

LONDON BOROUGH OF HARROW

Agenda item:

Page no:

Meeting:	Cabinet
Date:	20 th May 2003
Subject:	Approval of Contaminated Land Strategy
Key Decision:	No
Responsible Chief Officer:	Head of Housing and Environmental Health Services
Relevant Portfolio Holder	Environment Portfolio Holder
Status:	Part 1
Ward:	All
Enclosures:	Appendix – Contaminated Land Strategy – Executive Summary
	The Contaminated Land Strategy is available for viewing on the Council's Web Site – www.harrow.gov.uk - or can be provided in hard copy on request.

1. Summary

- 1.1 The contaminated land regime was introduced into Part IIA of the Environmental Protection Act 1990 by the Environment Act 1995. It was brought into force on the 1st April 2000 by the Contaminated Land (England) Regulations 2000 and is supported by statutory guidance on the implementation of Part IIA. The actual date on which the regime came into force is of little relevance given that the regime is retroactive and will apply irrespective of when the land became contaminated.
- 1.2 Under section 78B of the Act each local authority has to “cause its area to be inspected from time to time for the purpose of identifying contaminated land”. When identified they must ensure that it is managed in an appropriate manner. The guidance requires local authorities to take a “strategic approach” to inspecting their areas and to describe and publish this in a written strategy.

- 1.3 The purpose of this report is to outline the implications of the Contaminated Land Regime and consider the Contaminated Land Strategy which the Council is statutorily required to prepare. The Strategy has been prepared with regard to the legislative powers and statutory guidance.
- 1.4 The Strategy is available on the Council's web site. Hard copies will be made available through public libraries and on request. Note: references to the Strategy document are shown thus [...].

2. Recommendations: (for decision by Cabinet)

2.1 Cabinet approves the Contaminated Land Strategy

2.2 Cabinet endorses the implementation of the inspection strategy.

REASON: The Council is required to prepare a Contaminated Land Strategy in accordance with Part IIA of the Environmental Protection Act 1990 which details how they will accomplish inspection of the Borough for submission to the DETR.

3. Consultation with Ward Councillors

- 3.1 None undertaken at this time. Where a potentially contaminated site is identified the ward Councillors will be notified of any potential issues within that ward.

4. Policy Context (including relevant previous decisions)

- 4.1 No previous decision taken on this issue.

5. Relevance to Corporate Priorities

- 5.1 The Strategy addresses 3 of Harrow's Corporate objectives in that it will:
- 5.2 Enhance the environment in Harrow by promoting higher environmental standards and the provision of and sustaining of a healthy, safe environment for those living in, working or visiting Harrow.
- 5.3 Improve the quality of health and Social Care through the provision of housing and the encouragement of a viable local economy.
- 5.4 Encourage the development of a prosperous and sustainable economy by providing support for the Council's Environment Statement of continuously improving the quality of life for the people of Harrow through its role as community leader and as an employer and service provider [Box 1.3], the Unitary Development Plan to actively manage development [para 1.3.4], and the Agenda 21 programme [para 1.3.2].

6. Background Information

6.1 How the regime is intended to Work

- 6.1.1 The regime imposes a number of duties on local authorities. In particular, they must devise a Strategy for identifying and dealing with contaminated land. They have an

obligation to inspect their area from time to time in order to identify contaminated land; and they have to decide whether any such land is required to be designated a 'special site' and therefore be subject to enforcement by the Environment Agency.

- 6.1.2 If potentially contaminated land is identified, the enforcing authority may then (except in emergencies) enter into negotiations with those appropriate persons who may be liable, so as to encourage voluntary clean up. If it is unlikely that the land will be voluntarily remediated, then the enforcing authority must serve a remediation notice on the appropriate person specifying the actions, which must be taken [4.6].
- 6.1.3 Remedial actions may be subject to mutual agreement or be enforced by the authority. Alternatively the enforcing authority may, in certain circumstances, should the appropriate person not comply with the remediation notice, undertake the remediation work itself and then seek to recover the costs from the appropriate persons(s).

6.2 Main Features of the Regime

- 6.2.1 Land will be 'contaminated' for the purpose of the regime if the land by reason of the substances in, on or under it, is in such a condition that either significant harm is being caused, or there is a significant possibility of such harm occurring, or alternatively pollution of controlled waters is, or is likely to be, caused [1.4.2].
- 6.2.2 This definition is based on a risk assessment approach and requires that a 'pollutant linkage' is identified in respect of the land in question. In other words the local authority must identify a *source*, meaning a potential pollutant; a *receptor* which is an organism, ecological system, property or water which is being, or is likely to be polluted; and a *pathway*, which is a route by which the contaminant reaches the receptor [1.5.]. The Regime therefore focuses on the risk to the receptor or user rather than the land itself.
- 6.2.3 The statutory guidance, which is detailed guidance to the enforcing authorities on the application of the regime, contains assistance in relation to the definition and scope of the key term 'significant'. In essence, this is dependent on the possible nature and degree of harm, and the vulnerability of the receptor.
- 6.2.4 The Government's objectives with respect to contaminated land are:-
 - (i) to identify and remove unacceptable risks of human health and the environment;
 - (ii) to seek to bring damaged land back into beneficial use; and
 - (iii) to seek to ensure that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and sustainable.

