

## LOCAL PLAN SUB COMMITTEE - 8 AUGUST 2019

### PART I – NOT DELEGATED

#### 9. LOCAL PLAN TOPIC PAPER: GROUND CONDITIONS, CONTAMINATION AND POLLUTION (DCES)

##### 1 Summary

- 1.1 This topic paper sets out the issues which the new Local Plan will need to address in relation to ground conditions, contamination and pollution and proposes policy wording to be contained within the new Local Plan.

##### 2 Details

- 2.1 The planning system has an important role to play in protecting the environment, biodiversity, local residents, businesses and the public in general from all forms of development that could give rise to pollution. Pollution can be in many forms and includes all solid, liquid and gaseous emissions<sup>1</sup> to air, land and water (including groundwater) from all types of development.
- 2.2 Although pollution control regimes are governed by legislation outside of the planning process, the National Planning Policy Framework (NPPF) emphasises that planning policies and decisions should contribute to and enhance the natural environment which includes consideration for land stability, contamination and pollution.<sup>2</sup>
- 2.3 Paragraph 183 of the NPPF makes it clear that the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions where these are subject to separate pollution control regimes. Planning decisions should assume that these regimes will operate effectively.
- 2.4 With regards to land stability and contamination, national planning policy states that planning policies (and decisions) should only be concerned as to whether a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination and any proposals for mitigation<sup>3</sup>.
- 2.5 The legal definition of 'contaminated land' is set out in Part 2A of the Environmental Protection Act 1990:

'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 significant harm is being caused or there is a significant possibility of such harm being caused; or significant pollution of controlled waters is being, or is likely to be caused.'

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<sup>1</sup> Emissions include noise, light, vibration, smell, smoke and fumes, soot, ash, dust or grit which has a damaging effect on the environment and the public's enjoyment, health or amenity

<sup>2</sup> Measures to protect and enhance water quality will be covered in a separate policy.

<sup>3</sup> Paragraph 179 of NPPF states that where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

- 2.6 The Local Plan should therefore contain a policy that ensures that any unstable land is appropriately remediated and any contaminated<sup>4</sup> land is allocated only for appropriate development.
- 2.7 Air pollutants (including dust and odour) have been shown to have an adverse effect on both health and the environment and the 2008 Ambient Air Quality Directive sets legally binding limits for concentrations in outdoor air of major air pollutants that impact public health such as particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) and nitrogen dioxide (NO<sub>2</sub>).
- 2.8 The Council is also required to carry out a review and assessment of air quality across the District. This involves measuring air pollution and trying to predict how it will change in the next few years. The aim of the review is to make sure that the national air quality objectives are achieved by the relevant deadlines. These objectives have been put into place to protect public health and the environment. In locations where the objectives are not likely to be achieved, the Council will designate an Air Quality Management Area and will put together a plan to improve the air quality through a Local Air Quality Action Plan.
- 2.9 There is currently one Air Quality Management Areas (AQMA) within the District for a residential location straddling the M25 motorway at Chorleywood which is an AQMA on account of NO<sub>2</sub>. Away from this location, statutory air quality objectives are met for all pollutants.
- 2.10 To ensure that objectives can continue to be met in future and to secure improvements in air quality, emissions arising from any development including indirect emissions, such as those attributable to associated traffic generation, must be considered in determining planning applications. Developments sensitive to air pollutants should also be located where future occupiers would not be subject to unacceptable levels of air pollutants from existing sources.
- 2.11 In considering noise and vibration impacts, it is important to ensure noise-sensitive developments are located away from existing sources of significant noise and that potentially noisy developments are located in areas where noise or vibrations will not give rise to adverse impacts on surrounding occupiers or the environment, or where impacts can be minimised and mitigated.
- 2.12 The NPPF also states that where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity it should be the applicant of the new development to provide suitable mitigation before development has been completed.
- 2.13 National Planning Practice Guidance (PPG) sets out that plan-making and decision taking should consider whether or not:
- a significant adverse effect is occurring or likely to occur
  - an adverse effect is occurring or likely to occur; and
  - whether or not a good standard of amenity can be achieved.

