

Contaminated Land Inspection Strategy

Part 2A of the Environmental Protection Act 1990

Update 2022/23

Summary

Part 2A of the Environmental Protection Act (EPA) 1990 is the legal driver behind the contaminated land regime in England. Under Part 2A each local authority is required to take a strategic approach to inspect the land within its geographic boundaries, to identify and prioritise contaminated land most likely to pose an unacceptable risk to human health and publish this information within a written Strategy. Where land is classified as contaminated under Part 2A the Council is required to identify the person(s) liable to pay for the remediation and to ensure that it is carried out to the required standard. The Department for Environment Farming and Rural Affairs (Defra) published revised Statutory Guidance in April 2012, which requires all local authorities to periodically review their existing Inspection Strategy to ensure it remains up to date.

Gravesham Borough Council (GBC) published its first Inspection Strategy in 2002, shortly after publication of the original Statutory Guidance in 2001. Subsequently, the Strategy has been kept under periodic review with further revisions to the Strategy made in 2009 and 2012. The bulk of the statutory obligations relating to land contamination and activity on bringing contaminated sites into beneficial use have been and will continue to be addressed through the planning / redevelopment process. At present, most contaminated land issues are dealt with proactively through the planning regime which requires development sites to be “suitable for use” under local guidance to be issued under the NPPF. Work on any identified high priority sites on council-owned land will be completed utilising the Council’s in-house resources and employing private environmental consultancy services as/where required.

The 2022/23 strategy review and update has identified a need to review and update the Council’s Land Quality GIS mapping database which will have benefits to both the planning application and the land search services.

This Strategy will be reviewed and, if necessary, updated further in 2027/28.

Context

This Strategy outlines how GBC (the Council), will fulfil its statutory duties to investigate potentially contaminated land in the Borough as laid out in the Defra Contaminated Land Statutory Guidance (the Statutory Guidance). This Strategy should be read in conjunction with the Statutory Guidance, as it contains the legal and scientific detail behind the Council Strategy. Reference is also made to supplementary planning guidance which details the Council’s expectations of how land quality issues will be addressed and managed, primarily through the redevelopment of land under the planning process. This Strategy reflects the current and anticipated future financial circumstances the Council will face over the Strategy review period (2022/23-2027/28).

Objectives

The objective of the Strategy is to set out a framework detailing a proportionate approach by the Council for management of the risks raised by land contamination, whilst ensuring that any unacceptable risk to human health or the wider environment is resolved.

All investigations and risk assessments will be site specific, scientifically robust and will ensure only land that poses a genuinely unacceptable risk is determined as contaminated under Part 2A.

The Council will consider the various benefits and costs of taking action, with a view to ensuring that corporate priorities and statutory requirements are met in a balanced and proportionate manner.

The Council will seek to maximise the net benefits to residents taking full account of local circumstances.

Statutory Guidance

The legal driver behind the Contaminated Land regime in England is Part 2A (Sections 78A-78Y) of the Environmental Protection Act 1990 (EPA 1990) which came into effect in April 2000 (inserted by Section 57 of the Environment Act 1995). This established the regulatory system for the identification and remediation of land contamination.

The overarching objectives of the Government's policy on contaminated land and the Part 2A regime are:

- To identify and remove unacceptable risks to human health and the environment;
- To seek to ensure that contaminated land is made suitable for its current use;
- To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of sustainable development.

The legislation places duty on Local Authorities to inspect their area from time to time for the purpose of (a) identifying contaminated land and (b) deciding whether such land should be designated a special site, which then becomes the responsibility of the Environment Agency (EA).

Defra published the Contaminated Land Statutory Guidance in April 2012. This requires local authorities to adopt a "strategic approach" to inspecting their areas and prioritise land most likely to pose the greatest risk to human health and the environment and publish this information within a written Strategy. The Statutory Guidance requires Local Authorities keep their written strategy under periodic review to ensure it remains up to date. The timeframe for reviewing the Strategy was left to the Local Authority to decide, although the Guidance identified 5 years as "good practice." The Council published its first written Strategy in 2002 with revisions published in 2009 and 2012.

