Tunbridge Wells Borough Council

Tunbridge Wells Borough

Local Plan

Contaminated Land

Supplementary Planning Document

Adopted September 2016

Section 1: Introduction

1.1 This Supplementary Planning Document (SPD) is a material consideration in the determination of planning applications.

1.2 The National Planning Policy Framework 2012 (NPPF) aims to make the planning system less complex and more accessible, to protect the environment and to promote sustainable growth. It states that, where land is to be developed and potential land contamination is a consideration:

"*Planning policies and decisions should also ensure that:*

- *the site is suitable for its new use taking account of ground conditions and instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;*
- *after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990*
- *adequate site investigation information, prepared by a competent person, is presented."*

A competent person is defined in Annex 2 of the NPPF as:

"*Competent person (to prepare site investigation information): 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*."

(National Planning Policy Framework, paragraph 121)

1.3 Part 2A of the Environmental Protection Act 1990 sets out the basic principles for contaminated land investigation and risk assessment. It is not the intention of this SPD to describe them in any detail, as the development management regime and Part 2A are separate. The purpose of Part 2A is to address the legacy of contaminated land where development has already happened or is not likely to happen.[(1)]

1.4 Local planning authorities are concerned about land contamination because, as Paragraph 001 of Planning Practice Guidance on Land Affected by Contamination states that "*failing to deal adequately with contamination could cause harm to human health, property and the wider environment."*[(2)] Part 2A of the Environmental Protection Act 1990 is a system used for the identification and remediation of land where contamination poses a threat to human health and the environment. The system, however, doesn't take into account future uses that may require planning permission. Paragraph 003 of the same Planning Practice Guidance states "*To ensure a site is suitable for its new use and to prevent unacceptable risk from pollution*, *the implications of contamination for a new development would be considered by the local planning authority to the extent that it is not addressed by other regimes."*

1.5 Where a specific remediation scheme is being proposed to address contamination of a site it is expected the scheme will have due regard to the protection of heritage assets which might be present, adjacent or near to the site.

1.6 The purpose of this guidance is to ensure that any land that is developed, and that has a history of potentially contaminative use and/or has a sensitive end use, meets the requirement of being suitable for its new proposed use.

1 Details of the Part 2A regime can found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223705/pb13735cont-land-guidance.pdf

2 Planning Practice Guidance on Land Affected by Contamination can be found at http://planningguidance.communities.gov.uk/blog/guidance/land-affected-by-contamination/land-affected-by-contamination-guidance/

1.7 Further, it is the objective of the Borough Council in accordance with its Contaminated Land Inspection Strategy[3] to ensure, where land is developed for the most sensitive forms of use (such as residential housing and schools), that this minimum standard is exceeded. This does not imply that the Borough Council will require a 'minimum risk' approach or unnecessary and wasteful remediation. Rather, it aims to give new owners the reasonable expectation that the new home they have invested in has been developed to a standard above that at which it does not pose 'significant possibility of significant harm' to them and their families.

1.8 The Borough Council will also seek to encourage the use of sustainable remediation techniques and technologies where appropriate as an alternative to disposal of soils to landfill. This is provided that the techniques and site investigation evidence supporting their use is credible and sufficient.

1.9 Although the real or perceived costs of action to address the risks arising could act as significant barriers to successful development, a considered and informed approach can minimise such barriers. Mitigation problems are compounded if the presence of harmful substances is not identified until development is already under way.

1.10 The broad approach, concepts and principles with respect to identifying risks from land contamination and dealing with them will be applied by the Borough Council to plan making and the determination of planning applications. The aim is to ensure that planners, developers and their advisers address land contamination issues at the appropriate stage and in a consistent manner.

1.11 The Borough Council will expect any site investigation, risk assessment, reporting and remediation concerned with potentially contaminated land to be undertaken by a suitably qualified consultant who meets the NPPF definition of a "*competent person*".

1.12 For the majority of sites where potential land contamination is a consideration, the extent of the risk is such that it can be addressed by adding conditions to the grant of planning permission. Developers should consider it good practice to submit a desk study and preliminary risk assessment with applications for such sites. This may eliminate the need for conditions and thus speed up the development process. However, for high risk sites the minimum requirement prior to approval will be the submission of a preliminary risk assessment and site investigation. Guidance on the level of information generally required with different types of application is given in Section 6 of this document.