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<sup>4</sup> It is important to note that land that does not fit this legal definition of 'contaminated land' may still be affected by contamination.

- 2.14 The PPG also provides a noise exposure hierarchy and refers to the Explanatory Note of the Noise Policy Statement for England which the Council currently uses to assess issues of noise.
- 2.15 The draft policy will therefore state that the Council will have regard to the PPG and the Explanatory Note for the Noise Policy Statement for England.
- 2.16 In common with all other built-up areas, artificial lighting is essential for safety and security within the District. There may also be some opportunities to add to the amenity of the built environment by highlighting buildings and open spaces of character.
- 2.17 Equally, insensitive lighting (light pollution) can have a negative effect on the amenity of surrounding areas and have a negative impact on biodiversity by influencing plant and animal activity patterns. In particular, light pollution can be harmful to birds, bats, and other nocturnal species that avoid overly lit areas.
- 2.18 The draft policy will need to include considerations for development proposals which include external lighting.
- 2.19 The proposed Draft Ground Conditions, Contamination and Pollution Policy is set out in Appendix 1 to this report.

### **3 Policy/Budget Reference and Implications**

- 3.1 The recommendations in this report are within the Council's agreed policy and budgets.

### **4 Financial, Legal, Equal Opportunities, Staffing, Environmental, Community Safety, Public Health, Customer Services Centre, Communications & Website, Risk Management and Health & Safety Implications**

- 4.1 None specific.

### **5 Recommendation**

- 5.1 That the Local Plan Sub Committee note the contents of this report and recommend to the Policy and Resources Committee the Draft Ground Conditions, Contamination and Pollution Policy as set out in Appendix 1.

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#### **Background Papers**

National Planning Policy Framework (2019)

National Planning Practice Guidance <https://www.gov.uk/guidance/noise--2#significant-observed-adverse-effect-level>

Noise Policy Statement for England 2010

<https://www.gov.uk/government/publications/noise-policy-statement-for-england>

Explanatory Note to the Noise Policy Statement for England (DEFRA 2010)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69533/pb13750-noise-policy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69533/pb13750-noise-policy.pdf)

Chorleywood AQMA [https://uk-air.defra.gov.uk/aqma/details?aqma\\_ref=56](https://uk-air.defra.gov.uk/aqma/details?aqma_ref=56)

Air Quality guidance (MHCLG) <https://www.gov.uk/guidance/air-quality--3>

## **APPENDICES**

Appendix 1 Draft Ground Conditions, Contamination and Pollution Policy

# APPENDIX 1

## DRAFT GROUND CONDITIONS CONTAMINATION AND POLLUTION POLICY

### Ground Conditions, Contamination and Pollution

It is important that a site is suitable for its proposed use taking account of ground conditions, including land instability and contamination.

To protect the environment and quality of life it is also important that existing or new development is not adversely affected by or put at unacceptable risk from unacceptable levels of soil, air, water or noise pollution.

The District enjoys a generally high environmental standard. However, the minimisation of pollution and contamination remains a key local priority. The Council will consider the possible polluting effects of a development proposal on aspects such as amenity and surrounding land-uses, and will take account of the agent of change principle<sup>1</sup>.

Where possible, development proposals should also take opportunities to improve local environmental conditions and to remediate or mitigate despoiled, degraded, derelict, contaminated or unstable land.

