

# A Brief Introduction to the Planning System

[and how land quality issues  
are assessed and controlled]



# Primary Legislation



## Town and Country Planning Act 1990

Provides the overarching legal framework for regulating the use and development of land.



Complementary to other separate area of law e.g.

Building Act  
1984;

Environmental  
Protection Act  
1990;

Highways Act  
1980;

Human Rights  
Act;

Equalities Act;

# Subject to Overarching Human Rights and Equalities Legislation

- ▶ Human Rights Act 1998:
  - ▶ Article 8:
    - ▶ Everyone has the right to respect for his private and family life, his home and his correspondence.
    - ▶ There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- ▶ Equalities Act 2010.
  - ▶ Equality Duty:
    - ▶ Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
    - ▶ Advance equality of opportunity between people who share a protected characteristic and those who do not.
    - ▶ Foster good relations between people who share a protected characteristic and those who do not.



## What Development is Controlled (\$55)

The carrying out of (in, on, over or under land):

- Building operations:
  - Demolition
  - Rebuilding
  - Structural alterations or additions
  - Other operations normally undertaken by a builder
- Engineering operations,
- Mining operations,
- Other operations

Or the making of any material change in the use of any buildings or other land.



## What Development isn't Controlled (S55)

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

- (i) affect only the interior of the building, or
- (ii) do not materially affect the external appearance of the building;

(b) the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road;

(c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;

(e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;

(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.

(g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.



# Not all Controlled Development Requires Planning Permission

- ▶ The Town and Country Planning (General Permitted Development) (England) Order 2015
- ▶ Extensive Permitted Development rights for:
  - ▶ House Extensions and Alterations;
  - ▶ Agricultural Buildings;
  - ▶ Industrial Extensions and Alterations;
  - ▶ Conversions of Offices, etc to Residential Use;
  - ▶ Works by Statutory Undertakers and Local Authorities;
  - ▶ And a lot more.
- ▶ However certain types of Permitted Development require 'prior-approval' including consideration of land quality issues.



# Planning Process [Secondary Legislation/ Statutory Instruments]

- ▶ The Town and Country Planning (Development Management Procedure) (England) Order 2015;
- ▶ The Town and Country Planning General Regulations 1992;
- ▶ The Town and Country Planning (Environmental Impact Assessment) Regulations 2017;
- ▶ The Town and Country Planning (Consultation) (England) Direction 2021.





# Who Administers the Planning Process?

- Two-Tier Authorities:
  - County Council – Education, Transport, Minerals and Waste
  - District Council – Everything Else
- Unitary Authorities – All Planning Functions (Other than NSIPs)
- Secretary of State (Administered by Planning Inspectorate and Planning Casework Unit):
  - Called-in Planning applications;
  - Appeals;
  - Nationally Significant Infrastructure Projects (NSIPs).

# Validation Requirements (National)

- ▶ DMPO Article 7, an application for planning permission must:
  - ▶ (a) be made in writing to the local planning authority on a form published by the Secretary of State (or a form to substantially the same effect);
  - ▶ (b) include the particulars specified or referred to in the form;
  - ▶ (c) include a location plan and any other plans, drawings and information necessary to describe the development which is the subject of the application;
- ▶ Planning Application Form Requirements:
  - ▶ Does the proposal involve any of the following? If Yes, you will need to submit an appropriate contamination assessment with your application.
    - ▶ Land which is known to be contaminated
    - ▶ Land where contamination is suspected for all or part of the site
    - ▶ A proposed use that would be particularly vulnerable to the presence of contamination

# Validation Requirements (Local)

- ▶ TCPA S62(3) The local planning authority may require that an application for planning permission must include—
  - ▶ (a) such particulars as they think necessary;
  - ▶ (b) such evidence in support of anything in or relating to the application as they think necessary
- ▶ This is referred to as a 'local validation list'
- ▶ DMPO A11(2) restrictions on local lists (further information can only be required if):
  - ▶ (a) before the application is made the local planning authority publish or republish a list of requirements on their website;
  - ▶ (b) the particulars or evidence that the authority require to be included in the application fall within that list;
  - ▶ (c) the particulars or evidence the authority require to be included in the application—
    - ▶ (i) are reasonable having regard, in particular, to the nature and scale of the proposed development; and
    - ▶ (ii) are about a matter which it is reasonable to think will be a material consideration in the determination of the application; and
  - ▶ (d) the list mentioned in sub-paragraph (a) was published (or republished) during the 2 year period immediately before the date on which the application is made.

