

Chapter 1 – Introduction

The London Borough of Barking and Dagenham (“the Council”) is required to inspect its area for the purpose of identifying contaminated land. This undertaking came into force on the 1st April 2000 as part of new powers contained within Part IIA of the Environmental Protection Act 1990. As a result of this the Council must produce and adopt a Strategy for the identification of contaminated land within its area.

1.1 - Corporate Aims and Objectives

The Contaminated Land Strategy (“the Strategy”) is presented in part of the Councils overall Mission Statement, which is detailed below:

The Headline Community Priorities

- **Raising Pride in the Borough**
- **Creating better Education and learning for all**
- **Regenerating the Local Economy**
- **Promoting Equal Opportunities and Celebrating Diversity**
- **Making Barking and Dagenham Cleaner, Greener and Safer**
- **Improving Health, Housing and Social Care**
- **Developing rights and responsibilities with the Local Community.**

Dealing with contaminated land will clearly overlap with several of the above priorities, especially Regeneration issues, Improving Health and Housing and making Barking and Dagenham Cleaner, Greener and Safer; and as such the Council has drawn up a list of Objectives and Targets for tackling contaminated land. These are discussed in detail in Chapter 3 – The Council’s Strategy: Overall Aims.

In addition, the contaminated land regime will play a part in other Councils Strategies and initiatives. For example, the issue of contaminated land will have a major input in the Council’s Housing Strategy; Asset Management Plan, Best Value Review, UDP Review, Regeneration initiatives, Sustainable Development and Transport Strategies amongst others. Clearly the need for a holistic approach to the identification and remediation of contaminated land is essential.

1.2 - Sustainable Development

The main driver behind this new regime for dealing with contaminated land is Sustainable Development to address our legacy of contaminated land from past economic activity.

“the last hundred years have seen a massive increase in the wealth of this country and the well being of the people. But focussing solely on economic growth and

ignoring its impact on people and the environment, means we have reduced or avoided the cost of contaminated land.” Tony Blair: “A Better Quality of Life” – A Strategy for Sustainable Development in the UK, 1999.

Sustainable Development is at the heart of the Council’s Corporate Objective's and the Contaminated Land Strategy will support this aim.

Sustainable Development is going to be incorporated into an Environmental Sustainability Strategy, which is being prepared at the present time. The Government places great emphasis on Environmental Sustainability issues and has recognised that a damaged environment will eventually lead to social decline, increased crime and disorder, more unemployment and lack of investment. Therefore it is anticipated that the Contaminated Land Strategy will feed into our overall Environmental Sustainability Strategy.

1.3 - Regulatory context

The implementation of Contaminated Land legislation has been promised for over 10 years. The 1990 Environmental Protection Act, set out, in Section 143 a duty on Local Authorities to keep a “register of potentially contaminated land.” However, this was quickly withdrawn, due to a backlash of criticism revolving around the issue of property blight and public alarm.

Finally in April 2000 the Government announced that they would now implement the (revised) legislation. The Secretary of State has enacted the Environment Act 1995 to bring into force Part IIA of the Environmental Protection Act 1990. The Secretary of State has also made the Contaminated Land (England) Regulations 2000, as well as publishing Circular 02/2000 *Contaminated Land*. The Circular contains the statutory guidance which the Council is required to enact.

Annex 1 of the Circular describes the “suitable for use” approach that must be adopted based on site-specific assessment of risk. It comprises of three main elements:

- Ensuring that land is suitable for its current use, so that the acceptability or otherwise of the risks presented by the land are assessed on the basis of the current use and circumstances.
- Ensuring the land is made suitable for any new use, as planning permission is given for such use. This is primarily the role of the Planning and Building Control systems.
- 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 any future use for which planning permission is being sought.

Linking in with this concept is the current Government thinking on “sustainable development”. The Government has stated that contamination presents its own risks to sustainable development, which is detailed below:

- it impedes social progress, depriving local people of a clean and healthy environment;

- it threatens wider damage to the environment and to wildlife;
- it inhibits the prudent use of land, in particular by obstructing the recycling of previously developed land and increasing development pressures on Greenfield areas; and
- the cost of remediation represents a high burden on companies, home and landowners, and the economy as a whole.

The Council is committed to sustainable development. It has been instrumental in the successful re-generation of brownfield land in Barking and Dagenham. One such project is Barking Reach, where remediation is currently in progress for the redevelopment of contaminated land for house building. (See Chapter 2.14.)

1.3.1 - The roles of the Council and the Environment Agency

Under the new contaminated land provisions contained in Part IIA each Local Authority has to “cause its areas to be inspected from time to time.” When contaminated land is identified, they must ensure that it is managed in an appropriate manner. The Secretary of State has issued Statutory Guidance to Local Authorities to take a “strategic approach” to inspecting their areas and to describe and publish this in a written Strategy.