<b>Policy xx Ground Conditions, Contamination and Pollution</b>	
(1)	Development must not contribute to; be put at unacceptable risk from; or be adversely affected by unacceptable levels of soil, air, water, light or noise pollution, odour, vibration, disturbance or land instability. Where mitigation measures are required to avoid unacceptable impacts, these must be capable of being implemented and permanently maintained.
(2)	Opportunities should be taken to improve local environmental conditions and/or to remediate or mitigate despoiled, degraded, derelict, contaminated or unstable land.
<b>Ground Conditions</b>	
(3)	The Council will only grant planning permission for development on, or near to, former landfill sites or on land which is suspected to be contaminated or subject to land instability, where the Council is satisfied that: a) There will be no threat to future users or occupiers of the site or neighbouring land; and b) There will be no adverse impact on the quality of local groundwater or surface water quality.

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<sup>1</sup> Under the agent of change principle, if new development or uses are to be introduced near a pre-existing business, such as a live music venue, it is the responsibility of the developer to ensure solutions to address and mitigate noise are put forward as part of proposals.

### **Air Quality**

- (4) Development will be permitted where it would not:
- a) Have an adverse impact on air pollution levels, particularly where it would adversely affect air quality in an Air Quality Management Area; or
  - b) Give rise to, or be subject to unacceptable levels of air pollutants, odour or disturbance from existing pollutant sources.

### **Noise and Vibration**

- (5) Development will be permitted where it would not:
- a) Have an unacceptable adverse impact on the indoor and outdoor acoustic environment of existing or planned development, or give rise to unacceptable vibration impacts;
  - b) Have an unacceptable adverse impact on countryside areas of tranquillity which are important for wildlife and countryside recreation; or
  - c) Be subject to unacceptable noise or vibration levels or disturbance from existing noise or vibration sources whether irregular or not.
- (6) Noise or vibration from proposed commercial, industrial, recreational or transport use should not cause any significant increase in the background noise or vibration level of nearby existing noise-sensitive property such as dwellings, hospitals, residential institutions, nursing homes, hotels, guesthouses, schools and other educational establishments.
- (7) Proposals which have the potential to cause or exacerbate noise and vibration impacts on land uses or occupiers in the locality, or which may be affected by existing sources of noise or vibration, must fully assess such impacts.

### **Lighting**

- (8) Development proposals which include external lighting should ensure that:
- a) Proposed lighting schemes are the minimum required for public safety and security;
  - b) There are no unacceptable adverse impacts on neighbouring or nearby properties;
  - c) There is no unacceptable adverse impact on the surrounding countryside;
  - d) There is no dazzling or distraction to road users including cyclists, equestrians and pedestrians;
  - e) Road and footway lighting meets the County Council's adopted standard; and
  - f) There is no unacceptable adverse impact on wildlife, habitats or habitat features.

## ***Reasoned Justification***

The planning system has an important role to play in protecting the environment, biodiversity, local residents, businesses and the public in general from all forms of development that could give rise to pollution. Pollution can be in many forms and includes all solid, liquid and gaseous emissions to air, land and water (including groundwater) from all types of development.

Pollution may include emissions to land, air or water including noise, light, vibration, smell, smoke and fumes, soot, ash, dust or grit which has a damaging effect on the environment and the public's enjoyment, health or amenity.

While in many cases pollution control regimes are governed by legislation outside of the planning process, the NPPF emphasises that planning policies and decisions should contribute to and enhance the natural environment which includes consideration for pollution, land instability and contamination.

As part of this role, both existing and new development, including changes of use, should be protected from unacceptable levels of pollution or instability as required by Policy xxx. Measures to protect and enhance water quality are provided by Policy xxx.

## **Ground Conditions**

The Spatial Strategy for the District prioritises the use of previously developed brownfield land to deliver the growth needed in the District. However, the risk of pollution arising from contamination and the impact on human health, property and the wider environment also needs to be considered.

The Council maintains a register of contaminated land. The information stored on the formal register is that relating to regulatory action and remediation that has been undertaken at sites within the District. There are currently no sites listed on the Council's Contaminated Land Register.