# Example of Local Contaminated Land Information Requirement (Wakefield MDC)

- ▶ Land Contamination Assessment
- ▶ When is it required?
  - ▶ In particular, for sites where there is known contamination; or there is a reason to suspect contamination, such as the existence of former industrial uses, or other indications of potential contamination and the proposed development could give rise to a risk of contamination affecting any of the following receptors: people (particularly for sensitive uses such as residential housing which is likely to be used by families with children, allotments or children's nurseries); controlled waters; other watercourses; or principal aquifers.
- ▶ What is required?
  - ▶ This should at least consist of a desk study of the readily-available records relating to the site. This study should assess the previous uses of the site and their potential for causing contamination and the likelihood of causing harm to any future users of the site and the wider environment. If the potential for harm to human health or the wider environment is confirmed, further studies by the intending developer to physically investigate and assess the risks and identify and appraise the options for remediation are likely to be required.
- ▶ Further information:
  - ▶ The Government's National Planning Policy Framework at <https://www.gov.uk/government/topics/planning-and-building>
  - ▶ Local information can be found under Land Quality at <http://www.wakefield.gov.uk>
  - ▶ Guiding Principles for Land Contamination and Model Procedures for the Management of Land Contamination at [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)



# Decision Making Principles – Primacy of Development Plan

- ▶ To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise  
  
(section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004)



# Local Plan Policy Example (Kirklees)

## ► **Policy LP53 Contaminated and unstable land**

- Development on land that is unstable, currently contaminated or suspected of being contaminated due to its previous history or geology, or that will potentially become contaminated as a result of the development, will require the submission of an appropriate contamination assessment and/or land instability risk assessment.
- For developments identified as being at risk of instability, or where there is evidence of contamination, measures should be incorporated to remediate the land and/or incorporate other measures to ensure that the contamination/instability does not have the potential to cause harm to people or the environment. Such developments which cannot incorporate suitable and sustainable mitigation measures which protect the well-being of residents or protect the environment will not be permitted.

# National Planning Policy Framework

- NPPF is a material consideration – essentially a national planning policy document produced by the Secretary of State (not law).
- 120. Planning policies and decisions should:
  - c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;
- 174. Planning policies and decisions should contribute to and enhance the natural and local environment by:
  - f) remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.



# NPPF Continued

- ▶ 183. Planning policies and decisions should ensure that:
  - ▶ a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);
  - ▶ b) 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; and
  - ▶ c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.
- ▶ 184. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.





# NPPF Definition of SI Information

- ▶ **Site investigation information:** Includes a risk assessment of land potentially affected by contamination, or ground stability and slope stability reports, as appropriate. All investigations of land potentially affected by contamination should be carried out in accordance with established procedures (such as BS10175 Investigation of Potentially Contaminated Sites – Code of Practice).




# Non- Statutory Guidance

- Yorkshire and Humberside Pollution Advisory Council: Technical Guidance for Developers, Landowners and Consultants
  - Excellent regional guidance which provides a step by step explanation of how to assess land contamination issues in a phased and robust manner.
- National Planning Practice Guidance:
  - Non-statutory guidance produced by the government replacing the previous planning circulars



# National Planning Practice Guidance - Should not Duplicate Other Regimes

- ▶ **What is the role of planning when dealing with land which may be contaminated?**
- ▶ To ensure a site is suitable for its new use and to prevent unacceptable risk from pollution, the implications of contamination for development should be considered through the planning process to the extent that it is not addressed by other regimes. The latter include:
  - The system for identifying and remediating statutorily defined contaminated land under [Part 2A of the Environmental Protection Act 1990](#), which provides a risk based approach to the identification and remediation of land where contamination poses an unacceptable risk to human health or the environment. The government has published [statutory guidance](#) on Part 2A which focuses on addressing contaminated land that meets the legal definition and cannot be dealt with via any other means, including planning.
  - [Building Regulations](#), which require that reasonable precautions are taken to avoid risks to health and safety caused by contaminants in ground to be covered by buildings and associated ground.
  - [Environmental Permitting Regulations](#), under which an Environmental Permit from the Environment Agency is normally required to cover the treatment and/or redeposit of contaminated soils if the soils are 'waste'



