

## REPORT OF THE CORPORATE DIRECTOR OF NEIGHBOURHOODS & REGENERATION

<b>Contaminated Land Planning Conditions</b>  <b>PLANNING SUB-COMMITTEE – 06/05/09</b>	<b>Classification</b>  Public	<b>Enclosures</b>  Appendix 1: contaminated land conditions
	<b>Ward(s) affected</b>  All wards	

### 1. BACKGROUND TO PROPOSAL

- 1.1 Under the Town & Country Planning Acts and material planning guidance, for each new planning application, the Council must consider whether any measures may need to be taken to address land affected by contamination.
- 1.2 The definition of ‘land affected by contamination’ provided within the Planning Policy Statement 23 - Planning and Pollution Control - Annex 2: Development on Land Affected by Contamination – (PPS23) includes “where the actual or suspected presence of substances in, on or under the land may cause risks to people, property, human activities or the environment”. Substances include chemicals such as petrol, lead and solvents.
- 1.3 PPS23 requires that land contamination is considered in relation to sensitive developments (including residential, schools, open spaces and public buildings on or adjacent to a site) and situations where contamination may be present, such as from a previous industrial use or chemical/fuel storage.
- 1.4 Where contaminated land issues must be addressed during development, similar to most other authorities, the Council attaches contaminated land conditions to the decision notices of planning applications. The conditions require the developer to provide investigation, remediation and validation/verification information to reassure the Council that a development is suitable for its intended use.
- 1.5 It is important that contaminated land conditions require provision of an appropriate level of information for each stage of development and control what development work may proceed. At the same time conditions should be reasonable, clear and enforceable.

## **2. DETAILS OF PROPOSAL**

- 2.1 The Pollution Section has drafted new contaminated land conditions (see Appendix 1) with representatives of the Planning Authority and Legal Services in line with local, regional and National planning policy/guidance. Examples of the old conditions in use are provided in Appendix 2.
- 2.2 The new conditions will resolve a number of limitations with the contaminated land conditions currently in use. In particular, the conditions currently in use are not sufficiently flexible, up-to-date or detailed enough. The current conditions often do not require provision of sufficient information and do not sufficiently control development. These shortcomings may result in new developments being inadequately protected against contamination, which in turn may result in harm or financial loss to residents and business in the Borough.
- 2.3 Currently a number of different contaminated land conditions (four or more) are in use, all with very similar enforcement aims. Certain development situations are not sufficiently catered for by the existing conditions. The proposed conditions provide tailored wording to specific development situations (see attached conditions). This should make the aims of the conditions clearer to developers and assist with enforcement action.

## **3. RECOMMENDATIONS**

- 3.1 The Planning Sub Committee is recommended to:
- 3.2 Authorise the use by the Planning Authority of the contaminated land conditions set out in Appendix 1.
- 3.3 Authorise the removal of all other contaminated land conditions currently in use by the Planning Authority from data systems in order to prevent their further use.

## **4. RELATED DECISIONS**

- 4.1 We are not aware of any related decisions.

## **5. INTRODUCTION TO FINANCIAL CONSIDERATIONS**

- 5.1 There will be increased costs to the Council to review information submitted in line with material planning guidance. The Pollution Section has applied for Section 106 bank money to cover these additional costs.
- 5.2 A reduction in costs/long term liabilities will result as follows:

- A reduction in long term liabilities for the Council and developers from ensuring appropriate information is gathered at the development stage in line with material planning guidance.
- A reduction in long term liabilities for the Council by ensuring that the developer pays for site investigation and remediation work instead of the Council. The Council would have to fund the investigations of a site in the future where insufficient information had been gathered by the developer.
- Reduced risk of future financial losses by future residents and businesses. Such losses may result from a property being less desirable and from ill health.



