Interactions Between Government Policies Affecting the Planning and Development of Brownfield Land in England

July 2025

Anonymised evidence cards submitted through National Brownfield Forum members between May and June 2025

The evidence cards should be read in conjunction with the main report available on the CL:AIRE website

Contents table

To search for a specific evidence card from the table below use #EC <insert card no.> in the pdf search function.

Title: Development delays and additional costs due to conflict between groundwater policies for abstraction, treatment and discharge of groundwater

Stakeholders affected: Care home developer, Remediation/enabling subcontractor, Environment Agency (policy regulator), local trades, businesses and new care home occupants.

Problem statement: Lack of joined up thinking between planning, environmental permitting for mobile plant, groundwater abstraction licencing and discharge consents.

Policy interactions: Planning requirements to clean up contaminated groundwater are often thwarted by the differing objectives of abstraction licencing and discharge consents.

Description of real-world example: In August 2021, *** was appointed by a care home developer to remediate a former fuel terminal at *** near ***. The site was contaminated as result of its former use. Fuel contamination was present within the chalk aquifer beneath the site. Remediation was required under planning to reduce this contamination to acceptable levels as part of the development.

Working with the customer's consultant and in liaison with the planning regulators the Remediation Contractor developed an acceptable remediation strategy for the site. Implementation of this strategy required deployment of *** environmental permit for mobile plant to abstract and treat the contaminated groundwater (with the Environment Agency). This activity also required an Environment Agency abstraction licence and a discharge permit for discharging treated water to the local sewer.

The Environment Agency rejected our abstraction licence application due to potential for depletion of the aquifer. As an alternative they suggested treating the groundwater and re-injecting into the aquifer so that it didn't become depleted. This required a discharge consent with the Environment Agency. Despite making this application and following up on numerous occasions, no response was ever received from Environment Agency department responsible for approving the discharge licence.

Impact: Delays to the project of over 6 months whilst we waited for response from Environment Agency. No response was received, and project timings were becoming critical. In the end we had to modify the remediation reducing its efficacy and resulting in increased future risks to groundwater.

Title: Development delays and additional costs due to policies regarding a stockpile of soil at a Confidential Site

Stakeholders affected: Confidential Customer (housing developer), Remediation/enabling subcontractor, Environment Agency (policy regulator), local trades, businesses and potential new homeowners.

Problem statement: Stockpiled materials from historical activities are being determined as waste on development sites. This removes the potential to re-use suitable materials quickly and effectively for the development purposes using industry best practice (under CL:AIRE DoWCoP).

Policy interactions: Valuable, development essential materials are being deemed as waste (under Waste Framework Directive 2008) causing significant project delay and associated costs. Once waste classification is applied it's not possible to apply best practice in accordance with CL:AIRE DoWCoP due to the EA's current position statement.

Description of real-world example: In August 2021, the Customer had recently acquired the Site. The 10acre site had planning permission for >100 houses. The site included a 23,000m^3 soil and stones stockpile (containing some deleterious materials) that had been left on the site by the previous site owner, on agreement of the Customer. The stockpile material was required by the Customer to raise site levels which was required under the planning permission for the redevelopment to reduce flood risk at the site.

*** planned to process this stockpile under its Environmental Permit for remedial treatment using mobile plant, in order to segregate oversize and deleterious materials, to render it physically suitable for re-use as general engineering fill. The Customers consultant had already identified that the stockpile was chemically suitable for re-use without the need for any treatment). It was then proposed to re-use this stockpile as general engineering fill under CL:AIRE DoWCoP.

The above process would normally have taken 4-8 weeks. However, this proposed process was rejected by the local EA office, on the basis that the stockpile was deemed to be waste as it had been stockpiled at the site prior to the development. The EA stipulated that the only mechanism available to re-use this stockpile of soil on site was a "Deposit for Recovery permit".

Following several rounds of communication with the EA including a site visit to view the stockpile, *** applied for a Deposit for Recovery permit in February 2022. The permit was issued by the EA in March 2023.

Impact: Significant delays to the project during the negotiation/consultation/pre-application period with the EA, and then subsequently during the permit application process. During the permit application process, the 20,000m^3 (processed fines) stockpile had to be moved on 3 occasions for site logistics reasons, with associated costs and carbon emissions (costs alone estimated at circa £100,000). Ultimately, the material was re-used under the Deposit for Recovery Permit *exactly* as it would have been under CL:AIRE DoWCoP, but with the addition of significant time and cost, including use of the regulators overstretched resources.

Had the material not been required for ground improvement purposes (surcharging the underlying geotechnically poor ground) after initially being relocated 3 times, due to foreseeable prolonged timescales to secure a permit for re-use, the material would likely have been removed off site and the corresponding volume of clean fill imported to meet site development levels. This would have resulted in significant increase in carbon emissions caused by the project, and over 5,000 HGV movements on/off site on a congested road network.

Title: Surface water management on a construction site

Stakeholders affected: Developer / Contractor, Environment Agency

Problem statement: Developer & Contractor required to apply for a discharge permit for managing surface water during the construction phase. Planning consent has been approved as have all drainage options, but the Environment Agency consider surface water management on a construction site to be trade effluent. The requirement for a permit is not captured /covered in planning consultation. This is a separate permit that is required (largely as a response to silt pollution from construction activities)

Policy interactions: Planning & Permitting

Description of real-world example: There is no available standard rules permit for surface water management on a construction site, therefore a bespoke discharge permit application must be made. This is expensive and time consuming. The assessment includes consideration of the presence of specific substances (an ever-increasing list of potentially problematic chemicals in the water environment).

Both of the two example sites are former greenfield and the land quality investigation considered a range of chemical sources that might be present, including the potential for pesticide residues; relevant soil testing was undertaken. The results showed all concentrations at or below the laboratory limit of detection.

The ground investigation was submitted with the permit application, however a Schedule 5 notice was then issued from the Environment Agency with a 5 day action period. The schedule 5 notice required a minimum of 1 sample of water to be tested for all specific substances to provide evidence there was no risk of these substances entering the surface water.

A laboratory quote for a single water sample of all specific substances was £11K and would be at least 7 day turnaround. The laboratory also confirmed what the project team already knew, that the majority of the specific substances listed would not be present on most sites as they had very specific sources.

The requirement for the data request was queried with the Agency given the water being captured is rainwater and the only source of contamination would be infiltration through the soil and sources had been assessed and tested in the ground investigation. The Agency responded that a risk-based assessment could not be made from the soil sampling, it could only be done via a minimum 1 sample of water and this must be compared to the EQS values. Also since we could not provide this in the allocated 5 days the permit application was being returned.

The Project Team continue to try and explain to the Agency that the requested testing should not be required and the costs of delivering this is prohibitive and excessive.

This issue is mirrored on construction sites across England

Impact: Construction activities cannot commence until the permit for discharge of captured surface water during the construction phase is granted otherwise the Agency can, and have, threatened legal action for operating without a permit. This causes considerable delays delivering developments.

The cost of delivering any meaningful water data is excessive and the Agency are not considering the commercial implications of their blanket, default testing suite.

This approach completely undermines the risk-based assessment set out in LCRM by discounting a robust CSM in a suitably designed ground investigation.

The Agency team looking at the discharge application do not seem to understand the approach to assessing land quality and refer to risk when they are in fact looking at hazards.

There is an increased risk of a site flooding and potentially causing the discharge of silty water as sites must hold captured rainwater on site until a permit is issued.

