

## **LAND CONTAMINATION AND PLANNING:** **ADVICE NOTE**

**Guidance notes for developments on land which is known to be contaminated, potentially contaminated, or where the proposed end use is vulnerable (sensitive)**

### **INTRODUCTION:**

The National Planning Policy Framework (NPPF) came into effect on 27 March 2012 and is a material consideration in planning decisions. The framework replaced 44 other planning documents, including Planning Policy Statement 23: Planning and Pollution Control (3 November 2004) and the Letter to Chief Planning Officers: Model Planning Conditions for development on land affected by contamination (30 May 2008), which are of particular relevance to land contamination.

[Link to NPPF](#)

There are 12 core planning principles in the NPPF, including encouraging the re-use of existing resources, conversion of existing buildings and re-using land that has been previously developed ("brownfield" land).

The NPPF states that:

- Where a site is affected by contamination, responsibility for securing a safe development rests with the developer and/or landowner.
- 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.
- Adequate site investigation information, prepared by a competent person, is presented.

The thread running throughout the NPPF is that there should be sustainable development, which is viable and deliverable. Obligations and policy burdens should not threaten viability of development. Supplementary planning documents should be used where they can help applicants make successful applications: in the absence of any national guidance, Colchester Borough Council has produced this note.

### **1APP FORM:**

Government introduced the National Standard Planning Application Form ("1APP") on 6th April 2008 in England and its use is mandatory. One of the questions on this form relates to the use of the application land with respect to contamination and requires information on the following:

#### **1. Land which is known to be contaminated?**

This would include development on land where there is known to be contamination or where the land is known to be affected by contamination.

#### **2. Land where contamination is suspected for all or part of the site?**

This would include a development *on or near* land which has had a previously potentially contaminative use, even if there are no known land contamination issues. *This category includes land that is within 250m of a landfill.* Certain uses of land are likely to be potentially contaminative. For more information about the kind of activities of concern, see the Department of Environment Industry

Profiles. (DoE, 1995), which can be viewed or downloaded free of charge from the [Environment Agency website](#)

*Note that there may be other potential sources of contamination not listed here – all previous uses of the land and nearby land should be considered by the applicant, including uses such as storage of fuels (including domestic heating oil), pesticides or other chemicals; pollution incidents.*

**3. A proposed use that would be particularly vulnerable to the presence of contamination?**

This would include any residential dwelling, school, nursery, hospital, allotment gardens, parks or similar.

If the answer to any of these questions is “yes”, the 1APP form states that you will need to submit an *appropriate contamination assessment* with your application.

Note that by answering “no”, you are confirming that, to the best of your knowledge, the land contains no contaminants that would affect vulnerable (or “sensitive”) end users, in accordance with your responsibilities as developer and/or landowner.

**Appropriate contamination assessment:**

**1. Land which is known to be contaminated, or;**

**2. Land where contamination is suspected:**

The minimum requirement must be a “Phase 1 Study” (desktop study, site walkover and initial risk assessment, carried out by a *competent and appropriately qualified person*). A guide to the kind of information that Colchester Borough Council will expect this study to contain has been produced by the [Essex Contaminated Land Consortium](#) and can be found from clicking on link.

*Please note that an non-interpretative environmental search, without any site walkover and initial assessment of risks **will not be acceptable** and will be rejected, possibly causing unnecessary delays to your development.*

Depending on the findings of the Phase 1 Study, additional reports may be required to be submitted before the application is registered or decided.

