

**Meeting** Planning and Development Committee  
**Portfolio Area** Environment and Performance  
**Date** 7 December 2023

## REVISED CONTAMINATED LAND INSPECTION STRATEGY

### NON KEY DECISION

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### 1 PURPOSE

1.1 To consider the Council's revised Contaminated Land Inspection Strategy.

### 2 RECOMMENDATIONS

2.1 That the Planning and Development Committee approves the publication of the attached draft contaminated land inspection strategy for external consultation until 4 February 2024.

### 3 BACKGROUND

3.1 Section 78B(1) of Part 2A of the Environmental Protection Act 1990 (EPA 1990) places a duty on local authorities to inspect their areas to identify contaminated land and confers regulatory powers to deliver against that duty.

3.2 Contaminated Land Statutory Guidance produced by the Department for Environment, Food and Rural Affairs in 2012 sets out how local authorities should meet these duties, including the need to have a written strategy setting out their strategic approach. The proposed Contaminated Land

Inspection Strategy is intended to meet this requirement and provides a brief overview of the contaminated land regime, its aims and objectives.

- 3.3 Any Part 2A inspection undertaken by the Council must be at its own expense and by its nature can consist of numerous phases under the supervision of environmental consultants.
- 3.4 Where contaminated land assessments conclude that there are unacceptable risks, as per Statutory Guidance, the Council must ensure these are addressed, typically through the completion of remedial works. Such works could comprise excavation of contaminated ground and sending to landfill, encapsulating the ground or cleaning the soil in situ.
- 3.5 Where no responsible party can be identified (e.g. landowner, developer, polluter), the cost may fall to the Council. Such costs have the potential to escalate to seven figure sums.
- 3.6 The Contaminated Land Capital Grants programme from central Government was previously available to local authorities to bid for funds to carry out such investigations and remediation work. This funding programme was withdrawn in 2013 and has subsequently not been replaced with an alternative, leaving many authorities unable to fund such inspections.
- 3.7 However, it is important to note that while Part 2A gives the Council powers to proactively deal with contaminated land, in the vast majority of cases such land is assessed and dealt with through the development control system.

#### **4 DISCUSSION**

- 4.1 The refreshed strategy, which can be found at Appendix A, contains updates based on amended national guidance, the updated Local Planning Policy Framework and, following the ending of the national Contaminated Land Capital Grants Programme, DEFRA's decision not to introduce a replacement scheme.
- 4.2 In light of the above the strategy incorporates a change from the approach of undertaking proactive inspection of sites where contamination may be present due to previous uses, to one of utilising the existing assessment of sites within the development control process to manage the Council's duties under Part 2A. It should be noted that formal proactive Part 2A work has never been needed to date in the borough and very rarely in other districts.
- 4.3 Environmental Health is a consultee within the planning process. The National Planning Policy Framework (NPPF) requires consideration of potential contamination as part of the planning process to ensure a site is suitable for its proposed use and, after remediation (where required), the land is not capable of being determined as Contaminated Land under Part 2A.
- 4.4 Through this process the Council reviews the previous use of a site from the information submitted by the applicant as well as Council records and decides whether further investigation is required. Officers review reports submitted, agree remediation measures where required and assess validation reports demonstrating that concerns have been addressed.

- 4.5 Many planning application sites have had some previous use and therefore may be identified as having potential for concern in respect of contamination. Ensuring these sites are addressed through the planning process, as required by the NPPF, also provides the Council with information on them. The large number of planning applications received each year allows a much greater number of sites to be addressed than would be possible under the Part 2A regime.
- 4.6 The revised Statutory Guidance places an emphasis on this approach, stating that the use of Part 2A should only occur where 'no appropriate alternative solution exists' and emphasises that land contamination can be addressed through the planning and building control processes as well as voluntary action by landowners. Officers continue to provide advice and guidance to landowners wishing to proactively deal with their land.
- 4.7 One of the overarching objectives of Government's policy in relation to the Part 2A regime is '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.' Accordingly, the Council will continue to use the preferred mechanisms detailed in the Statutory Guidance to ensure that historical contamination is appropriately dealt with whilst ensuring unnecessary burdens are not placed on the Council and its stakeholders.
- 4.8 The Council may still need to act in any cases where evidence of an immediate or likely case of harm occurring from land contamination exists as this would not be dealt with by other regimes. However, based on experience to date such scenarios are likely to be extremely rare.
- 4.9 The new strategy is predicated upon the identification of statutorily contaminated land in an ordered, rational and efficient manner, based firmly on the principles of risk assessment. It will slightly amend but largely build on the general approach detailed in the 2001 Strategy and will be implemented using a staged approach that will make the best use of scarce resources.
- 4.10 The 2001 Strategy had the following staged strategic approach:
1. A framework for inspection of sites requiring urgent attention
  2. Collection of information on potentially contaminated sites
  3. Compilation of a list of potentially contaminated sites
  4. Risk-based assessment and prioritisation of sites
  5. Initial assessment of potentially contaminated sites
  6. Detailed inspection of high-risk sites from the priority list
- 4.11 No sites were identified within Stage 1 of the Strategy and this Stage is complete.
- 4.12 Stages 2 and 3 can also be considered to be complete with a list of just over 400 sites identified as locations where contaminated land could theoretically be present.
- 4.13 To date, however, there has been no prioritisation of the sites within that list. Therefore, in order to meet the statutory requirements of being rational,

ordered and efficient with an approach to the prioritisation of the detailed inspection of potentially contaminated land, it is from Stage 4 of the strategic approach onward that this version of the Strategy needs to address.

## **5 REASONS FOR RECOMMENDED COURSE OF ACTION AND OTHER OPTIONS**

- 5.1 The Statutory Guidance directs that a local authority sets out its approach as a written strategy, which it should formally adopt and publish to a timescale to be set by the authority.
- 5.2 Further, the authority must keep its strategy under periodic review to ensure that it remains up to date. As good practice it should aim to review its strategy at least every five years.

## **6 IMPLICATIONS**

### **Financial Implications**

- 6.1 There are no direct financial implications arising from the policy or the report. The legislation already provides that in certain exceptional circumstances a situation might occur however where the responsibility for investigating or remediating a site could fall to the Council.

### **Legal Implications**

- 6.2 The Council has a statutory duty to produce a Contaminated Land Inspection Strategy under Part 2A of the Environmental Protection Act 1990.

### **Risk Implications**

- 6.3 Failure to adopt an up-to-date Contaminated Land Inspection Strategy exposes the authority to risk of challenge from landowners and developers as a result of lack of clarity in how the authority will discharge its inspection duty.

### **Policy Implications**

- 6.4 The Contaminated Land Inspection Strategy will accord with and supplement policies in the adopted Stevenage Borough Local Plan (2019).

### **Planning Implications**

- 6.5 The Contaminated Land Inspection Strategy will add to and complement the Development Plan for Stevenage and will be a material consideration for planning applications.

### **Environmental Implications**

- 6.6 The Contaminated Land Inspection Strategy will assist in enabling the remediation of contaminated land to be effected in a sustainable manner, minimising the environmental impact of operations.

### **Climate Change implications**

- 6.7 No direct implications.

### **Equalities and Diversity Implications**

- 6.8 None.

### **Community Safety Implications**

- 6.9 None.

## **BACKGROUND DOCUMENTS**

- BD1 Environmental Protection Act 1990: Part 2A
- BD2 Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance; April 2012

## **APPENDICES**

- A Draft Contaminated Land Inspection Strategy 2023-2028