Title: Historic landfill and strategic expansion (Part Govn' funded scheme)

Stakeholder affected: Commercial developers, remediation contractors, Local Authority, Environment Agency, Land Agent

Also effecting permit holder, landowner, developer, Local & Combined Authorities Growth Plan, Government funders. Key levelling up site with approved planning and key highway infrastructure already delivered, without objection.

Problem statement: Closed dilute and disperse landfill / land raise with Waste Management License still active. Earthworks needed to improve the condition of the site to provide stable banks and prevent landslip in the adjacent river (required regardless of development); earthworks required to deliver level and engineered development platform.

The site was allocated for commercial development and granted planning consent after full consultation with all consultees. A land agent, on behalf of the project funding committee purchased the site from a subsidiary of the permit holder to facilitate the development. Some basic earthworks are required to improve the site condition and facilitate development (inert waste that has already been deposited at the landfill, no new waste will be introduced). The Agency have stated the earthworks can only be undertaken if the current WML is varied into an EPR permit to allow 'overtipping' that complies with the Landfill Directive.

Policy Interactions:

EPR -The Permit holder is concerned that trying to update the WML into an EPR permit may place unreasonable regulatory burden on them to comply with guidance designed to work with landfill directive compliant sites.

Planning - The Combined Authority, local MP's & Ministers concerned the project cannot be delivered in a reasonable timeframe after considerable government funding has already been put into key infrastructure.

Growth Agenda - The Local Planning Authority identified the site to promote local businesses and employment, without the development businesses will move out of the area.

Commercial viability - Funders & Land Agent are concerned there is no return on the investment and there is a risk that commercial funders will identify the scheme as a bad return and stop funding if clear progress is not made soon.

Description of real-world example: As a regulated landfill the earthworks require a permit in place to allow deposit of waste. The Project Team engaged with the Agency national permitting team with a view to undertaking pre -app consultation in late 2023/24. This did not progress as feedback indicated different individuals / teams in the Agency were not in agreement how this could be achieved. The Project team therefore sought legal opinion for whether the works could reasonably be done under the existing WML with update of all associated risk assessments and supporting documents since the waste being reengineered has already been deposited under the WML, no new waste will be imported and the WML is

still in force. This approach was reviewed and agreed through a Kings Counsel review and would mean no separate variation into an EPR permit would be required, no concessions under the LFD would be needed and the approach would not cause land blight. The landfill as a whole does not meet the LFD obligations.

This also aligns with the highway construction which was completed through the landfill that went ahead unhindered pre 2018 and involved far greater earthworks and much deeper disturbance and replacement of the waste mass.

No constraints on the development were raised during any of the planning consultations and indeed the earthworks scheme was developed with the intention of using a mobile plant permit and DoWCoP, since this approach had been used on a number of other well documented landfills pre-2020.

The Agency objected to any earthworks being undertaken under the WML and reiterated an EPR permit, via variation of the WML would be required. After intervention by MPs and the LPA CEO it was agreed in January 2025 to reengage with the Agency using the pre-app consultation route to allow the Project Team to explain the issues around applying for an overtipping variation. The project team started pre-app process again on the back of this meeting but when the comments were received from the Agency they stated the current guidance must be followed and the site must be considered under the Landfill Directive. The pre app advice has not proactively moved anything forward and has simply confirmed what the project team already knew was the major constraint and concern. Pre-app provides reviews of reports but what is needed on this site is active and open engagement to understand all the different aspects and how these interact, it is far more complicated than just the Agency waste issue.

Works need to start Summer 2025 or funding may be withdrawn and the scheme will not be delivered.

Impact: The site is in poor condition and had no monitoring infrastructure in place, with steep slopes and the potential for landslide into the adjacent river. The proposed earthworks will improve the site condition, provide updated management plans, a long-term management scheme and complete the final restoration while also facilitating the approved development and essential employment and commercial growth. All works regardless of the regime are driven and supported by source-pathway-receptor risk assessment.

None of this will happen if a sensible solution to the earthworks is identified. If the regulatory burden imposed is too great or takes too long because the permit application is being considered against legislation & guidance that the conceptualisation of this landfill contradicts the project will fail.

Title: Deposit for Recovery permitting of previously permitted landfills

Stakeholders affected: Planning authority specified condition. Client, contractor and other consultant involved in decision making. Environment Agency involved in subsequent regulation & permitting.

Problem statement: Sites containing predominantly redeposited clean and natural soils which have been previously permitted as landfill sites (even though their permits have been surrendered) cause confusion for planning authorities and developers alike in term of waste management regulation, thereby hindering the development of such sites which in many cases may in practice not present any unacceptable environmental risks. In addition, the requirement for a DfR permit rather than a MMP, especially in the case of sites which only contain inert materials and a permit has been satisfactorily surrendered is unnecessarily onerous and a barrier to development.

Policy interactions: Confusion can arise if the planning consent refers to a Materials Management Plan, even though for former landfill sites it would not under prevailing legislation / policy be the appropriate solution to facilitate the work. There is often misunderstanding of this requirement at acquisition / early stage planning. The planning / environmental regulatory regimes are overly complex and confusing and often, the materials involved are effectively inert and may present no significant environmental risk, which is assessed as part of site investigations for the planning process. In addition, the requirement for a deposit for recovery permit for development of sites due to previous licensing as a landfill (even though the material within them may be or may present a similar level of risk to naturally occurring non-waste in the vicinity) causes lengthy delays and costs. This leads often to locking up or preventing the development of feasible sites when this could be covered under planning and or a simpler mechanism such as a MMP.

Description of real-world example: A historical landfill in England in the possession of a developer and containing excavation wastes from a road construction scheme (permit previously surrendered) underwent partial excavation with material redistributed and placed to create development platforms for a residential and commercial scheme. The outline planning consent specified that a MMP was required for the work. Following completion of the work, the planning authority subsequently requested evidence of compliance. Upon independent review by ***, it was evident that a Deposit for Recovery permit should have been the correct mechanism and this was applied for in retrospect and to cover re-excavation and redeposition of the material by tentative agreement with the EA following involvement of the EA environmental crime unit.

Impact: Due largely to delays with the EA permit review, the site has not yet had a permit issued and remains dormant and undeveloped, stalling development of a significant site which would provide local employment and housing. In addition, the permit will necessitate the excavation and redeposition of the same material in the same / similar locations (albeit whilst there is a permit in place) and thus incur significant and unnecessary cost and vehicle emissions together with potential nuisance issues such as dust and silt for what essentially entails a low-risk operation.

Title: Delays due to Local Authority queries on investigations, risk assessments or verifications. This is paired with an uneven coverage of experienced contaminated land officers able to process the work.

Worked Example of Small-Scale issues with Planning Departments: Contaminated Land Officers.

Stakeholders affected: Small-Medium Developers, Local Planning Authority, Specialist Remediation and enabling contractors, build contractors.

Problem statement: Trust in the competency of Small Companies (both Builders and Geo-Technical) by Local Authorities.

Policy interactions: N/A

Description of real-world example: Small projects in *** where works have been completed by small investigation-risk assessment companies who have demonstrated through work that site is suitable for use or can skip the risk assessment and simply move to protection of properties on small developments which is a saving to the developer in time and cost of risk assessment. Below is one of 5 examples available.

****: combined retrospective build of 3 flats and new build of 5 properties. Build company demonstrated competence and honesty when dealing with a low risk of gas protection and some soils replacement works, which were all conducted. Later modification to the new builds triggered a check of the works. One area was missed: the retrospective fit. Some 1 year of delays in getting response from the Local Authority, allowing sign off to allow refunding of the next project. With essentially the same conclusion that the development is safe.

