

Appendix 7.2

Planning Policy and Legislation

1 PLANNING POLICY

National Policy

National Planning Policy Framework (NPPF) (MHCLG, 2018)

- 1.1 The UK planning approach to the management of land contamination is risk-based, implemented by the National Planning Policy Framework (NPPF).
- 1.2 The NPPF (MHCLG, 2018) acts as policy for local planning authorities and decision-takers, both in drawing up plans and determining planning applications. Local planning authorities may determine the need for assessment and remediation of sites during the planning process. The Environment Agency is responsible for the management of groundwater resources in England and Wales, and for the control of groundwater abstractions under the planning and permitting regimes.
- 1.3 The Ministry for Housing, Communities and Local Government (MHCLG) has also produced National Planning Practice Guidance (MHCLG, 2018), which includes guidance on how land affected by contamination is dealt with through the planning regime.

Local Policy

Reading Borough Council

- 1.4 Policy CS34 (Pollution and Water Resources) of Reading Borough Council's Core Strategy (2008, amended in 2015) states that:

"Development will only be permitted where it would not be damaging to the environment through air, land, noise or light pollution; where it would preserve or ideally enhance ground and surface water quality; and where existing water resources, sewerage and wastewater treatment infrastructure are adequate to support the proposed development."

Proposals for development that are sensitive to the effects of air, noise or light pollution will only be permitted in areas where they will not be subject to high levels of such pollution, unless adequate mitigation measures are provided to minimise the impact of such pollution."

Development will be permitted on land affected by contamination where it can be demonstrated, to the satisfaction of the LPA, that the contamination can be satisfactorily remediated so that it is suitable for the proposed end use."

- 1.5 Policy CS36 (Biodiversity and Geology) states that:

"a) Development should retain, protect and incorporate features of biodiversity or geological interest (including protected species and their habitats) found within the application site into their schemes."

On sites with recognised biodiversity or geological value, development will not be permitted where there would be a direct or indirect adverse impact on the site, unless it can be clearly demonstrated that: -

i. The need for development clearly outweighs the need to protect the value of the site; and

ii. Appropriate compensation, impact minimisation, mitigation and compensation are provided."

b) Local Nature Reserves and Wildlife Heritage Sites will be safeguarded and where possible, enhanced. Permission will not be granted for any development that would adversely affect a designated nature reserve or Wildlife Heritage Site.

c) Any development that would sever or threaten the integrity of an established wildlife link, as indicated on an adopted proposals map, will not be permitted. Where applicable, developments should be designed to protect, consolidate, extend and enhance the network of wildlife links and corridors in and adjoining the Borough, working with neighbouring authorities where appropriate."

- 1.6 The Core Strategy is due to be replaced by the Draft Reading Borough Local Plan (Reading Borough Council, 2018), which details Reading's development up to 2036. Policy EN16: Pollution and Water Resources states that:

"Development will only be permitted where it would not be damaging to the environment and sensitive receptors through land, noise or light pollution; where it would result in no deterioration in, or ideally enhance, ground and surface water quality; and where adequate water resources, sewerage and wastewater treatment infrastructure will be in place to support the proposed development prior to occupation.

Proposals for development that are sensitive to the effects of noise or light pollution will only be permitted in areas where they will not be subject to high levels of such pollution, unless adequate mitigation measures are provided to minimise the impact of such pollution.

Development will only be permitted on land affected by contamination where it is demonstrated that the contamination and land gas can be satisfactorily managed or remediated so that it is suitable for the proposed end use and will not impact on the groundwater environment, human health, buildings and the wider environment, during demolition and construction phases as well as during the future use of the site."

2 LEGISLATION

European Legislation

European Water Framework Directive (2000/60/EC)

2.1 The European Water Framework Directive came into force in December 2000 and became part of UK law in December 2003. The Directive aims to protect and enhance the quality of:

- Surface freshwater (including lakes, streams and rivers);
- Groundwater;
- Groundwater dependent ecosystems;
- Estuaries; and
- Coastal waters out to one mile from low-water.

The Groundwater Daughter Directive (2006/118/EC)

2.2 This Directive expands upon Article 17 of the European Water Framework Directive. The Directive includes provisions for assessing groundwater chemical status and criteria for groundwater pollution trend identification.