**3. Vulnerable use:**

The 1APP form states that an appropriate contamination assessment is needed: the definition of “appropriate” is not stated. Colchester Borough Council wishes to keep the financial burden on developers to a minimum, whilst continuing to ensure that there are no unacceptable risks to sensitive users. Consequently, in accordance with the perceived spirit of the NPPF, if there are *no known contaminative uses of the land or nearby land*, there will be no automatic requirement to provide Phase 1 information with the application (although you may choose to commission such a report for research purposes anyway, under your responsibilities for ensuring the safe development of the site). Instead, *in this situation only*, a condition will be applied to any permission granted, requiring that any unexpected contamination encountered during the development must be reported, investigated, assessed and remediated to the satisfaction of Colchester Borough Council. This is considered to be in accordance with the aims of the NPPF; however, should advice to the contrary be received, Colchester Borough Council will reconsider this approach.

Where the development is large-scale, the need for a Phase 1 Study is considered proportionate and will still be required.

***Note that responsibility for securing a safe development rests with the developer and/or landowner and failure to disclose relevant information at the planning stage may lead to difficulties with the sale or re-sale of properties, or for action to be taken under Part IIA of the Environmental Protection Act 1990.***

### **FORMAT OF REPORTS:**

Copies of all contamination assessment reports should be provided in both hard copy and electronic formats.

### **COMPETENT PERSON:**

A competent person must provide adequate site investigation, remediation and verification information. The NPPF definition is: "A person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution, and membership of a relevant professional organisation."

Colchester Borough Council is unable to recommend any particular consultants or companies to you. We suggest that you search on Yellow Pages or trade directories such as the ENDS Directory for "environmental consultants", "site investigations" or similar. We suggest that you get a number of quotes, with details of the works proposed and evidence of their experience and competency.

### **COLCHESTER BOROUGH COUNCIL HELD INFORMATION:**

Colchester Borough Council does hold some information about the history of land use within the Borough. Where we are aware of a previously potentially contaminative use of a specific area of development land (or land beyond the development land, but with the potential to affect the development), this will be highlighted at the application stage. In this situation, your application will not be processed until we have received an appropriate contamination assessment. However, please note that Colchester Borough Council records are not complete and therefore you should not rely solely upon our records to indicate whether there is a potential for contamination to affect your development. Equally, a lack of record does not indicate that your site is necessarily free from contamination. It is likely that, as owners/developers of the land, you will have access to information not available to Colchester Borough Council (for example, information about spillages, fires, pollution incidents, fly-tipping, unregulated uses of the land etc.). This information should form a part of your risk assessment, in accordance with your obligations for ensuring the safe development of the land.

If you wish to discuss any information that Colchester Borough Council may have about potentially contaminative uses of your site, you may telephone Environmental Protection for an informal discussion. Alternatively, we are able to provide factual environmental information under the terms of the Environmental Information Regulations 2004, and *charges may apply*. Please see the [Contaminated Land web pages](#) for further details:

**Link to Environmental Protection web pages:**

[Environment Protection](#)

### **DEVELOPMENT ON LAND WITHIN 250M OF A LANDFILL:**

Applications on or within 250m of a landfill site *will* require a Phase 1 Study to be submitted with the application. Dependent upon its findings and conclusions, intrusive investigation and protection from migration of landfill gases may be required.

The Environment Agency may be able to provide information about landfill sites in the vicinity of your land.

Link to Environment Agency "[What's in your Backyard?](#)"

Further information may also be obtainable from [Essex County Council](#):

### **HOUSEHOLDER APPLICATIONS:**

Householder extensions, conservatories or similar will not normally require a Phase 1 Study to be submitted with the application, unless there is a specific, known, land contamination issue.

In some circumstances, an *Informative* may be added to a householder permission, advising of the risks. However, this is for information purposes only. Since it is the developer's responsibility to ensure the safe development of the site, how much investigation and risk assessment is undertaken, or in what form this should take, is for the applicant to decide. There is no requirement for any information (with regard to contamination) to be submitted to Colchester Borough Council at any time before or during the permitted development process, when such an informative is applied. However, if unexpected contamination is encountered at any time during the development works, the applicant is advised to contact Colchester Borough Council before commencing on any remediation, to ensure that it will be sufficiently effective in protecting the identified receptors.