Impact: Delays in project completion, Lack of access to future funding, Future funding, causing stress to the companies developing projects. Costs due to delays is frustrating, leading to developers not progressing projects in certain areas and slowing re development progress. Also leading to the developers not wanting to work in that area due to regulator over scrutiny of conclusions made by competent risk assessors-verifiers.

<u>Reflection of impact</u>

Government encouraging SME Businesses to conduct, to grow and fill the gaps of small redevelopment work. This lack of trust of the small, genuinely independent Contaminated Land companies seriously hampers the SME Build company's ability to gain future funding and complete projects allowing occupation.

Some of the issues are due to the complicated nature of the system, in that the small developers have not come across the requirements of certain aspects of contaminated land protection and need early hand holding to guide them, this could be their internal build program controls and forgetting to put in place some aspects of the process with regard to contaminated land, or simply not understanding the long term life of property risks associated with developing on contaminated land.

Title: Landfill Redevelopment under the Environmental Permitting Regulations 2016

Stakeholders affected: Environment Agency, ***

Problem statement: As well as large numbers of very old un-licenced landfills, there are significant numbers of landfills which were regulated under a Waste Disposal Licence following implementation of the Control of Pollution Act in 1974. Regulation then changed to Waste Management Licences (WMLs) in accordance with the Environmental Protection Act 1990 before the closure of many of these landfills in July 2001 prior to the implementation of the Landfill Directive. However, their WMLs (now environmental permits) were never surrendered, and these landfills remain in aftercare. Redevelopment of these landfills is not being undertaken due to the cost, complexity and timescales for varying their environmental permits.

Policy interactions: Re-use of waste soils in existing permitted landfills requires a permit variation which would bring the permit up to modern standards with additional, more stringent conditions. These can make landfill redevelopment financially unviable due to the addition of engineering controls and infrastructure, agreement of a new financial provision orders of magnitude higher than the existing one and potentially the payment of landfill tax. The permit holder also has a long-term commitment to permit compliance.

Landfill redevelopment requires planning permission, so the site is regulated under two regimes based on differing principles; negligible input and risk-based. There may be current impacts to controlled waters which were allowed under the old WML but form potential risks to receptors under planning.

Description of real-world example: *** was regulated from 1977 onwards as a dilute and disperse landfill for pulverised fuel ash (PFA). The landfill closed in 1994, but the licence was not surrendered. In February 2025, the landfill's permit was successfully varied to include excavation and re-deposition of 600,000m^3 of PFA to create a development platform for a 1.4GW and 50MW Battery Energy Storage Scheme (BESS), substation and associated infrastructure. Planning permission was also granted in January 2025.

As the majority of leaching from the PFA had already occurred, the re-deposited PFA will be placed directly on top of existing in-situ PFA and an impermeable cap is also not required. Landfill tax is not applicable as the PFA does not form a new landfill cell, and the existing aftercare period of 32 years has been maintained, reducing the financial provision and long-term commitment for the permit holder (developer).

Impact: The example shows how landfill redevelopment can be undertaken in compliance with the environmental permitting regime whilst being financially viable. The permit determination was also fast-tracked (6-months rather than 18+ months) for permit determination by the Environment Agency, allowing the site to meet its National Grid connection commitment. The development of the BESS will also help the UK's commitment to renewable energy and energy security.

Title: Regulatory positions and the role of citizen science

Stakeholders affected: Local planning authority, environmental regulator, local residents

Problem statement: A relandscaping project was carried out with public funds secured by competition and that needed to be spent within a short timeframe. The works involved moving waste materials, including asbestos waste, from an historic landfill. These were done with neither a permit nor under a material management plan yet the landowners did not face any action by the Environment Agency despite the continued presence at the surface of dangerous waste in the form of broken glass and ceramics from the landfill.

Policy interactions: The flawed way in which the relandscaping was carried out and the continued failure to deal with exposed dangerous waste resulted from a reluctance of the land owners to accept that the local residents' concerns were valid and once the issues had been taken on board, the lack of funds to render the site safe. The interaction between public funding mechanisms, planning and environmental protection resulted in delays and poor communication with members of the public.

Description of real-world example: A relandscaping project paid for by short term public funds secured by competition included reprofiling ground underlain by historic landfill. The works brought waste to the surface in newly created landforms. The landowners and their advisors only took action after local residents and an independent consultant they had commissioned flagged up the presence of, among other materials, asbestos in the exposed materials. The landowner eventually commissioned an asbestos survey and as a result took mitigating measures in the form of placing a capping layer over the exposed asbestos waste. No action was taken elsewhere where waste in the form of broken glass and ceramics were exposed in an area accessible to the public. It was accepted that the works were carried out with neither a permit nor a material management plan, yet the Environment Agency decided not to take any regulatory action for the acknowledged breach of waste law. In addition, and despite the continued presence at the surface of numerous fragments of broken glass and ceramics, the Environment Agency stated that the site was safe.

Impact: The landowners and local authorities have lost trust from at least some sectors of the public, weakening their credibility and their ability to secure future public funds in competitive allocations.

Members of the public demonstrated the value of citizen science and benefitted by having independent advice that allayed some concerns while validating others.

The Environment Agency has set a precedent by not pursuing a public body for a clear breach of waste law.

Title: Redevelopment of site containing ***

Stakeholders affected: Local Authority and development partners

Problem statement: Brownfield development sites may contain some legacy materials which are subsequently classified as waste. The material can be accommodated within the development without unacceptable risk. However, the Environmental Permitting Regime may not allow this material to be re-used on site. This adds considerably to the development costs if the material must be removed when it is excavated and can prove to be a barrier to development due to the high cost of off-site disposal.

Policy interactions: Some brownfield sites contain material that is suitable for re-use, but the Environment Agency's regulatory position does not currently allow the Definition of Waste Code of Practice to be used to keep these materials on the site of origin, and instead would require an environmental permit. The development will be subject to dual regulation as the site will have been considered under the planning regime, and conditions put in place to ensure that the site will be suitable for use and will not meet the definition of contaminated land under part 2A EPA 1990. This risk assessment will have considered the same sensitive receptors as considered under Environmental Permitting. If a site is compelled to seek an environmental permit to re-use material on site this can add significant time and cost to the project and could result in blight during conveyancing. These factors can make the site unviable or place a considerable burden on the public purse.

Description of real-world example: The site is part of a 48.5ha *** to the south of the town centre. This is the largest brownfield regeneration project ever handled in the area, and one of the largest in the region. A £100 million public infrastructure project has transformed the site to include employment land, residential, and integrated public facilities, with good transport connections.

Early discussion took place to appraise options for handling *** material arising from the previous site use. The *** material contains some residual naturally occurring radioactivity derived from the raw products historically used in fertiliser production

During establishment of infrastructure there was an opportunity to re-locate and re-use the *** material beneath roads. The main risk driver from the material is of inhalation of dust by humans. Encapsulation beneath roads would remove this exposure pathway. Risks to water and the natural environment were not significant. Excavation of the material and burial on site, or removal for disposal is determined as a waste activity regulated by the Environment Agency, so their advice was sought. As the advice was chargeable, it was provided in a reasonable timescale to allow decisions to be made, and an options appraisal to be carried out to compare remediation options.

The LA's Environmental Team are a consultee within the planning process when potential harm to human health from contamination is being considered. The team refer to guidance in the national planning policy framework and DEFRAs Land Contamination Risk Management to prevent unacceptable harm or pollution and to prevent land from becoming contaminated land as defined by the Environmental Protection Act. The issue of *** material on the *** has been managed during all stages of planning, enabling works and development. Waste regulation is a separate regime, that would also regulate the handling and final fate of the *** material. In effect this is dual regulation.

