

# **Barking & Dagenham**

## **Contaminated Land Inspection Strategy 2023-2028**

This strategy was approved by Cabinet on 14 November 2023.

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**The Council is committed to making Barking and Dagenham “Net Zero cleaner, greener and safer.”**

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# Chapter 1: The Contaminated Land Regime

## 1.0 Summary

Part 2A of the Environmental Protection Act 1990 is the legislative framework behind the contaminated land regime in England. Under Part 2A the London Borough of Barking and Dagenham (the Council), is required to take a strategic approach to inspect the land within its area, to identify and prioritise contaminated land which is most likely to pose an unacceptable risk to human health.

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 Food and Rural Affairs (DEFRA) published revised Statutory Guidance in April 2012. The Statutory Guidance requests that Local Authorities should publish this information within a written Strategy. Furthermore, that the Local Authorities should keep their written strategies under periodic review to ensure it remains up to date. This Strategy revises and updates the 2001 Strategy.

## 1.1 Background

The London borough of Barking and Dagenham is located north of the river Thames and east of the city of London. The characteristics of the borough are presented in Appendix 1. Consequently, it has an important legacy of industrial and commercial activities, particularly towards the south of the borough, as a result of commercial ease of access to the river Thames frontage. Although some industry remains in the borough, much has been redeveloped into commercial or residential uses. The contaminated land regime is one of the main policy measures used to deal with pollution which may be causing harm to human health or the environment as a consequence of this legacy and to ensure that contaminated land is made suitable for its current use.

## 1.2 Regulatory and Policy Context

The principal driver for establishing a Contaminated Land Inspection Strategy lies within the legislative framework. After wide consultation, s.57 of the [Environment Act 1995](#) amended the [Environmental Protection Act 1990](#) by introducing a new sub-section titled Part 2A, which specifically introduced regulation for contaminated land. The legislation enacted for the management of land contamination is provided by:

- Part 2A of the Environmental Protection Act 1990.
- Contaminated Land (England) Regulations 2000.

Under this framework, the Council (as an enforcing authority) has certain obligations. These are to:

- Inspect the Council's area and identify any contaminated land
- Establish if such land may be designated as a special site (Appendix 2)
- Establish responsibility for the remediation of contaminated land
- Ensure any necessary remediation takes place, either by agreement or enforcement action

- Determine liability for the cost of any remediation.

Some types of contaminated land are classed as special sites. This includes land that:

- seriously affects drinking waters, surface waters or important groundwater sources
- has been, or is being, used for certain industrial activities, such as oil refining or making explosives
- is being or has been regulated using a permit issued under the integrated pollution control or pollution prevention and control regimes
- has been used to get rid of waste acid tars
- is owned or occupied by the Ministry of Defence
- is contaminated by radioactivity
- is a nuclear site

The Government issued statutory guidance pertaining to the Part 2A legislation, the most recent version of which is the [Contaminated Land Statutory Guidance](#) (Statutory Guidance) 2012. Another key piece of guidance is the now updated [Land Contamination Risk Management](#) (LCRM Guidance) 2023 which sets out a detailed, risk-based approach for dealing with contaminated land. This supersedes the previous CLR11 guidance.

The Statutory Guidance recognises that there are two broad types of “inspection” likely to be carried out by local authorities:

- (a) strategic inspection for example collecting information to make a broad assessment of land within an authority’s area and then identifying priority land for more detailed consideration; and
- (b) carrying out the detailed inspection of particular land to obtain information on ground conditions and carrying out the risk assessments which support decisions under the Part 2A regime relevant to that land.

If the local authority intends to carry out a detailed inspection it will use statutory powers of entry under section 108 of the Environment Act 1995. For special sites the local authority authorises the Environment Agency carry out the inspection.

Consequently, the Council’s Contaminated Land Strategy was adopted by the Executive on 26<sup>th</sup> June 2001 and submitted to the DETR (now DEFRA) in July 2001. This document sets out how the Council will conduct its strategic and detailed inspections of the land within its jurisdiction and incorporates progression with the Contaminated Land Inspection Strategy.

### 1.3 Reason for Updating the Contaminated Land Inspection Strategy

The Department of Food and Rural Affairs (DEFRA) originally published statutory guidance on the implementation of the legislation and regulations as Circular 01/2000. The original Statutory Guidance was updated in [2006](#) and then in [2012](#).