### **HOW DO I KNOW IF MY LAND IS AFFECTED BY CONTAMINATION?**

- Current or previous owners and neighbours may have knowledge of current or previous use(s) of the site and its surroundings.
- Environmental searches undertaken for conveyancing or other purposes may provide information about current or former uses of land and surrounding land.
- Other sources of information, including those on web sites such as [Environment Agency](#)
- Speak to Colchester Borough Council Environmental Protection. We will be happy to discuss informally a specific site at no charge; however, we deal with requests for environmental information under the Environmental Information Regulations 2004, and charges may apply: [Contaminated Land](#)

## **ESSEX CONTAMINATED LAND CONSORTIUM (ECLC):**

All Essex local authorities work together to ensure a consistent approach to dealing with contaminated land in their areas. To help developers through the sometimes complex process, they have produced a helpful guidance document. Note that it may be necessary to change the guidance from time to time, to reflect government policy, scientific knowledge or individual Local Authority circumstances. Please check that you are using the most up-to-date version, but are also aware of any updates to the legislation.

[Link to ECLC technical guidance](#)

## **A NOTE ON SOIL GUIDELINE VALUES / GENERIC ASSESSMENT CRITERIA:**

Until there are changes to the advice provided to Local Authorities, Colchester Borough Council will continue to expect to see results of soil investigations, undertaken as risk assessment for planning purposes, compared to the assessment criteria hierarchy set out in the **ECLC technical guidance**. All tests should be carried out to MCERTS accredited standards.

## **PART IIA OF THE ENVIRONMENTAL PROTECTION ACT 1990 AND COLCHESTER BOROUGH COUNCIL'S CONTAMINATED LAND STRATEGY:**

The NPPF states that, 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.

Colchester Borough Council's strategy is currently under review, to take into account the recent changes to the statutory guidance for Part IIA, as well as other relevant changes since the last review. Colchester Borough Council's current strategy can be found from the following link:

Link to Colchester Borough Council contaminated land pages: [Contaminated Land](#)

Relevant contaminated land legislation can be found on the [DEFRA website link](#):

## **PLANNING CONDITIONS FOR LAND CONTAMINATION:**

Once sufficient information has been provided to show that land can be made suitable for the proposed use (and subject to any other non-contamination planning matters that are not the subject of this note), permission may be granted. Where there is more information to be supplied with regard to contamination, this will be conditioned. The level of information expected to be submitted is detailed in the **ECLC technical guidance**. At any stage where it has been satisfactorily shown to Colchester Borough Council that there are no remaining unacceptable contamination risks, and this has been confirmed in writing by Colchester Borough Council, no further information will be required to be submitted with regard to contamination.

[Link to example conditions.](#)

## **DISCHARGE OF CONDITIONS:**

Construction works cannot commence until the “prior to commencement” contamination conditions (or any other such conditions) have been discharged by the local planning authority. Where a developer fails to discharge such conditions before beginning construction works, these works may invalidate the planning permission.

## **ADDITIONAL ADVICE:**

- Matters relating to contamination will generally be required to be addressed **before** the development itself starts. Some of the necessary information may take some time to gather and present, especially where intrusive investigations or monitoring are necessary. In addition, the Council may ask for further clarification information to be provided. It is therefore essential that the applicant and/or developer is aware of all conditions that relate to their planning permission and allows sufficient time to provide all of the information required.
- Conditions will not be considered for discharge until Colchester Borough Council is satisfied that there are no unacceptable risks to all identified vulnerable receptors.
- Failure to provide sufficient information may result in the site being dealt with under Part IIA of the Environmental Protection Act 1990.

## **IMPORTANT:**

***The information provided in this note relates to contamination matters only. There may be other matters that need to be addressed, or supporting information provided, as a part of the complete planning process for your development, or to conform with building regulations: these should be discussed with the relevant officer.***

For further information see the [Planning and Building Control](#) web pages.