The EA issued a position statement that 'in-situ disposal of the *** material will require an EA Radioactive Substances Activity environmental permit'. The EA also stated that an exemption under Environmental Permitting Regulations 2016 could allow extraction and disposal in in a suitable disposal facility.

As a result, the decision was made to remove the *** material to a suitably licensed landfill at a considerable cost. This reduced potential delays in establishing essential infrastructure on the ***, but added considerably to development costs. The costs had to be borne from public funds and will reduce funds available for other regeneration projects.

Impact: £850,000 Of public funds were spent on off-site disposal of material that could have been safely used on site. There was an increased carbon footprint due to additional vehicle movements to a suitably licensed and operated hazardous waste landfill. An opportunity to secure sustainable remediation through redevelopment has been lost. Additional LA officer, consultant, contractor and regulator time was spent to regularise the excavation of material, and one of the least favourable remediation options had to be implemented.

The different approach taken by the Environment Agency to the agreed remediation strategy for the site has resulted in increased uncertainty and risk to taking forward development on other parts of the *** where it is known there is a risk of ***. This has resulted in time delays and additional costs to the build out of further phases of the ***.

Title: The challenge of effective regulatory engagement.

Stakeholders affected: Various Planning Authorities and the Environment Agency (Groundwater & Contaminated Land/Permitting), landowners, developers.

Problem statement: Considerable delays to the determination of Planning applications and the discharge of associated conditions for brownfield remediation. Statutory deadlines are regularly missed. When comments are received from the Environment Agency (EA), they are often unreasonable, inappropriate or reflect a misunderstanding of the submitted risk assessment, and there is no opportunity to communicate directly with the officer to resolve matters in a timely manner.

Policy interactions: Rather than a conflict of policy interactions, the issue relates to policies coming into force without the regulatory resources to effectively manage them. If Planning permission is required to remediate historic contamination, then there is an obligation on the regulator to make a decision on the application within the agreed timescales, and have the necessary competency to make informed decisions.

Description of real-world examples:

- EA does not have sufficient resources to offer pre-application advice, even if payment for engagement is offered.
- EA regularly misses statutory deadlines to respond to the LPA, and Planning officers are often unwilling to make a decision without their comments.
- Reports received from some LPAs communicating their frustration at the lack of response from their EA counterparts.
- In some instances, comments received show that the officer has not fully read or comprehended the submitted information as they request data or assessments that have already been provided; provide general copy/paste responses that are not site specific and inappropriate; are unwilling to accept the conclusion of a sustainability assessment undertaken in accordance with SuRF-UK guidelines; request investigation/assessment outside of the planning red line area.
- The inability to speak to the officer reviewing the application and having to go through a Planning Liaison Officer.
- There are instances where a strategy has been agreed with an officer who then leaves, and the replacement officer does not agree with the approach taken, taking the discussions back to square 1.
- EA officer requests additional site investigation and assessment (at great cost) which does not alter the conclusion of the initial assessment.

Impact:

- Significant time delays to remedial works and subsequent redevelopment. This creates procurement/supply chain challenges; contractual challenges; costs increases; impacts business aspirations and project viability.
- Increased cost and time delays associated with additional site investigations, assessments, recovery trials etc. that do not alter the initial conclusions and proposed remedial strategies.

Title: Properties purchased without conditions being fully discharged

Stakeholders affected: Residents, developers, CLOs, EA, LPAs

Problem statement: Homebuyers are able to purchase properties without contaminated land conditions being discharged.

Policy interactions: NPPF, Part 2A of the EPA 1990, Town and Country Planning Act 1990, LCRM, legal system/conveyancing

Description of real-world example: There are many developments across the country, where pre-commencement contaminated land conditions have been discharged, but the pre-occupation conditions are still extant. Conveyancing solicitors, in many/most cases, are not picking these up as they do not appear to be asking the right questions of LPAs, or may be unaware the condition has not been discharged. Condition discharges are not required to be reported under CON 29, so these would only be picked up when a conveyancing solicitor is going above and beyond.

Examples from the press: https://www.thesun.co.uk/money/property/21868884/worthless-new-build-developer-without-permission/

https://www.staffordshire-live.co.uk/news/property/families-left-living-unsellable-homes-8301582

Bradford new-build estate homes currently worth £0 - BBC News

Impact: Residents are unwittingly purchasing properties which may not be suitable for residential use, as they have not been subject to verification approved by the LPA. As such, these properties may still be on the LA's prioritised list under Part 2A of the Environmental Protection Act 1990. This could cause future issues for residents, especially if the information is not available or the developer has ceased trading.

If the issues need to be resolved after the event, the discharge of the outstanding conditions legally fall to the new owner of the property, but the developer may decide to undertake this work in case of reputational damage.

Some known impacts of this issue include:

- Potential health risks to homeowners and land users;
- Homeowners not being able to remortgage their property;
- Homeowners unwittingly becoming responsible for land contamination issues which should have been the responsibility of the developer to address;
- Homeowners (sellers) having to take out an insurance policy or undertake additional risk assessment themselves to resolve;
- House sales falling through, often close to completion, or sale delayed;
- Property value is significantly negatively impacted until issues resolved;
- Property cannot be insured, or insurance premiums and/or excess increase significantly, or land contamination excluded from policy;
- This issue is not discovered until time of resale; this can be years after the original build.

It's important to note that developers, including bulk housebuilders not discharging land contamination conditions is now commonplace. Furthermore, it can prove very difficult for Local Authorities to take enforcement action, many are under-resourced and reluctant to take action which may result in penalties for the Local Authority itself. There does not appear to be a system in place to prevent house sales before such planning conditions are discharged and similarly, it does not appear that LPAs regularly check to ensure that planning conditions have been discharged.

Title: Development continuing to commence

Stakeholders affected: Residents, developers, CLOs, EA, LPAs

Problem statement: The LPA enforcement team was unable to take enforcement action against a developer commencing development without discharge of their pre-commencement contamination condition.

Policy interactions: NPPF, Part 2A of the EPA 1990, Town and Country Planning Act 1990, LCRM

Description of real-world example: The LPA enforcement team determined not to take enforcement action against a developer commencing development without discharge of their pre-commencement contamination conditions, as their consultant continually submitted sub-par submissions, one after the other. As the submissions were 'being considered by the LPA', they were unable to take enforcement action at that time. Development continued as this carried on. The sub-par submissions not only took up a great deal of officer time to review and comment on, but also enabled development to continue. The CLO was unable to refuse the submissions as they were from a 'competent person' as per the NPPF, however it was clear that this consultant was out of their depth with the nature of work required. The consultant would not seek further expert help in this case.

On review, it was decided that the planning officer should have refused the discharge application earlier in the process, which would have enabled the enforcement team to get involved. The CLO has also changed internal practice by allowing only two attempts at a report before recommending refusal of the application.

Impact: Development continued, properties were constructed, and people moved in. All of the work had to be undertaken retrospectively with a significant impact to residents, the CLO, the LPA and the developer.

Title: Inconsistency in land contamination documentation requirements in Planning submissions

Stakeholders affected: Developer, land contamination consultant, CLO, Local Planning Authority, other internal and external consultees, the public.

Problem statement: There is inconsistency in the land contamination documentation which Local Planning Authorities require to be submitted in support of Planning applications.