Signed ..... Date: 27 April 2009

**Steve Douglas**  
**Interim CORPORATE DIRECTOR, NEIGHBOURHOODS & REGENERATION**

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**List of appendices:**

**Appendix 1: Proposed contaminated land conditions**

**Appendix 2: Examples of old conditions**

**Background papers:**

**(A) LONDON BOROUGH OF HACKNEY UNITARY DEVELOPMENT PLAN, ADOPTED JUNE 1995**

**(B) THE LONDON PLAN - LONDON MAYORS OFFICE, ADOPTED FEBRUARY 2004**

**(C) PLANNING POLICY STATEMENT 23 – ANNEX 2: DEVELOPMENT ON LAND AFFECTED BY CONTAMINATION – OFFICE OF THE DEPUTY PRIME MINISTER**

## Annex 1: Proposed planning conditions for contaminated land

**CLS1: Main Contaminated Land Condition:**

To be attached where any development (i.e. residential, other sensitive, commercial, industrial development) falls on an area identified as being potentially significantly contaminated.

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**Condition CLS1:**

With reference to paragraphs (1)-(6), work shall be completed and reporting produced by a competent person/company in line with Planning Policy Statement 23 (published by the Office of the Deputy Prime Minister), CLR11 (published by the Environment Agency) and other current best practice guidance. All reporting shall be provided in both a paper and electronic format to the Pollution Section. Upon completion of the development an electronic copy of all reporting shall be provided to the Planning Authority. The Pollution Section must receive verbal and written notification at least five days before investigation, remediation and development works commence.

(1) Before any remediation work, enabling works or development commences at the site a Desk Study report including full details of Site Reconnaissance, and a report containing full details of Site Investigation and Risk Assessment works completed for the site shall be produced to the satisfaction of and approved in writing by the Pollution Section.

(2) Before any remediation work, enabling works or development commences at the site a Remediation Report shall be produced to the satisfaction of and approved in writing by the Pollution Section. Works set out within the approved Remediation Report will then be fully implemented to the satisfaction of the Pollution Section. The Remediation Report shall incorporate Options Appraisal, Implementation and Verification Plans and include comprehensive details of groundworks and development works to be completed at the site. The Remediation Report shall clearly distinguish between remediation to be completed before development commences, during development and/or after development is completed.

(3) Before any development commences a Verification Report for remedial works that as agreed within the Remediation Report, have taken place pre-development, shall be produced to the satisfaction of and approved in writing by the Pollution Section. The Verification Report shall also include full details of a watching brief kept by the developer and their on-site agents including documented observations and photographs of the remediation.

(4) Before occupation/use commences a final Verification Report for remedial works that have taken place during and after enabling works and development shall be produced to the satisfaction of and approved in writing by the Pollution Section. The Verification Report shall also include full details of a watching brief kept by the developer and their on-site agents including documented observations and photographs of the remediation and groundworks phases of the enabling works and development.

(5) Any Post Remedial Monitoring reports shall be produced as specified within the Remediation Report, or as otherwise required by the Pollution Section.

(6) Any additional, or unforeseen contamination encountered shall be immediately notified to the Pollution Section. All development shall cease in the affected area. Any additional or unforeseen contamination shall be dealt with as agreed with the Pollution Section. Where development has ceased in the affected area, it shall recommence as agreed with the Pollution Section.

Occupation/use of the development shall not commence until this condition has been discharged in writing by the Local Planning Authority following the satisfactory supply of information in line with stages (1)-(6) and upon completion of any other reasonable works required by the Pollution Section to ensure compliance with current best practice. Subject to written approval by the Planning Authority, the condition may be varied, or discharged in agreed phases.

Reason: To protect the end user(s) of the development, any adjacent land user(s) and the environment from contamination in line with Planning Policy Statement 23 (published by the Office of the Deputy Prime Minister).

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**CLS2: Precautionary Contaminated Land Condition:**

To be attached to any sensitive development (i.e. residential, school, larger extension, or other sensitive development) that is identified as being on an area that doesn't appear, from available information, to be associated with a potentially significantly contaminating use.

To be attached to any less sensitive development (i.e. commercial and industrial) comprising a larger extension where the development falls on an area identified as being potentially significantly contaminated.