There is other statutory guidance which the Council needs to consider in relation to Part 2A:

- National Planning Policy
- Local Planning Policy (2017)
- Guidance on Radon
- Building Regulations
- Environmental Permitting Regulations
- Environmental Damage Regulations
- Statutory Nuisance.

Approach to contaminated land assessment

The approach to contaminated land assessment in the United Kingdom is presented in the Land Contamination Risk Management (LCRM) documentation available on the government (www.gov.uk) website. The guidance sets out three stages: 1) Risk Assessment, 2) Options Appraisal and 3) Remediation and Verification. Risk assessment is based on the Source-Pathway-Receptor contaminant linkage concept. For a risk to exist then all three elements of the linkage must be present. This is the case for land quality assessments under both planning and Part 2A.

Source: Contaminants in soil, groundwater, gas or vapour

Pathway: Physical contact with contaminated soil or groundwater, inhalation of dust, consumption of edible plants grown in contaminated soil and/or soil attached to edible plants, inhalation of indoor or outdoor gases or vapours, permeation of contamination into water supply pipes, migration of contamination in groundwater, migration of contamination via overground flow;

Receptor: Humans, controlled waters (groundwater or surface water), ecological receptors (animals and sites designated as environmentally sensitive land uses), buildings and structures.

Assessment under Part 2A

For land to be determined as contaminated land under Part 2A there must exist a 'Significant Possibility of Significant Harm' (SPOSH) from contamination in, on, or under the land, such that it presents an unacceptable intake (UI) for users of that land (i.e., in such a form and quantity that it presents a hazard by means of one or more pathways that has a *significant* possibility of causing *significant* harm to someone).

It is noted that there is no clear government guidance on what constitutes "unacceptable intake" or "significant possibility of significant harm". However, the regime and associated statutory guidance¹ is clear that only those sites 'most in need of remediation' should be dealt with under Part 2A.

The Statutory Guidance sets out four categories of sites to assist in the decision-making process, where Categories **1** and **2** 'would encompass land which is **capable** of being determined as contaminated land on the grounds of SPOSH' and, Categories **3** and **4** would 'encompass land **not capable** of being determined on such grounds'.

Further technical supporting information was provided by DEFRA in respect of screening levels for Category 4 land (i.e. not Contaminated Land as defined by Part 2A). These are often referred to as C4SLs. The C4SLs consist of **cautious** estimates of contaminant concentrations in soil that are still considered to present an **acceptable level of risk**, within the context of Part 2A, by combining information on human health toxicology, exposure assessment and normal ambient levels of contaminants in the environment. That is to say that exceedance of a C4SL does not, in and of itself, constitute SPOSH.

Duties

Local Authorities:

- Where possible inspect the Borough to identify contaminated land
- Prepare a strategy for inspection of their area
- Determining whether any land meets the definition of Contaminated Land under Part 2A i.e., land that is causing harm or has potential of causing harm
- Establish whether sites should be designated as "Special Sites" and thus become the responsibility of the Environment Agency
- Consult the Environment Agency on sites where there is pollution of controlled waters and where the Local Authority considers that land meets the definition of a Special Site
- Where the Agency carries out an inspection on behalf of the Council, the inspection duty and the decision as to whether land is Contaminated Land, remain the sole responsibility of the Council

¹ Environmental Protection Act 1990, Contaminated Land Statutory Guidance, HM Government, April 2012

- Act as enforcing authority for all contaminated land which is not designated as a “Special Site”, for which the Environment Agency will be the enforcing authority; and
- Maintain a public register of sites for which a remediation notice has been served, or where a remediation statement or declaration has been published.

Environment Agency:

The Agency is a primary source of information and advice for local authorities. In addition, the Agency has its own regulatory functions to perform under Part 2A:

- Assist and provide guidance to local authorities in identifying contaminated land, particularly in cases of water pollution
- Undertake inspections of Potential Special Sites following LA request
- Act as enforcing authority for any land designated as a Special Site
- Maintain a register of Special Sites remediation; and
- Publish periodic reports on the State of Contaminated Land.