Policy interactions: The NPPF, LCRM which refers to the government guidance at https://www.gov.uk/guidance/land-affected-by-contamination and accepted best practice confirm that PRA/Phase 1 and, if necessary, an intrusive investigation/Phase 2 should be submitted before a Planning application can be determined. However, some Local Planning Authorities (LPAs) do not require submission of any geo-environmental reports with applications and include a condition on the decision notice requiring submission of a PRA/Phase 1.

Description of real-world example: The NPPF requires that 'adequate site investigation information, prepared by a competent person' is submitted so that 'a site is suitable for its proposed use'. The government guidance at https://www.gov.uk/guidance/land-affected-by-contamination confirms that a 'proportionate but sufficient site investigation information' should be provided by applicants. It also states that 'The risk assessment should also identify the potential sources, pathways and receptors ('pollutant linkages') and evaluate the risks – which indicates that at least a PRA/Phase 1 should be submitted. It further states that 'Unless this initial assessment clearly demonstrates that the risk from contamination can be satisfactorily reduced to an acceptable level, further site investigations and risk assessment will be needed before the application can be determined' – which indicates that a site investigation/Phase 2 can also be required before the decision notice is issued.

However, the wording includes 'should' rather than 'must' or 'shall', therefore interpretation is at the discretion of the individual LPA.

Impact: This approach does not follow accepted good practice (as per the quoted documents above). It enables Planning permission to be granted before it is clear whether the development is feasible or practicable. There is resulting inconsistency which can be confusing for developers and consultants who will be working across various local authority areas. This approach may also result in sites with Planning permission being practically undevelopable or in delays to the implementation of the Planning requirements.

Title: Development permitted by Act of Parliament – Railway land

Stakeholders affected: Developer, land contamination consultant, CLO, Local Planning Authority, other internal and external consultees, the public.

Problem statement: Permitted development (PD) can take place without Planning permission or prior notification, on land which was authorised for development by an Act of Parliament, even where that land may be contaminated, or the development may have other environmental impacts.

In this case, the permitted development is to take place on railway land. In the early days of railway development in the mid-1800s, individual Acts of Parliament were required for each line.

(N.B. A similar situation may occur with older Planning permissions which do not include a date by which the permission must be implemented.)

Policy interactions: This situation came to light when the consultant contacted the Local Authority Contaminated Land Officer (CLO) with a request to confirm no objections to use of an MMP via DoWCoP. There is no requirement for the developer to inform the Local Planning Authority (LPA) where PD is planned.

Description of real-world example: Where permitted development is to take place, the landowner/operator may choose to use best practice and undertake appropriate investigations and appropriate remediation. However, the work is therefore undertaken in the absence of additional information (from wider Planning consultees) which may impact on the investigation e.g. previous Part 2A investigations, local information etc. This may result in residual un-addressed risks.

Impacts include those on:

- The public
    - A lack of transparency due to information not being publicly available.
- The contaminated land regulator
    - Who may have local knowledge which is not utilised which could result in unaddressed risks which may require Part 2A attention in future.
- The Local Planning Authority
    - Has no control over such development which may, or may not, fit with local policies and plans.
- The Local Authority Regeneration Team
    - May have been able to contribute constructively to discussions about the site use.
- The landowner and their consultants
    - May remain un-aware of issues which could result in risks remaining to human health and environmental impacts.
- Other consultees/stakeholders e.g. Lead Local Flood Authority.

The scale of this issue may not be nationally significant, although it may be locally impactful.

In this real-world example, the consultant is now in dialogue with the CLO.

Impact: It is not the purpose of DoWCoP to initiate liaison about potentially substantial redevelopment on land which may be contaminated. Relying on PD for redevelopment of sites subject to historical Acts of Parliament may result in unidentified risks and subsequent potential impacts on receptors. It is not transparent and is predicated on the landowner/developer's integrity. Such sites should be subject to the same Planning requirements as non-PD sites.

Title: Environment Agency Refusal to Engage on Remediation Scheme Results in Increased Costs and less Sustainable Outcome

Stakeholders affected: Client, Consultant (a top 10 UK geoenvironmental consultant), Contractor (a national remediation specialist), Environment Agency (EA) was regulator WRT controlled waters and waste, Local Planning Authority (LPA), site owner.

Problem statement: Environment Agency refused to engage either voluntarily, under the chargeable planning advice service or under formal planning process despite planning application being specifically for Remediation and Earthworks with attempts made over a period of 18 months to 2 years. Site was small but complex with gasworks tar contamination in soil and groundwater present in on, upstream and downstream of site. Environment Agency waste team stopped works with planning permission in place, conditions discharged, after mobilisation to site, delaying works for several months at significant cost to client/landowner and resulting in a more expensive and less sustainable outcome. Client impacted by additional costs (>£250K which ultimately fell to the *** and in turn the taxpayer).

Policy interactions: Environment Agency are a statutory consultee on land contamination issues under planning, however, they have insufficient resources to consult in this statutory role and often fail or refuse to review submitted reports and strategies whether consulted directly or via the local planning authority. The team instead issued generic letters simply referring qualified competent consultants to policy and guidance which had already been followed.

In this specific region, there appeared to be more available resource within the waste team but interactions with the waste team demonstrated a general attitude of mistrust by the waste team of clients and consultants. In this example the failure of the EA to engage or fulfil their statutory role worked against delivery of timely and sustainable developments and was obstructive to delivering remediation, environmental improvement and subsequent development. Notably, despite consulting a lawyer, the Client could not identify a route to escalate issues in the EA as an external party.

Description of real-world example: The site was impacted by coal tar contamination and surrounded by up-hydraulic gradient land which is also impacted by coal tar and associated contamination. The contamination was impacting controlled waters (Secondary A, River ***) and potentially a down-gradient SSSI. Engagement with the EA was sought at pre-planning stage by phone and letter, EA refused. Paid consultation with the EA was sought, EA refused. Consultation was sought under the planning process, EA refused to review or actively consult both to the Consultant and LA. EA issued a generic letter under planning consultation simply pointing to guidance. This is despite the planning application being specifically for remediation had been submitted with PRA, GQRA, DQRA for controlled waters and a Remediation Strategy to obtain planning condition discharge.

The proposed remediation work involved excavation and treatment of impacted unsaturated soils and replacement as well as treatment of encountered shallow groundwater. An in-ground barrier was considered to isolate the site from upgradient re-contamination (third party land) but not adopted due to the potential for this to divert contaminated groundwater flow from up-gradient land to controlled waters and towards an SSSI. The site was located in a wider area with a significant history of contaminative activities including coal tar works, metal working, landfills, scrapyards etc. The overall approach was one of environmental improvement. The value of the remediation works was £1.5m to £2m.

Planning permission was granted and pre-commencement conditions discharged by the LA. Contractor mobilised to site. Works were to commence under an MMP submitted under DoWCoP. The day after the final day of the DoWCoP consultation with the EA Waste Team, a refusal was received on the basis the EA had not reviewed the reports submitted to them and therefore despite permissions being in place, all works must stop. This is in the context of all reports and strategies being submitted on several occasions under planning and even alongside the DoWCoP documentation. The EA sat on and failed to review documents that had been in their possession for over 18 months.

Over five months were then lost with Contractor standing on site whilst comments went back and forth between the Consultant and the Environment Agency waste team. Minor changes were made to the reports and strategies, the final agreed overall remediation approach differed very little to that originally proposed except with an agreement to undertake some additional groundwater treatment which would have been very readily agreed upfront had the EA engaged at planning.

The EA took an extended period to respond to each interaction, emails were sent without signatures, it was unclear what roles individuals held, emails were sent at odd hours (often very late evenings) and often failed to be clear over exactly what the EA were seeking to achieve. It was clear that the available EA resource did not prioritise land contamination projects and rarely seems to have the authority and experience to reach a pragmatic and timely outcome.