1.13 This SPD also provides some information on documents that should be referred to when considering land contamination. It must be noted, however, that guidance documents are subject to regular change, and developers and their advisers should ensure that they are using the most up to date guidance documents and risk assessment methodologies. Failure to do so will result in planning permission or discharge of conditions being refused.

Section 2: The Role of the Developer

2.1 Where development is proposed, the developer is responsible for ensuring that the development is safe and suitable for use for the purpose for which it is intended. The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action and any costs associated with investigative and remedial works. In particular, the developer should arrange for a competent person to carry out an adequate investigation to inform a risk assessment to determine:

- whether the land in question is already affected by contamination through source-pathway-receptor pollutant linkages and how those linkages are represented in a conceptual model

3 The Council's Contaminated Land Inspection Strategy can be found at http://www.tunbridgewells.gov.uk/__data/assets/pdf_file/0016/26512/TWBC-Contaminated-Land-Strategy-2015.2020.pdf

- whether the development proposed will create new linkages; for example, new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors and
- what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land

2.2 Tunbridge Wells Borough Council supports the National Quality Mark Scheme for Land Affected by Contamination as a desirable component of any work undertaken to deal with land contamination.

2.3 Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land.

Section 3: The Role of the Local Planning Authority

3.1 The local planning authority (LPA) is responsible for the management of development and its impacts. In doing so, it has a duty to take account of all material considerations, including contamination. It is the role of the LPA to plan for land uses that are appropriate in the light of all the relevant circumstances, including known or suspected contamination, and to determine applications, including applying and enforcing any necessary conditions. Such conditions may require that land is remediated in the course of development to an appropriate standard, taking account of its intended use, and that, if necessary, it is properly maintained thereafter.

3.2 When considering development on land affected by contamination, the principal planning objective is to ensure that any unacceptable risks to human health, buildings and other property, and the natural and historic environment from the contaminated condition of land are identified so that appropriate action can be considered and then taken to address those risks. Achieving this objective should assist owners and occupiers of land about the suitability of the site for new development.

3.3 On a precautionary basis, the LPA should assume the possibility of contamination when formulating development plans and considering individual planning applications, in relation to all land subject to, or adjacent to, previous industrial use and also where the uses proposed are considered to be ‘vulnerable receptors’ that are likely to be particularly sensitive to contamination, such as housing, allotments, schools and nurseries, children’s play areas and hospitals.

3.4 Where development is proposed on land that is, or may be, affected by contamination, an assessment of risk should be carried out by the applicant for consideration by the LPA before the application is determined. Any existing or new unacceptable risks should be identified and proposals put forward to deal with them effectively as part of the development process.

Section 4: Before an Application is Made

4.1 Where practicable and applicable, proposers of development on potentially contaminated sites should arrange pre-application discussions with the LPA and other regulators, including the Council’s Environmental Health and Building Control departments, any other relevant Council specialists and the Environment Agency (where pollution of controlled water and the waste management implications of land contamination are likely to be issues).

4.2 Such discussions can help to identify the likelihood and possible extent and nature of contamination and its implications for the development under consideration. They can also assist in scoping any necessary environmental impact assessment and in identifying the information that will be required by the LPA to reach a decision on the application when it is submitted.

Section 5: When to Consider Contamination

5.1 Less stringent pollution control and less careful site management in the past has led to a substantial legacy of sites contaminated by former uses. While modern pollution control legislation and good practice in site management have largely reduced the impact of current industrial activity and help to prevent new contamination, a wide range of commercial and other activity has had the potential to cause contamination and could still do so. Further details are contained in the Department of the Environment Industry Profiles.[4] Not all sites that have been previously used by particular industries, however, are affected by contamination and sites occupied by similar uses will not necessarily contain the same contaminants or similar concentrations of contaminants. Some may have been remediated previously, to varying standards.

5.2 Developers should also be aware that contamination may pose problems on land other than the originating site. For example, contaminants may migrate or be transported by wind or water onto land that has no specific association with the contaminating industrial use. Contaminants may also be present on land where there are no specific records of contaminating uses, such as in made ground where unsuitable fill has been used.