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Condition CLS 2:

- (a) The Pollution Section shall receive verbal and written notification at least five days before investigation, remediation and development works commence.
- (b) Work shall be completed and reporting produced by a competent person/company in line with current best practice guidance. All reporting shall be provided in both a paper and electronic format to the Pollution Section. Upon completion of the development an electronic copy of all reporting shall be provided to the Planning Authority.
- (c) Before the commencement of development the requirements for establishing the potential presence/presence of any significant contamination both on and off site shall be agreed in writing with and thereafter carried out to the satisfaction of the Pollution Section.
- (d) Before the commencement of development the requirements for the importation of and/or reuse of fills, soils and other ground materials on site shall be submitted to and agreed in writing with and thereafter carried out to the satisfaction of the Pollution Section.
- (e) Any identified, or significant additional or unforeseen contamination encountered shall be immediately notified to the Pollution Section. If development has started, it will cease in the affected area.
- (f) Development shall not commence, or where development has ceased due to significant additional or unforeseen contamination recommence, until a programme of remediation has been submitted to and approved in writing by the Pollution Section.
- (g) The agreed programme(s) of remediation shall be fully implemented and a verification report shall be produced to the satisfaction of the Pollution Section. The verification report shall also include full details of the importation of and/or reuse of fills, soils and other ground materials on site.

- (h) Occupation/use of the development shall not commence until this condition has been discharged in writing by the Local Planning Authority following the satisfactory supply of information and completion of any other reasonable works required by the Pollution Section to ensure compliance with current best practice.
- (i) Subject to written approval by the Planning Authority, this condition may be varied, or discharged in agreed phases.

Reason: To protect the end user(s) of the development, any adjacent land user(s) and the environment from contamination in line with Planning Policy Statement 23 (published by the Office of the Deputy Prime Minister).

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**CLS3: Precautionary contaminated land condition for some industrial/commercial developments:**

To be attached to industrial and commercial development that is identified as being on an area that doesn't appear, from available information, to be associated with a potentially significantly contaminating use.

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- (a) The Pollution Section shall receive verbal and written notification at least five days before the agreed programme of remediation and/or development works commence.
- (b) Work shall be completed and reporting produced by a competent person/company in line with current best practice guidance. All reporting shall be provided in both a paper and electronic format to the Pollution Section. Upon completion of the development an electronic copy of all reporting shall be provided to the Planning Authority.
- (c) Any Desk Study, Site Reconnaissance, Site Investigation, Risk Assessment and Remediation information produced for the development shall be provided to the Pollution Section. Any recommendations relating to contaminated land issues will be fully implemented to the satisfaction of the Pollution Section.
- (d) Before the commencement of development the requirements for the importation of and/or reuse of fills, soils and other ground materials on site shall be submitted to and agreed in writing with and thereafter carried out to the satisfaction of the Pollution Section.
- (e) Any identified, or significant additional or unforeseen contamination encountered shall be immediately notified to the Pollution Section. If development has started, it shall cease in the affected area.
- (f) Development shall not commence until a programme of remediation to address any significant contamination identified during Desk Study, Site Reconnaissance, Site Investigation or other works has been submitted to and approved in writing by the Pollution Section.
- (g) Where development has ceased due to significant additional or unforeseen contamination, development shall not recommence until a programme of remediation has been submitted to and approved in writing by the Pollution Section.
- (h) The agreed programme(s) of remediation shall be fully implemented and a verification report shall be produced to the satisfaction of the Pollution Section. The verification report shall also include full details of the importation of and/or reuse of fills, soils and other ground materials on site to the satisfaction of the Pollution Section.

- (i) Occupation/use of the development shall not commence until this condition has been discharged in writing by the Local Planning Authority following the satisfactory supply of information and completion of any other reasonable works required by the Pollution Section to ensure compliance with current best practice.
- (j) Subject to written approval by the Planning Authority, this condition may be varied, or discharged in agreed phases.

Reason: To protect the end user(s) of the development, any adjacent land user(s) and the environment from contamination in line with Planning Policy Statement 23 (published by the Office of the Deputy Prime Minister).

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**CLS4: Contaminated land condition for extensions and small structures associated with existing property:**

To be attached to any development comprising a smaller extension that is identified as being on an area that appears to potentially be associated with significant contamination.