Impact:

Ultimately the site was remediated but at significant additional cost (hundreds of thousands) and with a greater environmental impact from carbon emissions with standing plant and equipment on site.

The delays and lack of certainty on timescales was a contributing factor to the Client losing their occupier and although now remediated, the site has still not been built out several years later.

The additional cost was borne by the *** in terms of land value impact from the cost of delays on the remediation and earthworks and so ultimately the taxpayer bore the cost.

The Client is now more reluctant to consider sites with contamination as they find the EA difficult to engage, disorganised, unpredictable and unable to communicate clearly and competently.

Even when project teams seek to do the right thing in terms of following guidance, engaging designing sustainable outcomes and delivering difficult sites, the EA is obstructive and unprofessional in its approach, adding cost and delays to no environmental benefit. The EA's regulatory approach and lack of resource/prioritisation is a significant barrier as it makes remediation projects much riskier for those looking to invest and develop housing or commercial property.

Title: General issues with addressing land contamination during development

Stakeholders affected: Local authorities, environmental consultants, developers, owners and occupiers

Problem statement: A variety of poor practices by environmental consultants are experienced when addressing land contamination issues through the planning process. Examples include:

- Overreliance on standardised consultant reports, which do not satisfactorily reflect national and local policy and guidance, or site characteristics.
- Insufficient site investigations often inadequately justified and evidenced.
- Lack of use of appropriate statistics to assess results.
- Overuse of generic screening criteria and underuse of detailed risk assessments.
- Default use of standard less sustainable remediation techniques, such as cover systems.
- Not addressing and evidencing all approved remediation actions.
- Undertaking work beyond individual and collective competencies.

Different local authorities have:

- Varying land contamination requirements
- Varying approaches to addressing land contamination through the planning process.
- In some cases, significant resource constraints and training requirements exist.
- A limited understanding of the extent and significance of local authority contaminated land duties and the implications of not achieving them.

Policy interactions: The National Planning Policy Framework and most Council Local Plans require that contaminated land is addressed during development as a material planning consideration. Decisions on what level of information is acceptable within each Council are made by the local authority based on national guidance, such as the Environment Agency's Land Contamination Risk Management guidance, various industry guidance and local requirements.

The government typically does not issue prescriptive contaminated land guidance and so industry guidance is formed from a patchwork of guidance produced by a range of organisations such as Environment Agency, societies, institutes, industry bodies, academia and local authorities.

Cost is often the most important consideration when securing environmental consultancy.

Description of real-world example: The interaction of the identified common issues with consultants' work and differing levels of local authority resourcing and competence have various outcomes, which can significantly impact the delivery of projects.

Within local authorities where land contamination is deprioritised and/or reviews and advice are provided by inexperienced officers, poor practices will often go unchecked and unchallenged.

Within local authorities where land contamination is better resourced by experience contaminated land staff, with varying degrees of discretion, poor practices will be challenged.

Depending on how a local authorities address poor practices through the planning process, this may result in, failed planning applications or, where allowed, lengthy consultations until an acceptable level of information is produced.

Impact: Where poor practices go unchecked, while development may progress faster a greater chance of land contamination issues not being addressed will exist. There are possible significant implications for local authorities where sites then need to be addressed through Part 2A of the Environmental Protection Act 1990.

Appropriately addressing land contamination issues through the planning process can be lengthy and cause significant delays to projects, particularly where an environmental consultant is unable to satisfy land contamination requirements, or where officers are inconsistent or overzealous. Delays often cause significant costs to developers (for example, where a site has been mobilised or finance is linked to conditions being discharged) and delay and/or prevent residential and commercial units' being developed, which impacts upon housing and commercial provision locally and across regions. Equally, limited local authority resources can be impacted, preventing Contaminated Land Officers progressing statutory Part 2A duties.

Title: Insufficient land contamination information provided with planning applications

Stakeholders affected: Developer, Council and future occupants/site users

Problem statement: Environmental consultants routinely submit contaminated land information which does not sufficiently address land contamination issues at the initial planning application stage and when discharging conditions.

This is for a range of reasons including, the way in which work is tendered for (i.e. with an onus on cost rather than quality), standard approaches taken by different consultants, knowledge gaps by decision-makers at all levels, a lack of clear/prescriptive guidance and inconsistency in the approaches taken by different local authorities. A lack of oversight by enforcing authorities exists, which exacerbates the problem.

These deficiencies result in a variety of negative impacts on projects ranging from delays, increased costs of delivery, inadequate information approved at the planning application stage, through to land contamination issues not being addressed in line with regulations, policy and industry guidance. Ultimately, impacts may occur to people and the environment.

Policy interactions: The National Planning Policy Framework and most Council Local Plans require that contaminated land is addressed during development as a material planning consideration. Decisions on what type and level of information is acceptable within each Council are made by the local authority based on national guidance, such as the Environment Agency's Land Contamination Risk Management guidance, various industry guidance and local requirements.

The government typically does not issue prescriptive contaminated land guidance and so industry guidance is formed from a patchwork of guidance produced by a range of organisations such as Environment Agency, societies, institutes, industry bodies, academia and local authorities.

Description of real-world example: A long running major residential development, on a significantly contaminating historical use, was near completion. The developer submitted a planning application with a final verification report, which was refused by the Planning Authority. Multiple submissions and further planning applications were subsequently made to discharge the contaminated land condition. Examples of deficiencies included:

- The previously approved remediation strategy had missed several significant sources of contamination.
- The verification report missed/did not fully consider many approved remediation actions or account for enabling works undertaken by others.
- The developers had not complied with the remediation strategy during the development process, for example an appropriate watching brief was not kept, groundwater monitoring was not undertaken, and records had been mismanaged.

The local authority had not regularly checked the implementation of the remediation strategy or liaised with the applicant during development. The planning consultant and project managers did not fully understand land contamination and complained the local authority was being more stringent than neighbouring authorities.

Impact: While ultimately resolved, the development was significantly delayed and ultimately approved without all remediation actions having been fully addressed, resulting in possible ongoing liabilities and the need to manage land contamination issues into the future.

Reviewing multiple submissions represented a significant burden on the local authority Planning and Environmental Health teams and impacted on the delivery of other land contamination related work.

The lack of oversight with the project reduced the level of confidence in outcomes.

Title: Former Manufacturing Facility, ***

Stakeholders affected: Developer, Remediation Contractor, Build Contractor, Local Authority, Local community.

Problem statement: The EA will not allow us to use abstracted and treated water from the contaminated aquifer to be re-injected to improve and effect an in-situ remediation.

Policy interactions: EPR, Water Framework Directive, Water Resources Act, LCRM, PreApp discussions with Regulators

Description of real-world example: The site is a former *** contaminated site. The Remediation was designed to be ex-situ Bio for soils and a combination of In-situ chemical treatment for groundwater and some limited water abstraction for excavation facilitation. We need to recover small amounts of water to facilitate excavation much of which is needed to re-inject once treated and added to Potassium Permanganate. This is not being allowed and as such we are buying tap water in a very water short area to inject into the groundwater. The abstracted groundwater is instead treated and discharged into a main River. This is higher risk in principle and very unsustainable as we need to use more resource to treat as a result.

Impact: some minimal delay and a reasonable additional cost in supplying additional water treatment equipment and also lost time trying to negotiate but in essence a poor outcome for resource use, progress of the remediation which will be slower and much technical frustration! We are instead having to provide a large scale effluent treatment plant to treat *** contaminated water which instead of being returned to the plume and treated along the pathway will be treated and discharged directly to the river. The consent is not a zero level so in principle as a result of this decision we are increasing the load to the river of what is really necessary!