Both LA and EA:

- Establish who should bear responsibility for the remediation of land
- Decide, after consultation, what remediation is required and ensure that such remediation takes place either through agreement or by serving a remediation notice. In certain circumstances the local authority may need to undertake the remediation
- Where a remediation notice is served or the authority carries out the work, to determine who should bear what proportion of the costs for the work; and
- Record certain prescribed information regarding regulatory actions on a public register.

Borough Characteristics

Physical and Land designations

The Borough of Gravesham is situated in the Northwest of the county of Kent on the South Bank of the River Thames some 32 km east of London and astride the A2. The borough consists of the urban areas of Gravesend and Northfleet and the parishes of Cobham, Higham, Luddesdown, Meopham, Vigo and Shorne. Key statistical information about the borough and its community can be found in the [Gravesham Community Profile document](#).

Gravesham is both urban and rural in character. Gravesend/Northfleet comprises the main urban area, which includes extensive industrial, commercial and the main residential areas of the borough. A large amount of new development is planned as part of its position within the Thames Gateway.

The extensive rural area lies to the south of the A2 and also to the East of Gravesend. This mainly forms part of the dip slope of the North Downs, rising from the riverside marshes in the north to the crest of the Downs in the south. Much of this rural area is of high agricultural, landscape and/or nature conservation value. Within the rural area, there are a number of villages, some of which are of considerable historic and conservation interest.

The borough has the following land use make-up:

- *Urban - 1,320 hectares (13%)*
- *Agricultural - 7,050 hectares (70%)*
- *Woodland - 1,195 hectares (12%)*
- *Other - 400 hectares (5%)*
- *TOTAL - 9,965 hectares*

The Borough contains 23 Building Conservation Areas, 305 Listed Buildings and 9 Scheduled Ancient Monuments.

There are several sites in the Borough which receive special protection because of their international, national or county-wide importance for nature conservation. These include the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar site, the North Downs Woodland Special Area of Conservation (SAC), five Sites of Special Scientific Interest (SSSI) and sixteen Local Wildlife Sites.

Geology, Hydrogeology and Hydrology

The underlying geology is an important consideration when considering contaminated land, especially with consideration to controlled waters as the permeability of the soils affect the migration of contamination in both soil and groundwater. Mobile contaminants, generally move more freely within coarse textured soils, such as sand and gravels as opposed to less freely through fine textured soils such as silty clays.

Much of Gravesham lies on chalk, a Principal aquifer with highly permeable strata and significant fractures which may have a low capacity for attenuating contamination entering the surface. A significant percentage of the public water supplies of Kent are derived from the groundwater of Chalk and consequently the importance of protecting these resources from pollution is recognised in the nationally established groundwater protection policy. More information on this policy together with aquifers, groundwater vulnerability and watercourses within the Borough of Gravesham can be found in the Medway Local Environment Agency Plan published by the Environment Agency.

The north of the Borough has a number of major industrial processes which are potential sources of pollutants of the groundwater. These are regulated by the Environment Agency under the Integrated Pollution Control regime which includes the control of pollutants into water. There are also areas of protected groundwater where important abstractions occur ('source protection zones'). The Environment Agency has provided data on abstractions and discharge consents which will be used to identify sensitive areas in the Borough.

An aquifer is defined by the EA as 'underground layers of water-bearing permeable rock or drift deposits from which groundwater can be extracted'. As well as maintaining the flow in some rivers, the EA states that groundwater provides a third of England and Wales' drinking water and the EA ensure it remains protected from contamination. Groundwater vulnerability zones are classified by the EA as high, intermediate or low vulnerability. More detail regarding aquifers can be found on the DEFRA magic website.

The Borough is underlain by vulnerable and important controlled water receptors. A priority of development control and contaminated land regulation for GBC will be to ensure this resource is protected from contamination.

With respect to the Principal aquifer, where groundwater is in hydraulic continuity with the River Thames, where contamination is found the EA would expect the developer to investigate, assess and if appropriate remediate. Please see the EA's Groundwater Protection: Principles and Practice (in particular Part J) for further information.

Surface water features within the Borough include the river Thames along the northern boundary of the Borough and the Ebbsfleet River in the west.

What have we done already?

The original strategy was produced in 2002. A Land Quality GIS database was developed recording current and historical industrial land uses. This database is utilised by Council officers to identify and prioritise potentially contaminated land for inspection under Part 2A.

