

# Remediating contaminated sites through the planning process

The Government gives clear advice on how Local Planning Authorities (LPAs) in England and Wales are to approach the issue of the remediation of sites that come forward for redevelopment, writes Catherine Davey, a partner at Stevens & Bolton LLP and head of Stevens & Bolton's Environment and Planning team

Current Government guidance is set out in Planning Policy Statement (PPS) 23 Planning and Pollution Control and the DEFRA Circular 01/2006 on contaminated land. The Government's position in relation to the use of conditions on planning permissions is set out in Circular 11/95, more recently amplified – in relation to contamination – in a letter sent to all Chief Planning Officers on May 20 2008.

The Government expects LPAs to assess both the risk concerned with a proposed development and its use as well as the current use of the land and other circumstances.

Annex 2 to PPS 23 sets out detailed advice on how LPAs are to approach the question of development on land affected by contamination. Remediation of development sites should normally be achieved by the imposition of conditions on planning permissions rather than through remediation notice procedures under Part 2A. Remediation works and/or future monitoring may additionally be the subject of a planning obligation imposed under section 106 of the Town and Country Planning Act 1990.

The model planning conditions issued in May 2008 set out the requirements for remediation, which can be summarised as:

- Site characterisation (i.e. desktop studies together with more intrusive investigations where necessary to establish whether or not a site is contaminated and if so with what),

- If the site is contaminated, requiring the submission of a remediation scheme for approval by the LPA; and
- Implementation of that approved remediation scheme.
- Reporting of unexpected contamination and carrying out of further investigations whereon expected contamination is identified and preparation of further remediation scheme.
- Providing for the provision of submission of a validation report to the LPA on completion of the works and ongoing monitoring.

It is absolutely critical that planning case officers consult their contaminated land colleagues and where appropriate the Environment Agency for advice on whether a site is likely to be contaminated and in relation to a technical evaluation of information provided by applicants. It should go without saying that it is also critical that as the requirements of the conditions imposed on the planning application are complied with and submitted to the Planning Department that the information is passed to the contaminated land officers in order that they may advise the planners whether the information provided is sufficient and whether the requirements of the planning permission in relation to remediation have been complied with.

If contamination gets overlooked at the planning stage it is open to building control to impose a condition on a Building Regulation consent under Part C (Schedule 1). The Building

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Regulation consent can require that investigations be carried out to ensure that the site is free from contaminants, as stated in Regulation C1(2): “Reasonable precautions shall be taken to avoid danger to health and safety caused by contaminants on or in the ground covered, or to be covered by the building and any land associated with the building.”

For the purpose of this requirement, contaminant means “any substance which is or may become harmful to persons or buildings including substances which are corrosive, explosive, flammable, radioactive or toxic.”

Building control thereby provides a local authority with a backstop to achieve clean-up where the developer uses the local authority building control service rather than an Approved Inspector.

Current economic conditions aside, more sites are being remediated voluntarily through the planning process than are being remediated compulsorily through Part 2A. Remediation through the planning process is as an important tool for achieving clean up of contaminated sites as they are brought forward for redevelopment. It is clearly important that the planning officers understand the requirements of PPS 23 and consult effectively with contaminated land colleagues and the Environment Agency and heed the advice that they are given.

- Catherine Davey may be contacted on 01483 302264.