5.3 While the most severe examples of contamination are often found in developed or former industrial areas, rural and urban fringe areas can also be affected by, for example:

- inappropriate applications to land of such materials as sludges
- the use of land for activities such as storing and reprocessing scrap vehicles or other wastes
- closed landfills and abandoned mines, and
- the effects of flood events; for example, downstream of old mining areas

5.4 In addition, some areas may be affected by the natural occurrence of potentially hazardous substances, such as arsenic, lead or copper, which are the product of the underlying geology and bear little relation to previous or current land use.

5.5 Only a specific investigation can establish the actual level and types of contamination at a particular site. Such an investigation will also need to consider the possibility that new pathways may be introduced as a result of development activities, such as piling, drain laying and trenches for services and that new receptors may be introduced by the development proposed.

5.6 The presence of contamination, including quite hazardous substances, in, on or under land does not, by itself, necessarily present an unacceptable risk, nor therefore necessarily require action. Risk arises where there is a pollutant linkage; a pathway between a contaminant, or source, with a potential to cause harm or pollution of controlled waters and a vulnerable receptor, which is capable of being harmed by the contaminant. The hazards may be chemical (toxic, carcinogenic), biological (pathogens), radioactive or physical (asphyxial, explosive). Land contamination can also affect the general environmental quality, amenity and economic capacity of an area.

5.7 Because of the widespread potential occurrence of contamination, the possibility should always be considered, regardless of past land use, when development is proposed involving or introducing a particularly sensitive use, such as housing, allotments, schools and nurseries, children's play areas and hospitals. Particular attention should be given to the condition of the site and of neighbouring land where the proposed use would be particularly vulnerable to contamination, where the current circumstances or past use suggest that contamination may be present. Full account should be taken of whether the proposed use or development is likely to be adversely affected by contamination. For example, the addition of a new storey to an existing building is unlikely to be significantly affected by contamination, whereas lateral expansion onto former industrial land potentially carries a higher risk, and building extensions or undertaking landscaping that disturbs the ground may breach protecting layers.

4 Department of the Environment Industry Profiles can be found at https://www.gov.uk/government/publications/department-of-environment-industry-profiles

Section 6: Information Required from the Applicant

6.1 Where contamination is known or suspected, or the proposed use would be particularly vulnerable, the LPA will require the applicant to provide, with the application, such information as is necessary to determine whether the proposed development can proceed. In doing so, it will adopt a balanced approach. It would be disproportionate and unnecessary to require every applicant to carry out a detailed and expensive site investigation. Sufficient information should be required, however, to determine the existence or otherwise of contamination, its nature and the risks it may pose and whether these can be satisfactorily reduced to an acceptable level. This will require a risk assessment that identifies the sources, pathways and receptors (pollutant linkages). A phased or tiered approach is recommended in Model Procedures for the Management of Contamination (CLR11, DEFRA/Environment Agency, 2004).[5] The initial provision of this information is essential to determine whether further, more detailed investigation is required.

6.2 The minimum requirement that should be provided by an applicant is the report of a desk study and site reconnaissance (walk-over). This will, in some cases, be sufficient to develop a conceptual model of the source of contamination and pathways by which it might reach vulnerable receptors, as well as the means by which the identified pollutant linkages can be broken. While they may provide a useful indication of the possible presence of contamination, the commercial searches provided on the internet will not be sufficient to establish the presence or absence of contamination. Where one exists, a Land Condition Record (LCR) provides a useful starting point. The LCR is an objective record of the physical and chemical nature of land contamination completed to a standard format by an accredited professional on behalf of a landowner. It will not, however, fully meet the requirements that should accompany a planning application since it provides only factual information. Interpretation is necessary to develop a conceptual model, which identifies plausible pollutant linkages as a basis for assessing the risks and appraising the options for remediation.

6.3 The desk study and site reconnaissance will assist in determining the need for, and scope of, further investigation, the problems that may require remediation and whether remediation can be secured by means of planning conditions. It may provide sufficient evidence that the planning application can be determined based on an appropriate conceptual model and the LPA being satisfied that there is a viable remedial solution. Further investigations and risk assessment will be needed, however, unless this initial assessment clearly and reliably demonstrates that the risk from contamination is acceptable. Where the desk study and site reconnaissance does not provide sufficient information to assess the risks and appraise remedial options, further investigations will need to be carried out before the application is determined. The LPA will seek evidence to demonstrate that such investigations have been carried out to an acceptable professional standard. Advice on the assessment and development of land affected by contamination is contained in guidance published by the British Urban Regeneration Association (BURA), the National House Building Council (NHBC) and the Environment Agency[6]. The BURA Guide includes checklists for the desk study, site investigation and remediation.