# National Planning Practice Guidance – Circumstances Where Refusal Warranted

- ▶ **Should planning permission be refused if there are concerns about land contamination?**
- ▶ Responsibility for securing a safe development rests with the developer and/or landowner. However, local planning authorities should be satisfied that a proposed development will be appropriate for its location and not pose an unacceptable risk.
- ▶ Local planning authorities should work with applicants to find acceptable ways forward if there are concerns about land contamination. For example, establishing or retaining areas of green infrastructure may serve to limit harmful disturbance of the ground. To help secure necessary mitigation, planning permission can be granted subject to conditions and/or planning obligations, where the relevant tests are met.



# National Planning Practice Guidance – Unacceptable Risk

- ▶ **Unacceptable risk**
- ▶ The Department for Environment, Food and Rural Affairs has published [statutory guidance to help identify and deal with land which poses unacceptable levels of risk](#) under the Part 2A of the Environmental Protection Act 1990 regime for remediating statutorily defined contaminated land. Local planning authorities will want to have regard to this guidance alongside other considerations including the [Water Environment Regulations 2017](#) and other matters that could affect the amenity of a site and its future occupants. For example, there could be contaminants present at levels that could cause nausea, headaches, odour/nuisance to people or harm to non-protected species of plants and animals. After remediation, as a minimum, [land should not be capable of being determined as contaminated land under Part 2A.](#)

# Requirements at Different Stages

Validation: Minimum level of information required to show some consideration of land contamination issues and how they may affect the development;

Assessment of Planning Application: Sufficient information required to understand the likely scope and magnitude of any contamination issues relevant to the proposed development and (in broad terms) the nature and extent of any remediation works likely to be required;

Discharge of Conditions: Detailed Contamination Risk Assessment & Remediation Strategy (Pre-Commencement) and Verification Report (Pre-Occupation).



# Model Planning Condition

- *The development other than that required to be carried out as part of an approved scheme of remediation must not commence until criteria 1 to 2 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until criteria 3 has been complied with in relation to that contamination.*
- *Criteria 1: Submission of Remediation Scheme*
- *A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historic environment must be prepared, and approved in writing, by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.*
- *Criteria 2: Implementation of the Approved Remediation Scheme*
- *The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of the development other than that required to carry out remediation. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.*
- *Criteria 3: Reporting of Unexpected Contamination*
- *In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken, and where remediation is necessary, a remediation scheme must be prepared in accordance with the requirements of criteria 1, which is subject to the approval, in writing, of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with criteria 2.*
- *Reason for the condition is stated as: To ensure that risks from contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with section 11 of the National Planning Policy Framework.*



# Concluding Comments

- ▶ The assessment of land contamination is well integrated within the English Land Use Planning System – although there are differences in approach between LPAs and room for interpretation.
- ▶ Usually land contamination will be addressed in a pragmatic and proportionate manner and the detail will be agreed through the discharge of conditions process; however where there are significant deficiencies in the quality of land contamination information presented applications can be (and are) refused.
- ▶ Occasionally land contamination will be a central issue for a planning application e.g. for the residential development of former chemical works, landfill sites, etc – with brownfield land regeneration being a key priority for government.
- ▶ Although a pragmatic approach is often taken to the level of land quality information provided pre-determination, the better the condition of the land is understood at the decision making stage the less uncertainties there are for land owners, developers, the local authority and development agencies in terms of development costs/ viability and the extent to which remediation requirements will influence the project timeline.
- ▶ Often insufficient consideration is given by applicants to the timeline required to discharge contamination related planning conditions, particularly where little detail has been submitted up-front.
- ▶ Occasionally enforcement issues associated with non-compliance with contamination related conditions can scupper whole development projects.