "harm" or "pollution" is deemed as "significant".

- 2.3 The Statutory Guidance sets out the principle of the pollutant linkage when identifying contaminated land. A pollutant linkage is made up of three components: a source, pathway and receptor. The source is the actual contamination itself. The receptor is an object which can be caused harm by the source; this includes people, animals, ecosystems, water bodies and buildings (although this list is not exhaustive). The land can only be defined as contaminated if the source has the ability to harm a receptor via a pathway. A pathway could be inhalation of contaminated dust, ingestion of soil or, where buildings are concerned, chemical attack on the construction materials. If the pollutant linkage is causing significant harm (as defined in the statutory guidance) then it is termed a “significant pollutant linkage” and the land is registered as contaminated land.
- 2.4 Although the council is dealing with land which is potentially causing harm in its current use, many brownfield sites are proposed for development incorporating a new use. The regeneration of brownfield sites is consistent with the council’s policy on sustainability, and is often attractive to developers where development would enhance the value of the land and cover the cost of remedial work. It is the role of the developer and the council’s Development Control and Building Standards unit to ensure that any development is suitable for its new use and, as such, contamination is a material planning consideration.
- 2.5 The Finalised West Lothian Local Plan 2005 sets out a development strategy for West Lothian. Chapter 11 of the plan includes Policy NWR 22:

Where it is suspected by the council that a development site may be contaminated, a developer will be required to undertake a site investigation and risk assessment, to the council’s specifications. If contamination at the site is shown to present an unacceptable risk to human health or the environment within the proposed use, the developer must submit a programme of remedial works, to be agreed by the council, prior to planning permission being issued. The developer must appoint an accredited consultant to carry out the site investigation and risk assessment, and planning conditions will be applied to secure any necessary remedial works.

The onus is on the developer to convince the council’s Development Control and Building Standards unit that a development site poses no risk through contamination for its proposed use. Development Control and Building Standards will consult with the council’s contaminated land officer or, if required, an independent contaminated land consultant, to ensure that the site investigation is thorough and that any proposed remedial works eliminate the identified risk. If the council is not satisfied that enough information has been provided at the detailed stage of a planning application, then this may result in the refusal of the application. Where the council has granted an outline planning application with a suspensive planning condition relating to contaminated land, development will not be allowed to proceed until the council is fully satisfied that the risks have been assessed and dealt with.

- 2.6 Occasionally, development works are not subject to the requirements of the planning regime; or the presence of contamination is not suspected until after planning permission has been granted. In these cases the Building (Scotland) Regulations 2004 can provide powers to ensure the structure of buildings or their proposed occupants are not affected by contamination. Regulation 9 states:

“Construction shall be carried out so that the work complies with the applicable requirements of Schedule 5”.

Schedule 5, paragraph 3.1 states:

“Every building must be designed and constructed in such a way that there will not be a danger to the building nor a threat to the health of people in and around the building due to the presence of harmful or dangerous substances.”

It is expected that the majority of contaminated land issues will be addressed by the contaminated land and planning regimes. However, if contamination is not suspected until after planning permission has been granted, the council’s Development Control and Building Standards unit has the power to insist an investigation is carried out before a building warrant is issued.

3.0 CONTAMINATION THROUGH HISTORICAL LAND USE

- 3.1 Land may be contaminated by a wide range of substances and materials in the form of solids, liquids or gases. Contaminants may be spread across a site, or concentrated in pockets; readily identifiable, or hard to detect. They may be mixed with topsoil, with inert waste materials, or buried beneath clean material.
- 3.2 The nature and extent of the contamination is highly dependent on the former use of the site. The economy of a number of towns and villages in West Lothian was founded on shale and coal mining, steel and associated industries. It is the legacy of these former industries that are likely to cause the major contamination issues in West Lothian. However, other land uses such as scrap yards, engineering works, paper mills and railway land can also give rise to contamination. Some agricultural activities can also be a source of contamination. Therefore, greenfield sites should not be assumed to be free of contamination.
- 3.3 The Environment Agency (EA) and the Department of the Environment, Food and Rural Affairs (DEFRA) have published guidance to assist stakeholders identify which types of land might be contaminated and the chemicals and substances causing the contamination. The EA’s Research and Development Publication CLR 8, *‘Priority Contaminants for the Assessment of Land’* contains useful information and should help developers and consultants in their investigation of a particular piece of land.

4.0 SITE INVESTIGATION AND RISK ASSESSMENT

- 4.1 Site investigations are highly structured operations consisting of several phases. A phased approach is necessary to ensure resource is not wasted, as each phase of the investigation informs the next and therefore sampling and analysis can be targeted at areas of a site which is at a greater risk. This approach is outlined below:

Phase 1

- 4.2 The first phase of the investigation is used to compile as much information about the site as possible. This includes the former use of the site, which can be sourced from historical maps, aerial photographs, trade directories and anecdotal evidence. Once the former use of the site has been established, a list of possible contaminants can be compiled. As noted in section 3.3, the EA and DEFRA have published a range of guidance to link contaminants to former use. This includes a set of Industry Profiles in which common UK industries are described in detail and working practices are linked to groups of contaminants.