Information on the Land Quality GIS is also utilised when assessing planning applications for new developments, assisting officers in deciding when to apply land quality conditions to new planning permissions. If a potential risk is identified from a former or current potentially contaminative land use, then contaminated land conditions are placed on the planning permission decision notice.

Using the Land Quality GIS, an initial list of potential sites – where historical land uses of potential interest coincide with present day sensitive uses - was created. These were prioritised based on an assessment of the Level of Potential Hazard (historical land uses rated as Low, Medium, and High risk) and the Predicted Impact, but are in need of review and updates.

What are we doing now? (And will continue to do)

Responding to enquiries and complaints about contaminated land (both private and Council-owned land)

A complaint made regarding contaminated land will be dealt with using the same procedure as is currently used by Regulatory Services when dealing with statutory nuisance complaints i.e.

- Their complaint will be logged and recorded
- They will be contacted by an officer regarding their complaint; usually within five working days of the complaint being made (one day in the case of urgent referrals) and kept informed of progress.
- The council will investigate the complaint as appropriate and, where necessary, take steps towards resolving the problem.

Processing planning applications

The planning system has, and continues to be, the main mechanism in the identification and management of land affected by contamination. Potentially contaminated sites are dealt with by imposing pre-commencement planning conditions on developers, requiring them to carry out contamination assessments and where applicable remedial work. At present, most contaminated land issues are dealt with proactively through the planning regime which requires development sites to be “suitable for use” under local guidance to be issued under the NPPF. The Environmental Protection team work closely with Planning Officers to ensure the redevelopment of land is carried out appropriately.

Undertaking site inspections and site visits as/where required

A site visit might be required in one of the following scenarios:

- A site has been identified as requiring further inspection as part of the Council’s duties under Part 2A
- A site may be visited in conjunction with a planning application that has been made or to oversee remediation or investigation works required by a planning condition
- A site may be visited in response to a complaint from a member of public.

Responding to land search requests

The Environmental Health Team responds to land search requests and is responsible for providing information in a timely manner.

What do we need to do?

The Statutory Guidance requires the Council to continue to identify and prioritise sites that may be potentially contaminated by their historic or current use, followed by detailed inspections/investigations of sites where a need for further investigation has been identified.

The tasks proposed for progression under this Strategy are as follows:

1. Review land search procedure and where necessary/possible modernise the delivery of land search responses.
2. Evaluate existing information held by the Environmental Health Team/Planning department.
3. Update mapping layers, GIS and datasets including:
 - a. Historic land use layers with mapping up to current day.
 - b. Current land uses (residential, education, green spaces, hotel/commercial and allotments).
 - c. Update where site investigations have been completed.
 - d. Update where Council owned land is located.
4. Complete updated database of potential sites removing those which have now been addressed through the planning process and adding any new sites identified by review process.
5. Subject to resources and as priorities dictate, carry out detailed inspection of potential Part 2A sites.
6. Prepare for the next Strategy review.

How are we proposing to do it?

Identification of potential sites and prioritisation for detailed inspection

The work already undertaken means that the Council has built a database of potentially contaminated sites across the Borough. This database will be modernised, updated and streamlined to improve its efficiency for use by Council officers, for planning applications and for land search requests. The data base will be regularly updated when new information becomes available. The contaminated land register for the Borough will be maintained in accordance with Statutory Guidance requirements.

Once a new, updated list of prioritised sites has been constructed those sites with the highest priority ranking will be subject to more detailed inspection. It is envisaged that all but the highest risk sites will be addressed via the planning process (this is primarily due to resource constraints). High risk sites under private ownership will be addressed by identifying and contacting the landowner and initialising the assessment process in accordance with the statutory guidance. High risk sites under Council ownership shall be investigated utilising Council records, environmental searches, and publicly available records to produce a Desk-based (Phase I) study. A site visit will then be undertaken. If the Phase I assessment concludes a significant potential risk does exist to one or more identified receptor, then an intrusive (Phase 2) site investigation will be undertaken. Much of this work will be undertaken by employing the services of specialist Environmental Consultancies.