Reflections - This should be an automatically allowed activity under a Remediation Permit where groundwater requires cleanup

Title: Former Manufacturing Facility, Cambridgeshire

Stakeholders affected: Developer, Remediation Contractor, Build Contractor, Local Authority, Local community.

Problem statement: Standard planning conditions for all aspects of land contamination added to planning permission despite pre-app discussions, pre application review and approval of all documentation.

Policy interactions: planning permission, NPPF, LCRM, Town and Country Planning Act, standard condition wording, Pre-application discussions with Regulators

Description of real-world example: A full suite of documents relating to investigation and remediation had already been submitted and approved for a residential development. When, due to delays in the original approval, the scheme was no longer viable, permission for a commercial development was sought. All documents were updated to reflect the new end use and agreed by regulators during the planning approval process. Regardless however on grant of the planning permission all the usual standard pre-start conditions were attached. All documents were then reviewed (no changes to the development scenario. Whilst the local Authority had no significant comments that would or could not have been addressed in ordinary correspondence or during validation/verification of the works the EA had extensive questions most of which had been previously answered/ dealt with. Note this is a Designated Part2A site. A Special Site.

Impact: Around a 9-month delay was encountered before commencement and large amounts of EA and VertaseFLI time undertaken in reviews and minor documentation reviews. No changes to the way the remediation was to be done came from this.

Reflections - A simpler way would have been to simply condition the remediation be done with the initially reviewed document and agreement of a Validation/verification plan for the remediation as set out in the strategy which would have brought forward the development by 9 months, reduced all round workload and had no detrimental effect on the scope of the works. When documents are submitted and reviewed either as a pre-app or a part of a planning application which is later approved there should be no need for a condition or multiple planning conditions requiring the submission of the same information again. A more efficient way would be to have a planning condition that requires the remediation work to be carried out in accordance with the agreed Remediation strategy and to current guidance etc. The sign off of a verification report as a “pre-occupation condition” could be viewed as a “catchall condition” reducing workload for regulators in terms of review.

Title: Former Manufacturing Facility, ****

Stakeholders affected: Developer, Remediation Contractor, Build Contractor, Local Authority, Local community.

Problem statement: The EA took nearly 2 years to agree an abstraction licence to enable remediation of a Part2A special Site.

Policy interactions: planning permission, Water Framework Directive, Water Resources Act, NPPF, LCRM, Town and Country Planning Act PreApp discussions with Regulators

Description of real-world example: The site is a former *** contaminated site. The Remediation was designed to be ex-situ Bio for soils and a combination of IN-situ chemical treatment for groundwater and some limited water abstraction for excavation facilitation. The EA required us to have a "cut off trench" downgradient of the injection works in case of over injection. The permit this they also required an abstraction licence. This took almost 2 years to process. Incidentally other concurrent delays meant that this wasn't the longest delay. This is commonplace even when trying to abstract highly contaminated water to protect a River and other groundwater.

Impact: Delay to Project and much technical frustration!

Reflections - This should be an automatically allowed activity under a Remediation Permit where groundwater requires cleanup. We need to make this more expedient and simple in all but cases where the abstraction is so large or so close to drinking water abstraction that in depth consultation be required. A simple volume limit that is workable with remediation and a time limit of maybe 2 years would be sensible. May clients would have walked away by this time.

Title: Former Manufacturing Facility, Cambridgeshire

Stakeholders affected: Developer, Ecological Consultant, Remediation Contractor, Build Contractor, Local Authority, Local community.

Problem statement:

Policy interactions: Natural England Licensing requirement, planning permission, NPPF, Town and Country Planning Act.

Description of real-world example: at a development site in *** as part of the planning permission the demolition and clearance of the site was approved. This also required the closing of Badger Setts, Bat mitigation and management of vegetation to protect Birds and other fauna. This was all scoped out and detailed in the Ecological Management Plan submitted as part of the planning process. This was then conditioned as part of the development permission and had to be re-submitted for discharge, which it was in due course. After this a licence application had to be made to Natural England where the case for the closing of the badger setts had to be re-made alongside the same for the demolition of the buildings that had roost potential along with setting out the proposed mitigation (which was already in place as part of the CEMP).

Impact: The time taken to secure the license meant that the remediation season was missed and significant delay was incurred to the project of around 9 months. Ironically these delays were concurrent to some extent with other delays!

Reflections - The use of licensing for specific tasks on a site is often a duplication where planning conditions and the permission itself required the justification for loss of habitat to be made then NE require the same evidence re-presenting for assessment. this increases the workload of all concerned and could be streamlined by having a requirement in all planning permissions to make the assessment but once granted we should be able to select a licensed ecologist that can then undertake the works without further interactions. NE could then spend time effectively policing these schemes and the ecologists.

Title: Former MOD Site, ***

Stakeholders affected: Developer, Ecological Consultant, Remediation Contractor, Build Contractor, Local Authority, Local community.

Problem statement:

Policy interactions: Natural England Licensing requirement, planning permission, Town and Country Planning Act,

Description of real-world example: The development contained 350 homes in ****. As part of the planning permission the demolition and clearance of the site was approved. This also required the Bat mitigation to be in place. This was all scoped out and detailed in the Ecological Management Plan submitted as part of the planning process. This was then conditioned as part of the development permission and had to be re-submitted for discharge, which it was in due course. After this a licence application had to be made to Natural England where case for mitigation for the bats was required to be re-made. The consent was a hybrid consent but with most of the site area part of an outline application. Natural England required re-justification of the case for demolition despite the planning permission being in place for the same. Then when the detail was examined delays were encountered as we couldn't specific the time that final mitigation (i.e. in the built new homes) could be provided. We had proposed significant intermediate

Impact: The time taken to secure the license meant that the remediation season was missed and significant delay was incurred to the project of around 9 months.

Reflections - The use of licensing for specific tasks on a site is often a duplication where planning conditions and the permission itself required the justification for loss of habitat to be made then NE require the same evidence re-presenting for assessment. this increases the workload of all concerned and could be streamlined by having a requirement in all planning permissions to make the assessment but once granted we should be able to select a licensed ecologist that can then undertake the works without further interactions. NE could then spend time effectively policing these schemes and the ecologists.

Title: Former Chemical Manufacturing site, ****

Stakeholders affected: Developer, Remediation Contractor, Build Contractor, Local Authority, Local community.

Problem statement:

Policy interactions: Discharge consent, Mobile Plant Permits, water framework directive, Water Resources Act, planning permission, Part 2A

Description of real-world example: Abstraction licenses required to abstract contaminated groundwater on a Part 2A site to enable Remediation mean at least a 12 month timescale probably longer for all abstraction over 20m3/day. Read "all groundwater abstractions for remediation activities".

Impact: The time taken to secure the license (16 months) meant the remediation of the site was delayed significantly and that we had to enter complex negotiations with other areas of the EA and stakeholders to extend the Mobile plant permit for the site as it took longer to get an abstraction license than it would to have remediated the site and longer than you can deploy a mobile plant permit for. As a result we got trapped in a continuing loop of not being able to progress the works. The project suffered significant delay. In the time waiting the development market changed requiring amendment to the planning for the site meaning consequential further delays.

