

**EAST CAMBRIDGESHIRE DISTRICT COUNCIL
LOCAL DEVELOPMENT FRAMEWORK**

**Guidance on submitting planning applications on land that may be
contaminated**

SUPPLEMENTARY PLANNING DOCUMENT

**Consultation Statement
18 June 2010**

This Consultation Statement has been prepared in accordance with Regulations 16, 17 and 18(4)(b) of the Town and Country Planning (Local Development) (England) Regulations 2004 (as amended).

The following is a list of those consulted in connection with the 'Guidance on submitting planning applications on land that may be contaminated' Supplementary Planning Document.

Environment Agency
Parish/Town Councils In East Cambridgeshire
Bidwells
RPS
Savills
Carter Jonas
Peacock and Smith
Turley Associates
CC Associates
Greg Saberton
Acorus
Cheffins
Vincent Gorbing
Mcdyre
IDH
AMA Planning
BSM
Januarys
Barton Willmore
Mono Consultants
PPG LLP
EHI
Phillips Planning
JB Planning
John Martin
Smiths Gore
Taylor Vinters

Hutchinsons Planning
Unex Group
Ptal
Rapleys
Indigo Planning
GVA Grimley
Barfords
MLT Architects
Southern Planning
I Plan
The Planning Bureau
Tribal MJP
RICS online
Martineau UK
ITS Partnership
Middle Level
Nabarro
Beacon planning
Woolfbond
Smart Planning
Signet Planning
CGMS
Prime Planning
ISION
ECS
Andrew Fleet
Trevor Smith
David Fenton
L Veens Associates
Property Revolutions
Brian Murfitt
MIC Associates
L Barn
B Butler

The consultation period lasted for four weeks, from 10th February to 10th March 2010. A total of two responses were received. A summary of the consultation responses and action taken is listed below.

No.	Respondent's name	Summary of response	Comments on the response	Action
1	Indigo Planning Limited	<p>In agreement with the SPD's content although added "the costs and benefits of reclaiming contaminated land should be taken into account when determining such applications and when considering planning obligations. This should be acknowledged in the SPD."</p> <p>SPD = Supplementary Planning Document</p>	<p>It must be acknowledged that it is to the Councils benefit (in terms of a reduction in number of contaminated land sites in the district) to have contaminated sites cleaned up through the planning process but the purpose of this SPD is to assist persons in addressing contamination on sites they wish to redevelop, not promote redevelopment of specific sites.</p> <p>It is a Planning Policy/Forward Planning separate process identifying brownfield sites for potential redevelopment, not the aim of this SPD.</p>	No change to the draft guidance.
2	<p>The Environment Agency</p> <p>(Multi-part response)</p>	<p>The Environment Agency considered the SPD an 'excellent guide', they also had the following comments:</p> <p>Section 2: Introduction We suggest insertion of 'its proposed' (line 7) to read '<i>..whether a particular site is suitable for its proposed use..</i>'</p> <p>Section 3: What is Contamination? We suggest replacement of 'this process' in (line 23 – top of page 8) with '<i>the process of land condition assessment.</i>'</p>	<p>Agreed, this should be included.</p> <p>Agreed, this should be included.</p>	<p>Section 2, paragraph 1 is amended as such:</p> <p>"....whether a particular site is suitable for its proposed use or..."</p> <p>Section 3, paragraph 5 is amended as such:</p> <p>"....Land Contamination' (CLR11, 2004), during the process of land condition assessment."</p>

Section 4: Liaison with the Council

Paragraph two states that the Council will attach conditions to planning consent it grants when there is insufficient information with the planning application for the council to assess whether a site is suitable for the proposed use.

We suggest that, if there is not sufficient information supplied with the application to determine whether a site is suitable for the proposed use, then permission should be **refused** in line with the recommendations of section 2.60 of Annex 2 of PPS23 'Planning and Pollution Control.'

In particular section 2.60 of PPS23 Annex 2 states;

"The LPA should refuse permission if it is not satisfied on the basis of the information provided by the applicant.....that the development would be appropriate. This could include cases where:no information has been provided or obtained that excludes the reasonable possibility of such contamination or risk."

In the event that permission is granted with conditions requiring assessment and remediation, for a site where no or insufficient information has been provided with the application and subsequently it becomes apparent that remediation is not possible or uneconomic given the proposed development, the applicant may be left with an untenable planning permission.