The Environmental Liability Directive (2004/35/EC)

2.3 The above Directive establishes a framework on environmental liability with regard to the prevention and remediation of environmental damage based on the 'polluter pays principle', according to which the polluter pays for the prevention and remediation of environmental damage. The Directive's objective is to prevent and remedy 'environmental damage', which is damage to protected species and habitats (nature), damage to water and damage to soil.

National Legislation

The Environment Act 1995

2.4 The Environment Act 1995 (Section 57) amends the Environmental Protection Act (1990) and makes provisions for a risk based framework for the identification, assessment and management of contaminated land within the UK. The provisions of the Act came into effect in April 2000.

2.5 Part 2A is implemented by the Contaminated Land (England) Regulations 2006 and the Contaminated Land (England) (Amendment) Regulations 2012. Supporting Contaminated Land Statutory Guidance was issued by Defra in April 2012 (Defra, 2012), a summary of which is provided in the relevant guidance section below.

2.6 The Part 2A regime is aimed at ensuring that actions taken with respect to contaminated land are directed by a technically well-founded assessment of risk that considers the 'contaminant-pathway-receptor' scenario (contaminant linkage). Under the legislation, contaminated land is defined as:

“...any land which appears to the Local Authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land, that:

(a) ‘Significant harm’ is being caused or there is a significant possibility of such harm being caused; or

(b) Significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused.”

2.7 ‘Significant harm’ is defined in the guidance according to risk-based criteria and must be the result of pollutant linkages.

2.8 A source, pathway and receptor must be present to complete the pollutant linkage and for a potentially significant risk to exist. As such, the presence of contamination in itself does not necessarily indicate a need for remedial action. Accordingly, a site can only be considered ‘contaminated’ when a risk to the environment or human health is present due to the presence of a ‘source-pathway-receptor’ linkage. In such circumstances and where there is a significant risk posed to human health and/or the environment, the above Acts state that Local Planning Authorities (LPAs) must adopt a ‘suitable for use’ approach. This means that the approach to remediating a site is dictated by the site’s proposed end use.

Environmental Permitting (England and Wales) Regulations 2016

2.9 These regulations introduced a new streamlined system of environmental permitting in England and Wales for certain installations, waste operations, mobile plant and discharges to groundwater. Activities under these regimes are covered by a single form of Environmental Permit governed by one set of regulations.

Water Resources Act 1991 (as amended 2009)

2.10 The Water Resources Act (1991 and as amended 2009) introduced the definition of controlled waters and outlined measures that should be undertaken to protect water resources. The Act also details the responsibilities of the Environment Agency (EA) in relation to water pollution, resource management and flood defence.

Groundwater (England and Wales) Regulations 2009

2.11 The Groundwater (England and Wales) Regulations (2009) supplement existing regulations to protect groundwater in England and Wales. These regulations control groundwater pollution from contaminated land. The regulations provide a more flexible, risk-based approach than previous legislation and cover a wider range of substances.

References

- Environmental Permitting (England and Wales) Regulations (2016)
- European Commission (2000) European Water Framework Directive (2000/60/EC)
- European Commission (2004) The Environmental Liability Directive (2004/35/EC)
- European Commission (2006) The Groundwater Daughter Directive (2006/118/EC)
- HM Government (1991 as amended 2009) Water Resources Act
- HM Government (1995) The Environment Act
- HM Government (2006) The Contaminated Land (England) Regulations
- HM Government (2009) Groundwater (England and Wales) Regulations. SI 2009 No 2902
- HM Government (2012) Contaminated Land Statutory Guidance
- Ministry of Housing, Communities and Local Government (2018) National Planning Policy Framework
- Ministry of Housing, Communities and Local Government (2018) Planning Practice Guidance
- Reading Borough Council's Core Strategy (2008, amended in 2015) Policy CS34: Pollution and Water Resources
- Reading Borough Council's Core Strategy (2008, amended in 2015) Policy CS36: Biodiversity and Geology
- Reading Borough Council's Draft Reading Borough Local Plan (2018) Policy EN16: Pollution and Water Resources