Investigation of sites where a potential unacceptable risk has been identified will be prioritised thusly:

- 1) Human Health Receptors
- 2) Controlled Waters Receptors
- 3) Ecological and Environmentally Sensitive Land Uses (Ecosystems)
- 4) Buildings and Structures.

The detailed inspection of a site will be limited to a site walkover and desktop study in the first instance. The Council will follow the Statutory Guidance at all points of the process and will work with the Environment Agency and external experts where appropriate. Where the potential for a significant pollutant linkage is identified, preliminary soil and groundwater tests may be carried out.

Where and only where a significant harm or a significant possibility of significant harm is identified will the site be designated as contaminated land/a special site. If appropriate the Council will proceed to secure satisfactory remediation of the site, identify liable persons and recover costs in accordance with the Act and the Statutory Guidance.

Possible outcomes

The statutory guidance describes in detail the possible outcomes of detailed inspection for all receptors. Sites will be assigned categories (1-4). Generally, sites in Category 1 will require immediate action (designation as contaminated land); sites in Category 2 may require immediate action. Sites in Category 3 may not meet the stringent definition of contaminated land but may require observation or monitoring and sites in Category 4 are unlikely to meet the definition of contaminated land. For controlled water receptors the Council will consult the Environment Agency.

Detailed inspection and risk assessment may show that an unacceptable risk is present. Where an unacceptable risk is present, or evidence of harm being caused this will trigger determination of the site as contaminated land. The Council will then decide based upon all of the available information and in line with the Statutory Guidance whether remediation of the site should be carried out. If remediation is carried out this will only be done where necessary and the Council will work with residents and all interested parties to minimise disruption as much as possible.

Who pays for this?

Part 2A of the Environmental Protection Act 1990 makes it clear that, wherever possible, the original polluter and/or a developer ('Class A appropriate person') that knowingly developed a contaminated site without ensuring suitable levels of remediation are completed should pay for any remediation needed in later years. The Council has a duty under the legislation will make every effort to ensure that this is the case. However, the legal process is time consuming and difficult particularly when pollution and/or development was many years ago, or the people and companies involved no longer exist. Where it is not possible to identify the 'Class A appropriate person', in accordance with the Guidance, the responsibility for dealing with the contamination passes to the current landowner of the land ('Class B appropriate person'). Under the legislation the Council has a duty to identify appropriate persons and apportion liability.

What are the wider benefits of this strategy?

As a result of the data collated during the initial prioritisation exercise, the Council has a searchable layer of historical land uses in the Borough. This information is used by Environmental Health, Planning and Building Control Teams when considering new developments. The information is used to provide more detailed and useful replies to environmental information requests (e.g. from solicitors when people are moving house) and enables the Council to focus its attention on the highest risk sites that have been identified.

How will we measure our progress in implementing this strategy?

The strategic inspection process is by nature an iterative process. It is normal that sites will be added and removed from the database as information becomes available. We aim to add

more detailed knowledge about sites each year using existing resources. This increased knowledge will enable the Council to refine the prioritisation process further, reduce the number of sites that need more detailed investigation and identify those that need detailed investigation most urgently.

How does this strategy interact with the planning system?

The National Planning Policy Framework (NPPF) makes clear reference to dealing with land contamination. Land contamination is a material planning consideration. As explained the development management process is the primary way in which land contamination issues are investigated and managed.

Where a site is affected by contamination, responsibility for securing a safe development rests with the developer and/or landowner.

As an absolute minimum this means that the site must be incapable of being designated as contaminated land as defined under Part 2A.

As a general rule the Council will expect any planning application for land which may be affected by contamination to be accompanied by a report on a desktop study and site walkover as defined in British Standard BS10175:2011+A2:2017 "Investigation of potentially contaminated site – Code of Practice". This report should identify that the site has been assessed as suitable for use or in the event that further works are needed, detail works required and put forward solutions for how the site can reasonably be made suitable for the proposed use. All reports should be completed by a suitably qualified "competent" person as defined in the NPPF.

Contact us

If you would like to talk about this strategy or other matters related to contaminated land, please contact the Environmental Protection Team via email: ep@gravesham.gov.uk.