These three objectives underlie the 'suitable for use' approach to the remediation of contaminated land, which the Government considers the most appropriate approach to achieving sustainable development in this field [Box 1.1].

6.3 The Contaminated Land Inspection Strategy

- 6.3.1 The aim is to approach the requirement for inspection of the Borough by initially investigating all sites where significant contamination is known. This investigation will run concurrently with a staged inspection of the entire Borough.

- 6.3.2 The inspection of the Borough will consist of a receptor based approach, a comprehensive search of potentially contaminative historical use of land where it is known that environmental receptors exist. The main priorities of the Council are highlighted in box 3.2 pg. 28 of the Strategy. In this respect the inspection regime will concentrate on 'user' risk as opposed to 'land' risk in line with Corporate and Government priorities.
- 6.3.3 The priority for inspection of environmental receptors, see page 29 of the strategy, is proposed because of the history and industrial nature of the borough and fact that many of the likely contaminated sites e.g. gas works have already been redeveloped and/or remediated. All land will be prioritised on the basis of environmental risk including groundwater vulnerability. No areas will be highlighted for prioritisation at Stage 1 of the review.
- 6.3.4 It is not intended to prioritise inspection of Council owned land, unless particular contamination and/or risk issues are raised or sites are in the process of being sold. Council owned land will be included in the initial stages of the review alongside other land in the borough.
- 6.3.5 Once the initial stages of the review have been carried out, a clearer picture will have developed with respect to sources, pathways and receptors within the borough and pollution linkages. Initial risk rating scores will be applied at Stage 1 with the use of a risk model. The risk rating will be categorised into **Low - Medium – High** risk sites or areas, based on the **source, pathway, and receptor** scenario and likelihood of harm. High risk rated sites/areas will then be prioritised for further investigation.
- 6.3.6 Should a major incident occur within the borough e.g. chemical spillage or some other major incident whereby contamination of a site occurs there is scope within the strategy to allow for inclusion and prioritisation of such a site.
- 6.3.7 Any evidence of risk to controlled waters, source protection zones etc. from any source will be notified to the Environment Agency.
- 6.3.8 The risk assessments will be processed in the Environmental Health Services Geographical Information System to generate a database of sites where sources and receptors are coterminous. This will be a staged process resulting in sites being categorised based on the likelihood of harm and of pathways existing.
- 6.3.9 An initial assessment of priority sites to identify those requiring prompt action is underway and will be completed in 2003. Any sites considered as requiring urgent action will be dealt with as they come to the Council's attention.
- 6.3.10 Following this, there will be further investigation of selected sites, targeting resources where the most serious harm is considered likely. It is expected that most detailed site investigations will be carried out voluntarily by the site owner or occupier, and we see the way forward generally through discussion and co-operation. However the Council is prepared to carry out investigations itself and to use enforcement powers to ensure the efficient operation of the regime.
- 6.3.11 In simple terms the regime imposes a strict and retrospective liability for contaminated land and has the potential to impact on all owners and occupiers of land, whether commercial or residential. The rationale is that it will provide an improved system for the identification and remediation of contaminated, where the contamination is causing unacceptable risk to human health or the wider environment, assessed in the context of the current use and circumstances of the land.

6.4 Who is Liable

- 6.4.1 The regime implements the 'polluter pays' principle and uses a two-tiered system to identify the person (known as the 'appropriate person') to whom the liability for the remediation of the contaminated land will attach. Those who will be liable in the first instance are those who fall into the first category of appropriate persons, i.e. any one who causes or knowingly permits the contaminating substance to be in, on or under the land. If, after reasonable enquiry, no-one can be found who belongs to the first category, then persons belonging to the second category must be liable. Such persons include the current owners or occupiers of the land.
- 6.4.2 A number of tests are included in the regime and the statutory guidance, whereby liability may be excluded. Tests are also provided to deal with the apportionment of liability where there is more than one person to whom liability may attach.

