

Up-front reporting

- how much? How little? And who to talk to?

Be warned - It looks like local authorities are going to start asking for Phase II site investigations as well as desk studies as a Pre-planning requirement.

The idea of 'up-front' desk studies might seem like a good one from a local authority perspective, as in theory it should avoid the possibility of them consenting a development which subsequently turns out to be unsustainable due to the presence of gross contamination.

But, the recent case of Technoprint Ltd v Leeds City Council could make obtaining permission, even with a Phase I study much more of an uphill task.

In this landmark case, planning permission was granted to the owners for 12 flats on an old repair shop site by Leeds City Council. This decision was then quashed by the High Court on the grounds that it was irrational and unreasonable.

You can find the court transcript here if you'd like the full details <http://www.bailii.org/ew/cases/EWHC/Admin/2010/581.html>. But, in short, the case hung on the fact that the planning officer had granted permission under delegated authority even though land contamination had been identified as a main issue and despite comment from the technical officer that no phase I (desk study) had been provided and that a phase II (SI) and remediation statement might be needed.

The judge summed up by saying:

"I appreciate that solutions can usually be found to overcome problems associated with land contamination. It does seem to me, however, that a reasonable local planning authority would have demanded much more information from the [applicant] before deciding to grant permission rather than grant permission subject to conditions when the extent of any potential problem was simply unknown."

What will this mean for future planning applications?

Because of the outcome of this case there is now advice to local authorities that they should also be asking for appropriate level of Phase II Site Investigation along with Phase I desk studies.

Marcus Bell, the contaminated land officer for East Cambridgeshire had this to say on the matter:

To avoid the potential situation of application refusals or the LPA granting an 'untenable' planning consent, early liaison with the Councils Planning department and particularly the relevant contaminated land staff, is

recommended. Personally I welcome this liaison because we can discuss any particular areas of concern and indicate what scale of investigation etc is likely to be necessary.

Why it's vital to get Phase I and II right

Giles Lock explains that EPS have always had a very practical approach to this section of the planning process:

'We talk to the right people and we understand the issues on both sides. As Marcus has pointed out, it's important to liaise with the local contaminated land officer to establish what's needed and if there's anything specific to look out for. It's going to be up to us to recommend to clients an appropriate Exploratory SI (where needed) that can cost effectively provide the information necessary to demonstrate that a proposed development is viable.

Effectively we're telling our clients they need to spend more money before they even get planning – which might end up being refused for any number of unrelated reasons, so we have to get it right.

He goes on to say:

'There's no point in testing for something that we know we won't find, it's costly and time consuming. Knowing what tests to do and what to rule out can save a client vital time and money. We can only do this kind of site specific report planning if we have a good working relationship with the local land officers, something many companies don't seem to think is necessary.'

Marcus Bell has an additional thought:

'Although I can appreciate developers would not want to commit resources to a site before they know they will be obtaining planning permission, these factors may encourage a higher standard of environment assessment.'