6.4 All investigations of land potentially affected by contamination should be carried out by, or under the direction of, a suitably qualified competent person and in accordance with BS10175 (2011) Code of Practice for the Investigation of Potentially Contaminated Sites or the most recent applicable standard in the event that it is superseded. The competent person would normally be expected to be a chartered member of an appropriate professional body (such as the Institution of Civil Engineers, Geological Society of London, Royal Institution of Chartered Surveyors or Institution of Environmental Management) and also have relevant experience of investigating contaminated sites. The Specialist in Land Condition (SiLC) qualification administered by the Institute of Environmental Management provides an accredited status for those responsible for signing off LCRs (see http://www.silc.org.uk/).

5 Model Procedures for the Management of Contamination can be found at https://www.gov.uk/government/publications/managing-land-contamination

6 BURA, 2001 Breaking New Ground: BURA Guide to Contaminated Land Assessment and Development; NHBC/Environment Agency, 2000 Guidance for the Safe Development of Housing on Land Affected by Contamination; and Defra/Environment Agency, 2004 Model Procedures for the Management of Contaminated Land (CLR 11).

Section 7: Environmental Impact Assessment

7.1 Environmental Impact Assessment (EIA) applies to development that is subject to the Town and Country Planning (Assessment of Environmental Effects) (England and Wales) Regulations 1999 as amended by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2001. Detailed guidance to the regulations and procedures is given in Planning Practice Guidance: Environmental Impact Assessment (2014).[7] This sets out the criteria for development that is subject to mandatory EIA and the factors to be considered in deciding whether it should apply to other development proposals.

7.2 Where an EIA is required, the applicant must submit an Environmental Statement in support of the planning application. Many of the characteristics of land affected by contamination and the remediation methods that are used increase the likelihood that an EIA will be required, but the decision can only be taken in the light of the particular circumstances.

7.3 An Environmental Statement should ensure that the likely significant environmental effects of the proposed development, and the measures proposed to mitigate those effects, are fully understood and are taken into account before development is allowed to proceed. The Environmental Statement can only relate to the requirements of the Regulations. It may not therefore provide comprehensive information about the existing condition of the land. Such information would be provided only to the extent that it is relevant to the environmental effects of the development itself, or to the means by which the development is to be carried out. An Environmental Statement is, therefore, by itself, no guarantee that the potential for contamination at a site to affect the proposed development has been fully assessed.

7.4 For example, a proposal to cover a site with inert material to isolate the surface from underlying contaminants and allow development to proceed would not necessarily have significant environmental effects. It would not, however, deal with what may already be significant ongoing pollution of groundwater arising from substances migrating from the contaminated materials into the saturated zone or other water resources. An Environmental Statement may not, therefore, be the sole source of information on the consequences of development of a potentially contaminated site. It is necessary to consider not only the effects of the proposed development, but also to understand the implications of the existing condition of the site.

Section 8: Determining Applications

8.1 In determining applications, the LPA will need to be satisfied that the development does not create, or allow the continuation of, unacceptable risk arising from the condition of the land in question, or from adjoining land. In particular, it must satisfy itself that existing significant pollutant linkages will be broken by removing the source, blocking the pathway or removing receptors and that the development will not create new pollutant linkages by changing or creating exposure pathways; for example, by creating new pathways to groundwater by site investigation drilling or piling.

8.2 The standard of remediation to be achieved through the grant of planning permission for new development (including permission for land remediation activities) is the removal of unacceptable risk and making the site suitable for its new use, including the removal of existing pollutant linkages. All receptors relevant to the site should be protected to an appropriate standard. As a minimum, after carrying out the development and commencement of its use, the land should not be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990.

8.3 Where the land is determined as contaminated land under Part 2A of the Environmental Protection Act 1990 and remediation is undertaken without a remediation notice and in accordance with a planning permission, a Remediation Statement will be required under that Act. Remediation must meet the requirements of both Part 2A and the planning permission.