6.5 Public Register

- 6.5.1 For the information of the public, each local authority must keep a Public Register in which it will record certain information about its regulatory activity under the regime [5.9.]. Accordingly a search for such information should occur whenever a purchase of land is proposed.
- 6.5.2 The purpose of the regime is not to create a register of contaminated land, but to identify land and secure its remediation, with the register acting as a permanent public record of the main stages of regulatory activity. All information placed on the Public Register remains for future reference and is not removed once remediation has taken place. Authorities are not required to certify that remediation has been completed, the site is safe or that no further remediation will be needed in future. Furthermore, the definition does not catch all land containing contaminants, or land where remediation has been carried out previously, so long as this remains adequate and the land is 'fit for use'.
- 6.5.3 The actual entries in these registers will build up slowly, as authorities begin to discover and formally identify individual sites that meet the definition of contaminated land. Entries will be made on the Public Register as each case progresses, so consulting the Public Register will provide a 'snapshot' of the case at the time and will show the regulatory route is being followed [Box 5.2.].
- 6.5.4 The register should nevertheless provide prospective purchasers with useful information, which may point to the existence of further information and may prompt further lines of enquiry. It should help purchasers to satisfy themselves as to the condition of the property or related circumstances, but it cannot provide a substitute for physical tests and surveys. Entries will only appear on the Public Register once land has been formally identified as contaminated land by the authority, so the absence of entries does not guarantee freedom from contamination or from risk of harm.

7 Current Situation

- 7.1 The Environmental Health Service is currently undertaking the phase I (desk top) survey of all known potentially contaminated sites. This will identify the sites, their 'contaminating' use and data available regarding the type and level of contamination. Additional site visits are undertaken to assess the current condition and use of each site and to carry out basic on site investigation and assess risk to the user or receptor.

- 7.2 The sites have not however been assessed in terms of the imposed regime in terms of their 'suitability for use'. The suitable for use approach consists of three elements;
- (i) Ensuring that the land is suitable for its current use.
 - (ii) Ensuring that land is made suitable for any new use, as official permission is given for that new use.
 - (iii) Limiting requirements for remediation to the work necessary to prevent unacceptable risks to human health or the environment in relation to the current use or officially permitted future use of the land.
- 7.3 There have been delays in implementation of the strategy due to staff vacancy. However, staff have now been appointed and are in post. It is envisaged that phase 1 will be completed by the end of 2003.

8. Consultation

- 8.1 Extensive consultation has taken place during the preparation of the Strategy, in accordance with the statutory guidance issued by the Secretary of State. A full list of consultees is included in the Strategy [Box 5.1.]
- 8.2 Within the Council, there has been full consultation with the Forward Planning Team, to ensure access to available databases held by the Council and to influence the Unitary Development Plan.
- 8.3. Further consultation will be conducted during the review of the Strategy to be undertaken within a year of its adoption.

9. Finance Observations

- 9.1 There are no significant financial implications identified within this report at present although considerable staff time will be expended in terms of implementation of the Strategy. A designated post exists within the current staff compliment.
- 9.2 Although there are no immediate cost implications to the Council, the potential implications as a land owner and regulator may be significant where remediation works are required to land within its ownership or where the Council, as the enforcing authority, undertakes remediation work and seeks to recover costs from the appropriate person.
- 9.3 There may also be a cost implication where intrusive site investigations are required in order to identify the extent to which remediation is required and in defending enforcement action. The potential financial implications will be identified as part of the process of implementing the Strategy and will be reported to Cabinet as they arise.
- 9.4 There are however, significant funding opportunities available through the Supplementary Credit Approval (SCA) Programme operated through the Department for Environment, Food & Rural Affairs in respect of proposed capital expenditure to be defrayed by the Authority in undertaking its duties relating to intrusive site investigation or remediation of Contaminated Land under the Environmental Protection Act 1990. This funding is available for both investigation and enforcement action regardless of the whether the Council is the owner or responsible person. The Authority has already successfully accessed this funding and where such action may be required in future, including to remediate land in its ownership should this be required, further bids will be made for funding through this system in the first instance.

10. Legal Observations

- 10.1 The majority of observations have been included within the body of the report where relevant.
- 10.2 In addition to the potential cost of enforcement action outlined above it is possible that there will be appeals against Remediation Notices and prosecution for failure to comply without reasonable excuse to a Remediation Notice, especially where there are substantial financial implications in undertaking the work. The legal resource and cost implications cannot be accurately assessed at this time.

11. Conclusion

- 11.1 The Contaminated Land Strategy has been drawn up in strict accordance, and fully complies, with statute, the statutory guidance and procedures laid down in technical advice for local authorities.
- 11.2 The legal requirement to prepare, and publish the Strategy has provided an opportunity to consider and document how the underlying policy and legal objectives of Part IIA are to be met, given specific local conditions. It also considers how best to prepare and deliver the Strategy through the co-operative efforts of Council services and practical working arrangements with external organisations that will have to be put in place to implement the legislation as a whole.

12. Background Papers

Contaminated Land: Implementation of Part IIA of the Environmental Protection Act 1990. DETR Sept. 1999

Contaminated Land (England) Regulations 2000.

Contaminated and Inspection Strategies - Technical Advice for Local Authorities May 2001.

London Borough of Harrow, Contaminated Land Strategy.

13. Author

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