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- (a) Whether for the identification of existing remedial measures, continuation of existing remedial measures, or to assess the need to install new remedial measures, before development commences the developer shall complete investigations and agree remedial measures to the satisfaction of the Pollution Section.
  - (b) If any contamination is identified, development will cease and the Pollution Section shall be notified immediately. A scheme of remediation to address the identified contamination shall be submitted to and agreed in writing with the Pollution Section.
  - (c) Agreed remedial measures shall be implemented in full and a verification report will be provided to the satisfaction of the Pollution Section.
  - (d) A Building Control Officer or another environmental professional shall be available on site to witness the installation of remedial measures and to provide written confirmation that the agreed remedial measures have been installed.
  - (e) Occupation/use of the development shall not commence until this condition has been discharged in writing by the Local Planning Authority following the satisfactory supply of information and completion of any other reasonable works required by the Pollution Section to ensure compliance with current best practice.

Reason: To protect the end user(s) of the development, any adjacent land user(s) and the environment from contamination in line with Planning Policy Statement 23 (published by the Office of the Deputy Prime Minister).

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**Con1: Informative**

Advice to be added to the decision notices of planning applications that disturb the ground but do not require a full condition.

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The responsibility to properly address contaminated land issues, including safe development and secure occupancy, and irrespective of any involvement by this Authority, lies with the owner/developer of the site. The applicant/developer is requested to contact the Council's Pollution Section (Tel: 020 8356 4827) as soon as is practicable should contamination be encountered during the development of the site. Contamination will often be evident either visually or due to odours. Visual evidence of contamination may include staining by oil/fuel, coloured liquids/soils uncharacteristic of soil or groundwater, or debris (e.g. asbestos) being present. Odours will usually be obvious and smell of fuels/solvents, be pleasant or unpleasant, or otherwise be uncharacteristic of soil or groundwater.

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## Annex 2: Examples of old conditions

Old condition A (used for a 2007 application)

“If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for an amendment to the Method Statement detailing how this unsuspected contamination shall be dealt with.”

Old condition B (used for a 2007 application)

“Before the development is commenced a detailed site investigation shall be carried out to establish if the site is contaminated, to assess the degree and nature of the contamination present, and to determine its potential for the pollution of the water environment. The method and extent of the site investigation shall be agreed with the Local Planning Authority prior to the commencement of the work. Details of appropriate measures to prevent pollution of groundwater and surface water, including provision for monitoring, shall be submitted to and approved by the Local Planning Authority before development commences. The development shall then proceed in strict accordance with the measures approved.”

Old condition C (used for a 2007 application)

“Full details of any contamination of land and/or water (groundwater/surface waters) shall be submitted to and approved, in writing, by the Local Planning Authority, in writing, before any work on the site is commenced. Phase 1 of such an assessment shall be the compilation of a full site history. If the site history indicates that the site may be contaminated, the information provided by the Phase 1 Desktop study should be used in the design of a conceptual site investigation model. Both the Phase 1 Desktop Study and conceptual site investigation model must be submitted for review prior to carrying out a Phase 11 Site Investigation, which must be carried out having regard to BS10175:2001 Code of Practice for the identification of potentially contaminated sites. The development shall not be carried out otherwise than in accordance with the details thus approved.”

Old condition D (used for a 2007 application)

“Prior to commencement of works, detailed site investigation shall be carried out to establish if the site is contaminated, to assess the degree and nature of the contamination present, and to determine its potential for the pollution of the water environment. A soil contamination report shall be submitted to – and appropriate remedial measures agreed with – the Local Planning Authority, in writing, and implemented prior to the commencement of any work on site.”

Old condition E (used for a 2006 application)

“No development shall take place until details and results of a soil contamination survey of the site and details of remedial measures proposed to treat/eradicate any contamination found have been submitted by the applicant and approved by the Local Planning Authority in writing. The survey shall be carried out by a suitably qualified person or body to be agreed by the Local Planning authority. The development shall not take place otherwise than in accordance with the details thus approved.”