7 Planning Practice Guidance: Environmental Impact Assessment can be found at http://planningguidance.communities.gov.uk/blog/guidance/environmental-impact-assessment/

8.4 Remediation or site investigation activities themselves, including field trials, may require planning permission if not carried out as part of a development. For such applications, and for any development or change in use requiring remediation, the LPA will consider the impact of remediation activities on neighbouring land uses and the environment, including any off-site works such as those needed to control methane migration beyond the site boundaries. While some aspects may also be covered under separate pollution control regimes, the LPA will consider issues such as dust, noise and traffic movements arising from the remediation activities and the possible need for measures to control or mitigate them. Applicants are recommended to consider carefully the waste management implications when deciding the best approach to remediation and the handling and treatment of contaminated soils and other material.

8.5 The LPA will need to be satisfied that the development can be carried out safely without unacceptable risks to workers, neighbours or other off-site receptors. It is important that risk to workers is managed using the standard hierarchy of control measures under the Control of Substances Hazardous to Health (COSHH) Regulations 2002 (http://www.hse.gov.uk/coshh/), the Construction (Design and Management) Regulations 1994 (http://www.legislation.gov.uk/uksi/1994/3140/contents/made) and other relevant legislation.

Section 9: Outline Planning Applications

9.1 Outline planning permission will not be granted unless the LPA is satisfied that it has received sufficient information from the applicant about the condition of the land and its remediation and the full range of environmental impacts arising from the proposals to be able to grant permission in full at a later stage. A grant of outline planning permission that cannot be sustained at the detailed approval stage, because it becomes apparent that the necessary remediation is not viable or practicable, or because the Environmental Statement (where EIA is required) demonstrates unacceptable adverse impacts, could leave the LPA vulnerable to a claim for compensation. The LPA must be satisfied, therefore, that the risks have been properly assessed and, if there is an unacceptable risk, that the options have been appraised sufficiently to identify a viable remediation scheme that will reduce the risks to an acceptable level, just as it would with a full application. Outline permission will not be granted until the LPA is satisfied that it understands the contaminated condition of the site and that the proposed development is appropriate as a means of remediating it.

9.2 If the LPA is satisfied about this, further investigations and the detailed design of remediation might still be needed. Identifying these issues as reserved matters will enable detailed approval at an appropriate stage and give the developer greater certainty before incurring the costs involved. Where the LPA is minded to grant outline planning permission, the length of time needed for further investigations and detailed design should be considered in determining the timescale for submission of a detailed application on the reserved matters.

Section 10: Consultation

10.1 The LPA will consult the Borough Council's contaminated land officers for any development proposed on land that might be affected by contamination. In many cases, work on inspection under Part 2A of the Environmental Protection Act 1990 will have identified appropriate consultation areas within an authority's area.

10.2 Where there is a risk to controlled waters, the LPA will consult with the Environment Agency.

10.3 Other statutory bodies also have relevant responsibilities, including Natural England and Historic England in relation to particular receptors. They will be consulted by the LPA where appropriate. The LPA will also consult other relevant departments within the Borough Council and its advisors, such as building control, conservation and archaeology, engineering and reclamation as necessary. Other bodies, such as water companies and local community and conservation or amenity groups, may be able to advise on issues relating to specific receptors.

Section 11: Granting Planning Permission

11.1 Where it is satisfied that the development proposed will be appropriate, having regard to the information currently available about the contamination (if any) of the site and the proposed remediation measures and standards, the LPA will grant planning permission subject to any conditions requiring such further investigations and remediation (including verification) as would be necessary, reasonable and practical.

11.2 The LPA will refuse permission if it is not satisfied on the basis of the information provided by the applicant and that available from other sources, including the responses of those consulted, that the development would be appropriate. This could include cases in which:

- circumstances, including information available to the LPA, clearly suggest the possibility of contamination or of unacceptable risk and no information has been provided or obtained that excludes the reasonable possibility of such contamination or risk
- the LPA considers that unacceptable risk exists and there is no evidence to suggest that it can be dealt with adequately to deliver a development that is suitable for its intended use and which results in the removal of such risks, or
- the steps needed to deliver an appropriate development and deal with unacceptable risk are not already in place and cannot be secured by suitable planning conditions; for example, because these are not within the powers of the developer since action is needed on other land outside the developer's control or influence

Section 12: Planning Conditions

12.1 In most cases, the information available when a planning application is under consideration will be sufficient to resolve the main issues regarding contamination from a planning point of view, but insufficient to resolve all the details. The LPA firstly will need to be satisfied that the proposal will deliver an appropriate development and that the risks are sufficiently well known that there is a viable remediation option. If it is so satisfied, it may be appropriate to grant permission subject to conditions relating to the condition of the land.