If further information is needed from the applicant in order to determine the condition of the land in question and the requirements for remediation, the Council should only grant conditional permission if the level of information that has been submitted is enough for the Council to be satisfied that the condition of the land is such that the development can proceed.

It is acknowledged that these are a very valid series of points and do outline the position the Council can take when accepting (duly-made), or refusing, planning applications.

In terms of potentially contaminated sites, there are two key aspects of the process of receiving planning applications that are raised and need addressing.

Firstly, in the rare cases where contamination at a site is such that it cannot be viably remediated to make it suitable for its proposed use and any subsequent planning permission (with condition) would therefore become 'untenable', the Council would refuse the application, which has been done in the past. This is clarified in the SPD through the additional detailed included in several sections.

However, in the more common cases comprising low and medium risk contaminated sites, it is usual that any further works which are required can be successfully implemented through a conditional planning permission rather than widespread refusal of applications on this basis.

Its is hoped that this guidance improves awareness, as well as the fact that there is a fee associated with discharging conditions, to encourage applicants to submit sufficient assessments initially with an application to avoid a contamination condition being attached to the subsequent planning permission (or potentially have the application refused).

Summary of Guidance, 3rd Bullet point amended as such:

".....to avoid a relevant condition being attached to the subsequent planning permission or in some cases the application refused."

Section 4, para 2 amended as such:

"In the event that an application does not contain sufficient information for the Council to reasonably assess whether a site may be affected by contamination or is suitable for use, then the Council may either refuse the application (as per paragraph 2.60, Annex 2 of PPS23) or attach a condition to the subsequent planning permission to require further work."

Figure 1 (flow-chart) amended as such:

".....then either a 'contamination condition' will be attached to the planning permission, requiring further work prior to development taking place or in some cases, the application may be refused where there is insufficient information to satisfy the Council that the necessary works are viable or practicable through a conditional planning permission."

		<p>Conditions will ensure additional information to inform the required future actions for the site, but there must already be enough information to ensure that the development is an acceptable use of the land. This is extremely important, particularly for outline planning applications. PPS23 states, at Annex 2, section 2.55:</p> <p>'Extreme caution should be taken in the granting of outline planning permission unless the LPA is satisfied that it has 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 ES (where EIA is required) demonstrates unacceptable adverse impacts could leave the LPA vulnerable to a claim for compensation.'</p> <p>ES = Environmental Statement EIA = Environmental Impact Assessment LPA = Local Planning Authority PPS23 = Planing Policy Statement 23</p>	<p>It needs to be considered that this guidance is primarily aimed at those submitting planning applications, not to define how planning applications are managed internally at the Council.</p> <p>This final comment should be included within the SPD although it is essentially (important) guidance for the LPA itself.</p>	<p>Section 5, para 3 amended as such:</p> <p>"If the information submitted with an application is such that the Council cannot be satisfied that the necessary works are viable or practicable through a conditional planning permission, then the application may be refused to avoid the applicant being issued with an untenable planning permission, as per Section 2.55, Annex 2 of PPS23."</p>
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		<p>Section 5: The Councils' Responsibility We suggest replacement of the word 'may' in line 8 with '<i>will</i>' to read: 'Submission of a desk-study report or other supporting information with the application <i>will</i> assist the decision making process'.</p> <p>Where an applicant has answered 'yes' to any of the questions in section 15 of the standard planning application form, a preliminary risk assessment should be supplied with the planning application, in accordance with PPS23.</p>	<p>Agreed, this should be included.</p> <p>This comment is also correct, and is conveyed in the report (in Figure 1) and added to Section 6.</p>	<p>Section 5, para 2 amended as such: ...”desk-study report or other supporting information with the application will assist the decision making process.”</p> <p>Section 6, new para added (# 5): “Where an applicant has answered 'yes' to any of the questions in section 15 of the standard planning application form ('1 App'), a preliminary risk assessment (see Figure 1 & Section 8) should be supplied with the planning application, in accordance with PPS23.”</p>
		<p>References We would be grateful if the our document 'Environment Agency Guidance on Requirements for Land Contamination Reports' (July 2005) could be referenced in section 7 and the appendices.</p>	<p>Agreed, this should be included.</p>	<p>Included in References</p>