

National Planning Practice Guidance

A response by the Land Quality Committee of Environmental Protection UK

We are writing in response to the above consultation. The Land Quality Committee of Environmental Protection UK has considered the consultation document and welcomes the opportunity to comment. These comments represent an overview of the Committee, but do not necessarily reflect the views and opinions of individual Environmental Protection UK members.

About Environmental Protection UK

Environmental Protection UK is a national charity that provides expert policy analysis and advice on air quality, land quality, waste and noise and their effects on people and communities in terms of a wide range of issues including public health, planning, transport, energy and climate.

We offer clear and critical analysis of UK government and European Union policy proposals through a range of high-quality publications and expert-led events, as well as up-to-date regulatory information through our comprehensive guide to UK and EU environment legislation.

Environmental Protection UK works with and for UK national and devolved governments, local authorities, business, academics and the general public, and with relevant EU institutions and NGOs.

Response to Consultation

The website states that planning practice guidance is being revised to support the National Planning Policy Framework and make it more accessible. The Land Quality Committee of EPUK is most concerned with the draft new planning practice guidance on environmental quality, especially land contamination. Our response is thus focused on the land contamination aspects of the guidance.

The principle of a summary of planning guidance as it relates to contaminated land is to be welcomed, especially as it cross-references to legislation contained within Legislation.gov website. We also welcome a slimmed down, more readily accessible set of guidance and importantly it is to be provided on one central reference location rather than scattered as before.

Comments of the guidance on land contamination

This is under the heading of land remediation, albeit that land identified as contaminated doesn't necessarily proceed to remediation. Looking at the detailed wording of each section:

Sections 1-2 – no comment

Section 3 "What is planning's contribution?"

We suggest that the sentences should be reverse order, to emphasise planning's contribution and not Part 2A as the most significant in this context.

Section 4 “When is contamination likely to be present?”

Should add that contamination may be present on land with no history of contaminative use having migrated from adjoining land.

There is no reference or link to guidance published by DEFRA and the Environment Agency, CR11 “Model Procedures for the Management of Contaminated land”, which is the key guidance in this area of assessment.

Section 7 “*What is the starting point for an applicant bringing forward a proposal for a site that could be contaminated?*”

The first paragraph relating to declared Part 2a sites seems to be inappropriate. Rather than Part 2a as the starting point here, a reference back to section 4 - 'When is contamination likely to be present' would be more helpful. We agree that early engagement with planning and environmental health departments is important and should be referenced at this point.

The Environment Agency’s role in planning can be greater than indicated in paragraph 2 and certainly beyond Part 2a Special Sites and the need for an environmental permit. EA most commonly requests planning conditions where it considers there to be a threat to groundwater from contamination at the development site.

Section 7 goes on to assign the responsibility for the initial phase of site investigation to the developer. However it states:

“The risk assessment should also identify the potential sources, pathways and receptors (‘pollutant linkages’) and evaluate the risks. This information will enable the local planning authority to determine whether further more detailed investigation is required, or whether any proposed remediation is satisfactory”

We suggest that a section be inserted – “What are a developers responsibilities?” This is effectively emphasising the statement from the NPPF “ Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.”

The responsibility for site risk assessments is assigned to the developer but it is not clear enough as worded where responsibility falls if the LPA decides that further work is required. The use of “should” in paragraph 4 is too vague - this needs firmer words such as “is responsible for producing”. Flow charts in Section 10 do briefly refer to this point, but it should be clearer in Section 7. It should also be emphasised that there will be many cases where the bulk of development cannot proceed or at least be occupied and used until remedial works identified by the risk assessment have been completed satisfactorily by the developer.

Here, a clear statement on responsibility for remediation is needed, such as that in SEPA’s guidance on land contamination: “The developer needs to satisfy the Planning Authority that unacceptable risk from contamination will be successfully addressed through remedial action without undue environmental impact during and following the development”. Alternatively, in PPS23 annex 11 (referring to DETR Circular 02/2000) there was a clear statement “*where new development is taking place, it is the developer’s responsibility to carry out the necessary remediation*”.

NB the link to further guidance in paragraph 7 does not work.

Section 9 “Should planning permission be refused if there are concerns about land contamination?”

Possibly this could be split into two sections one regarding grant of planning with conditions/obligations and one regarding refusal.

Could there be a clear statement here that land should not be capable of being determined as Part 2a statutory Contaminated Land on completion of the planning/development process - as per NPPF? The former guidance, PPS23 Annex 11 section 2.5.1, stated: “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 IIA of the EPA 1990”.

Under the section “Unacceptable risk” there is probably insufficient guidance as to what qualifies as unacceptable to allow authorities to apply this section. The guidance here appears to be referring to Part 2a legislation for a definition of unacceptable risk.

The last paragraph refers to a higher standard for remediation with regard to radioactive contamination, however for ‘normal’ (ie non-radioactive) contamination suitable for use/safe development is also requires a higher standard of remediation than would be required under Part 2A.

Further Comments

It is important that the developer should provide a record of validation/verification of remediation works to ensure the site does not continue to be blighted by contamination, and this guidance should include a paragraph to this effect.

Water Quality

Water quality has been included in this latest set of guidance, within a separate section. It is still a little unclear as to who is to provide the detailed assessment of water quality where this is needed to support the planning decision and especially where this is not part of an Environmental Statement. This should be clarified.