Contamination is more likely to arise in former industrial areas but cannot be ruled out in other locations, including in the countryside. Some areas may be affected by the natural or background occurrence of potentially hazardous substances, such as radon, methane or elevated concentrations of metallic elements.

Land instability may also affect the suitability of a site to accommodate development, and proposals will need to demonstrate that any such sites are, or can be made safe.

Whether contamination or land instability affects a particular site can only be identified through a specific investigation. To establish the risks that a site poses, it is necessary for applicants to use a competent and suitably experienced consultant to investigate and, where necessary, remediate contamination to mitigate the risk in accordance with best practice guidance.

Where an application relates to contaminated land or land which is suspected to be contaminated, applicants will need to submit details of an investigation of the site detailing any remedial measures

that need to be carried out. The approved remedial measures will be secured through the use of planning conditions.

### Air Quality

Air pollutants (including dust and odour) have been shown to have an adverse effect on health and the environment, and the 2008 Ambient Air Quality Directive sets legally binding limits for concentrations in outdoor air of major air pollutants that impact public health such as particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) and nitrogen dioxide (NO<sub>2</sub>).

The Council is also required to carry out a review and assessment of air quality across the District. This involves measuring air pollution and trying to predict how it will change in the next few years. The aim of the review is to make sure that the national air quality objectives are achieved by the relevant deadlines. These objectives have been put into place to protect public health and the environment. In locations where the objectives are not likely to be achieved, the Council will designate an Air Quality Management Area and will put together a plan to improve the air quality through a Local Air Quality Action Plan.

There is currently one Air Quality Management Areas (AQMA) within the District for a residential location straddling the M25 motorway at Chorleywood which is an AQMA on account of NO<sub>2</sub>. Away from this location, statutory air quality objectives are met for all pollutants.

However, to ensure that objectives can continue to be met in future and to secure improvements in air quality, emissions arising from any development including indirect emissions, such as those attributable to associated traffic generation, must therefore be considered in determining planning applications. Developments sensitive to air pollutants should also be located where future occupiers would not be subject to unacceptable levels of air pollutants from existing sources.

Applicants for development should have regard to any emissions arising from the proposed use/development, and seek to minimise those emissions to control any risks arising and prevent any adverse impact on local amenity. Environmental Health will be consulted on applications which may affect air quality.

Proposals that can raise issues of odour emissions, for example extraction systems for restaurants/takeaways, must be accompanied by details of the equipment to be installed including any odour abatement measures.

Where significant increases in emissions covered by the nationally prescribed air quality objectives are proposed, the applicant will need to assess the impact on local air quality by undertaking an appropriate modelling exercise to show that the national objectives will still be achieved.

### Noise and Vibration

To support the health and quality of life of the community, it is important to ensure noise-sensitive developments are located away from existing sources of significant noise and that potentially noisy

developments are located in areas where noise or vibrations will not give rise to adverse impacts on surrounding occupiers or the environment, or where impacts can be minimised and mitigated.

In considering noise and vibration impacts, the Council will have regard to the National Planning Practice Guidance and Explanatory Note of the Noise Policy Statement for England.

Where proposals may create or be subject to noise and/or vibration, applications will need to be supported by a noise and vibration assessment to consider impacts and any resulting requirement for mitigation.

Necessary mitigation measures will need to be implemented and maintained in the long term and will be secured by condition.

### Lighting

In common with all other built-up areas, artificial lighting is essential for safety and security within the District. There may also be some opportunities to add to the amenity of the built environment by highlighting buildings and open spaces of character. However, it is important to avoid insensitive lighting (light pollution) which can have a negative effect on the amenity of surrounding areas and have a negative impact on biodiversity by influencing plant and animal activity patterns. In particular, light pollution can be harmful to birds, bats, and other nocturnal species that avoid overly lit areas.

Proposals incorporating new lighting may require a Lighting Impact Assessment to consider potential for impacts and any measures to mitigate these. Necessary mitigation measures will be secured by condition.