Inspection strategies should set out how each Local Authority proposes to implement its inspection duties (See Chapter 3). The Strategy will set out inspection arrangements as well as being transparent in how the Council reaches its decisions. The aim of the Strategy should be to ensure that all those affected by, and involved in, inspection have the same clear understanding of the rationale for inspection, and how this will be carried out and over what timescales.

Although Local Authorities have been given the primary regulatory role, the Environment Agency (EA) has a secondary regulatory role in assisting Local Authorities, providing site-specific local guidance, technical advice as well as dealing with so called “Special Sites.” In addition the EA is duty bound to publish periodic reports on the state of land contamination throughout England.

1.3.2 - Defining contaminated land

Contaminated land is defined as “...any land which appears to the Local Authority in whose area it is situated, to be in such a condition, by reasons of substances in, on or under the land, that –

- a) Significant Harm is being caused or there is a Significant Possibility of such harm being caused or;
- b) Pollution of Controlled Waters is being, or is likely, to be caused.

Categories of Significant Harm are documented in Appendix A

1.3.3 – Dealing with contaminated land

If an area of Contaminated land has been identified, the approach for dealing with it will be the same regardless of whether it is the responsibility of the Council or the EA. There are three main stages:

- To establish who is the “appropriate person” to bear responsibility for the remediation (or clean up) of the land. Under this provision responsibility for remediation will, where feasible follow the “polluter pays” principle. In the first instance, any person who caused or knowingly permitted the contamination will be the appropriate person to undertake the remediation. However, if it is not possible to find such persons, responsibility will pass to the current owner or occupier of the land.
- To decide what remediation is required and to ensure that this occurs, through reaching a voluntary agreement. The Council will have powers to serve various legal Notices to establish who is the “appropriate person” as well as securing the clean up of contaminated land. It also has powers to carry out the work itself in certain circumstances.
- In some instances contaminated land will be the responsibility of various owners/occupiers, both current and historical. In this instance the Council must determine who should bear what proportion of liability to meet any clean up costs.

1.3.4 - Pollutant Linkages and Risk Assessment

For a site to meet the definition of contaminated land, a pollutant linkage must be established. Fundamental to this is the concept of Risk Assessment. The Statutory guidance applies existing principles of considering whether there is a contaminant, a relevant receptor (target), and a possible pathway between the two.

The contaminating substances in question are the potential sources of harm, and the receptor is the living organism, ecological system or property which may be harmed, or the controlled waters which may be polluted. The pathway is the route or means by which the receptor is being exposed to or affected by the contaminants or by which it could be so exposed or affected.

The pathway may be identified on the basis of general scientific knowledge without the need for direct observation. The source and the receptors must be specific and actual, not hypothetical.

The relationship between the contaminant, the pathway and the receptor are termed “pollutant linkages.” Without identification of all three elements of a pollutant linkage, land should not be identified as contaminated.

It may be the case that there may be more than one pollutant linkage on any given piece of contaminated land. The Council will have to ensure that all pollutant linkages are identified for any land suspected of being contaminated.

In simple terms the pollutant linkage is described below:

SOURCE -----> PATHWAY----->RECEPTOR

Receptors recognised as being potentially sensitive are:

- Human Beings.

- Ecological systems or living organisms.
- Property in the form of buildings.
- Other forms of property e.g. crops, livestock, animals etc.
- Controlled Waters e.g. surface waters, and groundwater.

For example:

A **Source** could be Asbestos contaminated soil; its **Pathway** would be inhalation if the soil was disturbed, and a **Receptor** would human beings.

1.4 – Development of the Strategy

The Council is required to take a strategic approach to the inspection of its area.

The approach to the identification of contaminated land should:

- Be rational, ordered and efficient;
- Be proportionate to the seriousness of actual potential risk;
- Locate the most pressing and serious problems first;
- Concentrate resources on investigating areas where the authority is most likely to identify contaminated land;
- Efficiently identify requirements for the detailed inspection of particular areas.

When developing this strategic approach the Council will reflect the unique characteristics of Barking and Dagenham.

This Strategy has been developed to meet these requirements. Particular reference has been made to guidance issued by the Government – “Contaminated Land Inspection Strategies – Technical Advice for Local Authorities.”

The Councils Strategy has been prepared in a number of stages:

- A briefing document and Committee report was prepared for Officers and Members to appraise them of the new legislation in November 1999. A further detailed briefing paper on the implications of the new legislation was issued to officers in August 2000.
- As a result of this, a Steering Group and Working Party was established in September 2000 to formulate policy with respect to contaminated land. Both groups are made up of officers from the Housing and Health, Leisure and Environment, Chief Executives and Legal Services Departments.
- A Draft Strategy was prepared for February 2001 for internal consultation as well as approval from Members and Chief Officers.
- Comments of the Draft Strategy will be invited from Statutory and non-Statutory Consultees. This is planned for late February through to April 2001.
- A Final version of the Strategy will be submitted to the DETR and copied to the Environment Agency by the end of June 2001.