Reflections - The use of licensing for specific tasks on a site is often a duplication and could be viewed as a fait accompli as arguable a Part2A notice requiring remediation should perhaps not need an application for a groundwater abstraction licence. Likewise perhaps once there is an approved Remediation Strategy and or a mobile plant permit deployed that should encompass any ancillary activities such as abstraction or discharge activities. It could be a condition that these abstractions are treated and returned to wither river baseflow or ground which would protect the Volume of the resource whilst remediation would ensure the improvement of the quality.

Title: Brownfield site for supermarket development, ****

Stakeholders affected: Developer, Remediation Contractor, Build Contractor, Local Authority, Local community.

Problem statement:

Policy interactions: Discharge consent, abstraction license, Mobile Plant Permits, water framework directive, planning permission, LCRM, Waste management

Description of real-world example: A brownfield site with planning permission for a supermarket. The remediation strategy is approved via planning. The site contains historic fill which is pre-COPA (Control of Pollution Act). The EA are unwilling to support the re-use of the material on site as through an extensive consultation period they will not accept the use of the DoWCoP and will not allow the use of a Waste Recovery Permit as the Financial Test cannot be met. It was only suggested to re-use suitable engineering materials such as concrete, soils, bricks and other hard materials that could be used within a risk assessment framework on site.

Impact: As a result the project has been delayed over 18 months for this discussion and also for the time for an abstraction license to be granted. In order to allow the scheme to go ahead we have had to redesign the approach to the site with materials that needs to be remediated being disposed off site instead of processed, treated and reused and materials imported to replace them. This material will most likely now end up in landfill with a multi-million pound impact to the site redevelopment budget as well as the delays already encountered and the delay now experienced as part of the re-design. There is a concern over viability for the project which may result in it being cancelled.

Reflections - The EA's position on waste is detrimentally affecting all but the simplest of projects. Unfortunately our historical industrial legacy is far from simple and complex histories require integrated permitting to enable their remediation. Where a site has planning permission and a remediation need a single remediation permit should be useable buy experienced operators to undertake all necessary activities. This need not remove the need for Validation or Verification and should take advantage of SiLC, NQMS, ROGEP etc in the sign off process freeing up the EA to tackle actual waste crime.

Title: Brownfield Site Residential Development, ****.

Stakeholders affected: Developer, Remediation Contractor, Build Contractor, Local Authority, Local community, Environment Agency

Problem statement: permitting options conflict with planning permission and Remediation strategy approved through planning. Waste management licencing regulations, Definition of waste, Environmental permitting all conflicting with LCRM and risk based framework of Land Contamination/Land Quality.

Policy interactions:

Description of real-world example: The Planning documents and Remediation strategy set out the risks for the site which can be adequately managed via partial excavation and remediation of soils for re-use on site. The EA will not allow the deployment of a mobile plant permit the use of the DoWCoP as the site is a former landfill site. The site is not an engineered landfill simply a filled former quarry filled with basic controls and mostly soils. Dilute and disperse. Alternative permitting in the form of a Waste Recovery Plan cannot be used as the WRP has been rejected on the basis of a failure to meet the financial test (substitution test). The only option would be for a full landfill permit which is unworkable on many levels not least the fact that the license could never be surrendered and a property could not be mortgaged on a site with an active permit.

Impact: The site has planning for 180 homes and the original developer has gone into liquidation as a result. The new developer/owner cannot secure a permit and the site is stalled. The site has been sat ready to go for nearly 3 years.

Reflections - if the view was taken that the material that is to be excavated and re-used on site within a risk-based framework could be done without the Waste Controls then this site would by now have been remediated reducing pollution risk and be under development. Instead, the site is stalled with no housing provision and no environmental improvement.

Title: Regional Scale Brownfield Site Residential Development, forming mining and minerals extraction, colliery spoil and former Landfills.

Stakeholders affected: Developer, Remediation Contractor, Build Contractor, Local Authority, Local community, Local Infrastructure, THE ENVIRONMENT!

Problem statement: Waste management licencing regulations, Definition of waste, Environmental permitting, DoWCoP Limitations, EA attitude all conflicting with LCRM and risk-based framework of Land Contamination/Land Quality. This site has the potential to deliver 1800 homes in an area much needing improved housing and infrastructure. Between the presence of old landfills, colliery spoil and the need to significantly reprofile the site out of the entire site less than a few acres can be considered for development without complex remediation. Aside from a full installations or landfill permit neither of which are suitable for the site, the development or the practicalities of delivery and occupation of homes there is no permit option available to allow for the remediation of the site.

Policy interactions:

Description of real-world example: The Planning documents and Remediation strategy set out the risks for the site which can be adequately managed via partial excavation and remediation of soils for re-use on site. The EA will not allow the deployment of a mobile plant permit the use of the DoWCoP as the site is a former landfill site. The site is not an engineered landfill simply a filled former quarry filled with basic controls and mostly soils. Dilute and disperse. Alternative permitting in the form of a Waste Recovery Plan cannot be used as the WRP has been rejected on the basis of a failure to meet the financial test (substitution test). The only option would be for a full landfill permit which is unworkable on many levels not least the fact that the license could never be surrendered and a property could not be mortgaged on a site with an active permit.

Impact: The site has planning for 1800 homes and has stalled at least 3 times over the last 5 years with the above reasons being the major stumbling block. The site was also to provide 2km of essential link road which also cannot progress for the same reasons.

Reflections - The EA need to take a view on what the overall better position is. Adherence to impractical definitions of what waste might be or taking pragmatic views that simply treating all soils or soil forming materials that can safely support development under a risk-based framework as resource. At the same time for that one simple decision we could improve 3 major landfills with partial remediation and formal closure/capping and facilitate 1800 homes and a link road on the wider site.

Title: Brownfield Developer change of attitude (colliery soil sites)

Stakeholders affected: Developer, Remediation Contractor

Problem statement: A brownfield developer who has significant experience of bringing forward complicated sites for remediation has changed its direction to focus on greenfield or more simple brownfield sites as the complexity or more accurately impossibility of bringing forward complex sites through permitting and then delivery takes so long even if it is successful that its no longer economic.

Policy interactions: Planning, NPPF, Waste regulations, Definition of Waste, LCRM conflicts.

Description of real-world example: The developer is now unlikely to consider and fund complex remediation projects as they see the regulatory framework in relation to waste as too uncertain and likely to impact timescales to a point where sites are non-viable.

Impact: This developer had/has a good understanding of brownfield sites and the challenges they can present. We have worked with them on over 30 sites in our history and their contribution is a loss to the remediation sector and to environmental improvement.

Reflections - The EA need to take a view on what the overall better position is. We could deliver great homes and great Environmental outcomes with intelligent thinking about utilising soils as resources, not waste.

Title: Former Manufacturing Facility, ****

Stakeholders affected: Developer, Remediation Contractor, Build Contractor, the Environment.

Problem statement: The EA would not allow us to use abstracted and treated water from the contaminated aquifer to be re-injected to improve and effect an in-situ remediation.

Policy interactions: EPR, Water Framework Directive, Water Resources Act, LCRM, PreApp discussions with Regulators

Description of real-world example: The site is a former manufacturing site. The groundwater remediation element of the scheme was designed In-situ anaerobic reductive *** of ****. We could not secure permission to use small quantities of abstracted groundwater from the plume to condition our injectate and re-inject back into the same aquifer to effect treatment.

Impact: Some minimal delay but the officer in this case was confident, knowledgeable and direct so not much time lost. However, we had to buy and use large quantities of drinking water and also had to condition this water as injecting highly oxygen rich water into an anaerobic system has negative effect on the remediation, so we had to use more chemicals to condition the drinking water making it suitable for mixing and injection.

Reflections - This should be an automatically allowed activity under a Remediation Permit where groundwater requires cleanup