12.2 The LPA will generally use a series of staged conditions that aim to:

- provide for preliminary risk assessment and conceptual model investigation and characterisation of the site to confirm the nature and extent of contamination and validate the conceptual model and allow more refined risk assessment and appraisal of remedial options
- propose and receive approval for a remediation scheme that ensures the removal of unacceptable risks to make the site suitable for use, and
- submit and receive approval for a validation report that demonstrates the effectiveness of the remediation carried out

12.3 Although it would be desirable that the process is completed before building begins, for large sites the investigation and remediation can be zoned and building can begin following remediation on a zoned basis. Provided that the zoned approach is detailed within the remediation scheme, the LPA will accept this approach. It is also recognised that, for some sites, a low or very low risk of contamination is identified during investigations and thus no specific remediation scheme is required. In these cases, a 'discovery strategy' should be implemented during development, and verification reporting cannot therefore be undertaken prior to building works commencing. Provided that this is agreed prior to commencement, the LPA will look pragmatically at this approach.

12.4 The differences between perceived and actual risk from contamination are such that a validation report is essential to demonstrate that, following remediation, the site is suitable for use. This should include details of all the actions taken at each stage of the process, from initial investigations and assessment through to carrying out and verification of the remediation.

12.5 A list of standard conditions commonly used by the LPA can be found at Appendix 1.

Section 13: Planning Obligations

13.1 Where it is not appropriate to impose conditions to deal with the issues, planning obligations can provide an effective mechanism to ensure that appropriate measures are taken to deal satisfactorily with contamination. Planning obligations can be particularly useful in ensuring that any necessary off-site treatment works, such as the installation of gas-migration barriers, water treatment or monitoring arrangements, are put in place. In doing so, it is important to avoid fragmentation of the site, which might prejudice necessary monitoring and maintenance provisions. Planning obligations may restrict the development or use of land, or require payments to the LPA; for example, for ongoing monitoring or maintenance or as a bond to cover the contingency of future action triggered by the monitoring. Guidance on the scope and use of planning obligations is provided in the National Planning Policy Framework under paragraph 204, which states "*Planning obligations should only be sought where they meet all the following tests:*

- *necessary to make the development acceptable in planning terms;*
- *directly related to the development; and*
- *fairly and reasonably related in scale and kind to the development"*

13.2 Further information can be found under Planning Practice Guidance: Planning Obligations at http://planningguidance.planningportal.gov.uk/blog/guidance/planning-obligations/

Section 14: Further Information and Advice

14.1 There are numerous sources of information on contaminated land. This information and guidance is updated frequently. In order to ensure that the most relevant guidance is being used, developers and their agents are advised to consult the DEFRA and Environment Agency websites.

14.2 The assessment of the presence of contamination and of the significance of the risks that may be posed requires careful professional judgement and competent expert advice. The developer is responsible for ensuring the safe development and secure occupancy of a site and that appropriate competent professional advice is available to:

- carry out any necessary investigations
- assess risk and
- design and execute any necessary remediation works, including verification of their effectiveness and appropriate monitoring and maintenance where these may be needed

14.3 The LPA will consider the presence of contamination and any risks posed in the public interest. In doing so, it will consult appropriately. However, it is entitled to require the developer to provide, at application stage, suitable information and expert advice on its implications. It is entitled to rely on that advice in considering the application and the circumstances of the land or to challenge it on the basis of similarly-qualified expert advice accessible to it in-house or externally. Those providing expert advice to developers should be aware of the future reliance that may be placed on that advice.

Appendix 1: Standard Conditions used by the Local Planning Authority

Land Contamination

The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the local planning authority:

1) A preliminary risk assessment, which has identified:

- all previous uses

- potential contaminants associated with those uses

- a conceptual model of the site indicating sources, pathways and receptors

- potentially unacceptable risks arising from contamination at the site

2) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3) A Remediation Method Statement (RMS) based on the site investigation results and the detailed risk assessment at (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for long-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

4) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in (3). This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto, or taken from, the site. Any material brought onto the site shall be certified clean.

Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.

Land Contamination 2

If during construction/demolition works, evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not recommence until an appropriate remediation scheme has been submitted to, and approved in writing by, the local planning authority and the remediation has been completed.

Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to, and approved in writing by, the local planning authority. The closure report shall include:

A) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.

B) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria, together with the necessary documentation detailing what waste materials have been removed from the site.

C) If no contamination has been discovered during the build then evidence (for example, photos or letters from site manager) to show that no contamination was discovered should be included.

Landfill Gas

To safeguard the future occupants of the site, a detailed scheme for the investigation, recording and remediation of gas shall be carried out. Such a scheme shall comprise:

- A report, to be submitted to, and approved by, the local planning authority. The report shall include a risk assessment and detail how on-site monitoring during the investigation took place. The investigation shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a methodology that complies with current best practice, and these details reported.

- Detailed proposals in line with current best practice for gas protection measures (the 'Gas Protection Proposals') have been submitted to, and approved by, the local planning authority. The proposals shall detail sources of best practice employed.

- Approved works shall be carried out in full on-site prior to first occupation.

- Upon completion of the works, this condition shall not be discharged until a closure report has been submitted to, and approved by, the local planning authority. The closure report shall include full details of the works and certification that the works have been carried out in accordance with the approved scheme.

Appendix 2: Sources of further information and advice

Bibliography of sources of further information and advice:

- DEFRA website https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs
- Environment Agency website https://www.gov.uk/government/organisations/environment-agency
- NPPF 2012
- Planning Practice Guidance: Environmental Impact Assessment (2014)
- Core Strategy 2010
- Contaminated Land Inspection Strategy 2015-2020
- Part II A Environmental Protection Act 1990
- Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223705/pb13735cont-land-guidance.pdf
- Department of the Environment Industry Profiles listed at www.defra.gov.uk/environment/landliability/pubs.htm
- BURA, 2001 Breaking New Ground: BURA Guide to Contaminated Land Assessment and Development;
- NHBC/Environment Agency, 2000 Guidance for the Safe Development of Housing on Land Affected by Contamination;
- Defra/Environment Agency, 2004 Model Procedures for the Management of Contaminated Land (CLR 11).
- BS10175 (2011) Code of Practice for the Investigation of Potentially Contaminated Sites or the most recent applicable standard in the event that it is superseded
- ISO/T 17924;2007 Assessment of human exposure from ingestion of soil and soil material or the most recent applicable standard in the event that it is superseded
- Town and Country Planning (Assessment of Environmental Effects) (England and Wales) Regulations 1999 as amended by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2001
- C4SL methodology http://randd.defra.gov.uk/Default.aspx?Module=More&Location=None&ProjectID=18341
- LQM/CIEH Generic Assessment Criteria Second Edition
- Contaminated Land Exposure assessment tool (CLEA) https://www.gov.uk/government/publications/contaminated-land-exposure-assessment-clea-tool
- BRE Cover Systems for Land Regeneration
- BS 3882 2015 Specification for topsoil and requirements for use
- Ground Gas Handbook 2009 Card and Wilson
- Ciria Publication C665 Assessing risks posed by hazardous ground gases to buildings 2007
- C4SL methodology http://randd.defra.gov.uk/Default.aspx?Module=More&Location=None&ProjectID=18341
- LQM/CIEH Generic Assessment Criteria Second Edition
- The Control of Substances Hazardous to Health (COSHH) Regulations 2002 http://www.hse.gov.uk/coshh/
- The Construction (Design and Management) Regulations 1994 (http://www.legislation.gov.uk/uksi/1994/3140/contents/made) and other relevant legislation
- Planning Practice Guidance: Planning Obligations http://planningguidance.planningportal.gov.uk/blog/guidance/planning-obligations/

If you require this document in another format, please contact:

Planning Policy
Planning Services
Tunbridge Wells Borough Council
Town Hall
Royal Tunbridge Wells
Kent TN1 1RS

Tel: 01892 554056

Email: planning.policy@tunbridgewells.gov.uk