

30 May 2008

The Chief Planning Officer:
County Councils in England
District Councils in England
Unitary Authorities in England
London Borough Councils
Council of the Isles of Scilly;

The Town Clerk, City of London;

The National Park Officer,
National Park Authorities in England;

The Chief Planning Officer,
The Broads Authority

Dear Chief Planning Officer

MODEL PLANNING CONDITIONS FOR DEVELOPMENT ON LAND AFFECTED BY CONTAMINATION

This letter is to circulate a new set of model conditions (attached at Appendix 1) intended for use by local planning authorities during development on land affected by contamination. This has been developed in conjunction with the Chartered Institute of Environmental Health's Standing Conference on Land Contamination Planning Subgroup and I am very grateful for their work on this.

Background:

The Government attaches great importance to making better use of land, and the re-use of land affected by contamination is at the heart of a range of Government policies. As you will be aware, PPS23: Planning and Pollution Control and its supporting Annex 2: Development on Land Affected by Contamination set out how the planning system can assist in the remediation of contaminated land through the process of development.

The principal planning objective when considering development on land affected by contamination is to ensure that any unacceptable risks to human health, buildings and other property, and the natural and historical environment from the contaminated condition of land are identified, so that appropriate action can be considered and then taken to address those risks. Annex 2 of PPS23 advises on the circumstances when it may be appropriate for local planning authorities to grant planning permission subject to conditions relating to the condition of the land and provides advice in respect to their use at 2.61 – 2.65.

The publication of PPS23 in 2004 had the effect that there are now two sets of planning conditions published in national planning policy relating to the issue of contamination. In addition to examples of conditions used by local planning authorities provided at Appendix 2B of Annex 2 of PPS23, there are suggested models of acceptable conditions in Appendix A of Circular 11/95 (conditions 56 – 59). These latter model conditions have been overtaken by the policy in PPS23. The intention of circulating these new conditions is to establish a single set of model conditions that is consistent with PPS23 policy. As such I would encourage their use to you. They replace Appendix 2B of Annex 2 of PPS23 and conditions 56 – 59 in Appendix A of Circular 11/95 which are hereby cancelled.

The new set of model conditions:

The new model conditions attached at Appendix 1 are intended to support effective implementation of PPS23 policy. At 2.62, PPS23 Annex 2 advises that local planning authorities should consider the use of three-stage conditions. Model conditions 1 – 3 follow this approach. At 2.63 the Annex advises that local planning authorities should consider imposing a condition in respect to the possibility of unsuspected contamination being discovered during the course of the development. Model condition 4 is intended for this purpose. At 2.65 Annex 2 advises that the use of a condition may be appropriate in respect of subsequent monitoring. Model condition 5 is intended for this purpose.

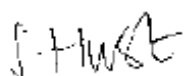
You will note that model condition 3 refers to the requirement for the local planning authority to receive a *verification* report that demonstrates the effectiveness of the remediation scheme, rather than the *validation* report referred to at 2.62 of PPS23 Annex 2. This is to conform to terminology in Defra and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

I would reiterate advice in Circular 11/95 that no condition should be imposed unless, having regard to the circumstances of each case, it meets the tests set out in the Circular. The attached conditions are only models, and may need adaptation to the circumstances of particular cases. Text in square brackets in the model conditions, [*thus*] are words that will commonly need variation.

I would also remind local planning authorities of advice in Circular 11/95 with regard to the compiling their own lists of model conditions (at paragraph 8).

If you have any queries please contact James Henderson at james.henderson@communities.gsi.gov.uk, or telephone 020 7944 3865.

Yours faithfully,



Steph Hurst
Deputy Director
Planning – Resources and Environment Policy

Appendix 1:

Model planning conditions for development on land affected by contamination:

Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions 1 to 4 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 condition 4 has been complied with in relation to that contamination.

1. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*'.

2. 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 historical environment must be prepared, and is subject to the approval in writing of 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.

3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. 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 (referred to in PPS23 as a validation 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.

4. 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 in accordance with the requirements of condition 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2, 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 condition 3.

5. Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of [x] years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority.

This must be conducted in accordance with DEFRA and the Environment Agency's '*Model Procedures for the Management of Land Contamination, CLR 11*'.

Reason (common to all): To ensure that risks from land 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 policy _____ of the adopted Local Plan (date)].