- 4.3 In order to assess the possible impact on the water environment, the site's geology, hydrogeology and hydrology must be understood. Geological maps are available from the British Geological Survey, as is hydrogeological information and groundwater vulnerability maps. The Scottish Environment Protection Agency (SEPA) should be consulted for information on surface and groundwater in or near a site.
- 4.4 The current and proposed uses of the site should also be assessed during the phase 1 investigation in order to understand which types of receptors could be affected by any contamination. A site proposed for commercial or industrial use will be quite different from a housing development in terms of risks to receptors.
- 4.5 On completion of the phase 1 investigation, the site assessor should have information on possible contaminants, pathways and receptors. This enables the assessor to define a conceptual model of the site. This model can be in text, schematic or graphical format and should describe succinctly each possible pollutant linkage. The conceptual model can then be used to design the phase 2 investigation. Sampling can be targeted at specific areas of the site (e.g. the tank farm in a former oil works), and risk assessments made dependent on specific receptors on the site. Alternatively, the phase 1 investigation may prove that there are no possible pollutant linkages on a site and the investigation can be concluded.

Phase 2

- 4.6 This part of the investigation usually involves intrusive sampling on the site in the form of soil, groundwater and surface water sampling. Sampling can be targeted using the conceptual model developed in the phase 1 investigation in order to maximise resource efficiency. Laboratory analysis suites tailored to the contaminants identified in phase 1 then take place, and the results are input into a risk assessment system. This is usually a tiered approach whereby results are initially assessed against conservative screening levels. The EA have developed the Contaminated Land Exposure Assessment (CLEA) model in order to aid the legislative framework in the UK. This includes the publishing of generic initial screening levels (known as soil guideline values - SGVs) that chemical analysis can be compared against. The CLEA model is still in its relative infancy, and as such only a limited number of contaminant SGVs are available so far. Where no SGV is available for a contaminant, site assessors often use values published by other countries including the USA and the Netherlands. Water samples taken in a phase 2 investigation are usually compared against drinking water and environmental quality standards.
- 4.7 The sampling can be used to refine the conceptual model and may eliminate the possibility of several or all of the pollutant linkages. However, if chemical tests on the soils show that initial screening values have been exceeded, more detailed sampling and risk assessment is usually necessary. The screening levels are generally a "worse case scenario" and are, therefore, highly conservative. Computer risk assessment models can be used to incorporate contaminant toxicology, soil characteristics and receptor behaviour to generate values which are purely site-specific. If chemical test results are still above these site-specific values, then some form of remedial work will be required.
- 4.8 Site investigations should be carried out in accordance with British Standards BS 10175:2001 and BS 5930:1999. See section 7.4.

5.0 REMEDIAL WORKS

- 5.1 Remediation of a site involves breaking the pollutant linkage causing the site to be classified as contaminated. This can take the form of complex work on the soil to reduce contaminant concentrations, or can simply involve minimising a receptor's contact with a contaminant, e.g., placing areas of hardstanding over a contaminated area.
- 5.2 Once it has been shown that the proposed use of the site would present an unacceptable risk to human health or the environment, developers should provide the council with a comprehensive method statement detailing the remedial works which are required. Validation testing of the site once the works are complete is also necessary to ensure the remediation has been successful. The council's Environmental Health unit will be consulted on the remediation method statement to ensure that the proposed works do not cause a health risk, pollution, or nuisance to neighbouring development.
- 5.3 Any site works should be undertaken in accordance with the following publications:
- (a) "*Protection of Workers and the General Public During the Development of Contaminated Land*", Health and Safety Executive, 1991.
 - (b) The Construction (Design and Management) Regulations, 1994.

6.0 SUMMARY OF DEVELOPER REQUIREMENTS

- 6.1 When a developer submits a planning application, the developer should answer Question 14 (Site History), taking care to consider the previous use of the site and whether contamination is a possibility. In cases where it is not known whether the site is contaminated, the application will be reviewed by the council's contaminated land officer. If there is the suspicion of contamination, a site investigation will be required.
- 6.2 Where the application is for outline planning permission, the first phase of a site investigation should be submitted before the application is determined. Where further phases of investigation are required, these can be attached as conditions to the granted planning application.
- 6.3 Where the application is for full planning permission, the condition of the land and any remedial requirements will ideally be known before the determination date. Where this is not possible, a condition will be attached to any successful application requiring that a site investigation and risk assessment is submitted to, and approved by, the council prior to any work commencing on the development.
- 6.4 Throughout the planning process, the council's contaminated land officer will be available to discuss specific points about site investigation and the council's requirements. However, the council will not design a site investigation scheme for developers, and qualified consultants should be contracted to carry out the work.
- 6.5 The cost of the site investigation, risk assessment and any remedial action will be undertaken solely by the developer.

7.0 PUBLISHED GUIDANCE

- 7.1 Comprehensive guidance for developers is contained in *Planning Advice Note 33 – Development of Contaminated Land (PAN 33)*. This is held on the Scottish Executive’s website (www.scotland.gov.uk).
- 7.2 The legislative text of Part IIA of the Environmental Protection Act 1990 and the Contaminated Land (Scotland) Regulations 2000 are held on the Office of Public Sector Information website (www.opsi.gov.uk). The statutory guidance for implementing Part IIA is published on the Scottish Executive’s website.
- 7.3 General guidance on managing contaminated land is published on the Environment Agency’s website in the form of CLR 11 *Model Procedures for the Management of Land Contamination*. The EA’s website also contains a wealth of information on site investigation and risk assessment methodologies as well as the CLEA scheme. The website can be accessed at www.environment-agency.gov.uk.
- 7.4 Site investigations should be carried out in accordance with British Standards BS 10175:2001 *Investigation of Potentially Contaminated Sites – Code of Practice* and BS 5930:1999 *Code of Practice for Site Investigations*. Developers should appoint consultants who promote the practices detailed in these standards. The standards are available on the British Standards website (www.bsonline.bsi-global.com).

8.0 FURTHER INFORMATION

- 8.1 For further information or advice on contaminated land please contact:

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