The Statutory Guidance recommends:

*Section 2.3: The local authority should take a strategic approach to carrying out its inspection duty under s. 78B(1). This approach should be rational, ordered and efficient, and it should reflect local circumstances. Strategic approaches may vary between local authorities.*

*Section 2.4: The local authority should set out its approach as a written strategy, which it should formally adopt and publish to a timescale to be set by the authority. Strategies produced in accordance with previous versions of this Guidance should be updated or*

*replaced to reflect this Guidance. The authority may choose to have a separate strategy document and/or to include its strategy as part of a wider document.*

*The local authority should keep its written strategy under periodic review to ensure it remains up to date. It is for the authority to decide when its strategy should be reviewed, although as good practice it should aim to review its strategy at least every five years.*

In addition to this, the Environment Agency (EA) published new guidance in 2020 on Land Contamination Risk Management (LCRM Guidance). The LCRM Guidance supersedes the previous CLR 11 Model Procedures for the Management of Land Contamination.

The Council is required to consult on the revised strategy with stakeholders across regulatory organisations and services, both internally and externally (Appendix 4).

This Strategy will be reviewed and, if necessary, updated further in 2028. As recommended in the Statutory Guidance, paragraph 2.5:

*The local authority should keep its written strategy under periodic review to ensure it remains up to date. It is for the authority to decide when its strategy should be reviewed, although as good practice it should aim to review its strategy at least every five years.*

## 1.4 Role of the Environment Agency

The Environment Agency (EA) also plays a major role in supporting the Council with contaminated land matters and assists with:

- Providing advice in relation to the pollution of controlled waters;
- Inspecting potential Special Sites (Appendix 2) on behalf of the Local Authority;
- Formalising designation of Special Sites;
- Publishing of periodic reports concerning the state of national contaminated land.

## Chapter 2: Other Statutory Guidance

The contaminated land regime is used for sites which cannot be regulated by the following:

### 2.0 The Planning Regime

The overarching principle of Part 2A is to deal with land that has been contaminated as a result of historical land use and ensuring that such land is appropriately remediated, in line with its current use. Previously developed land is more commonly referred to as brownfield land or sites.

Land which has not yet been developed falls under the planning regime. Any proposals to redevelop brownfield land need to be assessed for contamination risk on the proposed user of the land. The majority of contaminated sites in the UK are dealt with via the planning process.

As a consultee to the local planning authority, the Council's Environmental Protection team considers all applications for the potential for contamination. This is to keep in line with its duties set out in the National Planning Policy Framework (NPPF), as well as the Council's local planning policy and guidance.

Planning applications for sites of potential contamination are assessed using DEFRA's recommended phased planning conditions (LCRM Guidance 2021). Conditions are set to address each stage of the investigation process and to ensure sites are verified as free of risk before occupation. The NPPF states where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

Developers are also directed to a guidance document titled '[Guidance for the Development of Land Affected by Contamination](#)'. This was developed by the East London Contaminated Land Group (comprised of local authority contaminated land officers) and is intended to serve as an informative source of advice for developers seeking to redevelop potentially contaminated land.

Regulation 3 of the Town and Country Planning (Brownfield Land Register) Regulations were adopted in 2017. This provided, through the NPPF, a requirement for the Council to prepare and publish a Brownfield Land Register. This contains a list of previously developed land (brownfield) which is available for redevelopment. Regulation 17 requires local planning authorities to [review their registers at least once per year](#). The Council published an [Industrial Land Strategy](#) in 2020.

The Mayor of London supports the remediation of contaminated sites and will work with strategic partners to ensure that the development of brownfield land does not result in significant harm to human health or the environment. This is outlined in Policy 5.21 of the London Plan.

The Council's policy BR5 of the Local Development Framework requires that a contaminated land assessment to be completed for land known to be contaminated or which may be affected by contamination. The Council's Core Strategy also promotes the remediation of contaminated land in Policies CM1 and CR1.



## 2.1 Building Regulations

The Building Regulations also specify how contaminated land is dealt with. There are provisions in the regulations to ensure that developers incorporate mitigation measures by means of ground gas protection to abate the ingress of ground gas and volatile organic compounds into buildings. Building control bodies, a local authority building control service or a private sector approved inspector building control service, inspect such sites and assess the integrity of the mitigation measures.

## 2.2 Other Relevant Regulations

Other regulatory systems are available for dealing with pollution. The statutory guidance states that Part 2A should only be exercised when no appropriate alternative solution exists.

In addition to the planning regime, land contamination can also be addressed through the regimes for:

- Environmental Permitting (England and Wales) Regulations 2016; and
- the Environmental Damage (Prevention and Remediation) (England) Regulations 2015.

The former regulations are regulated by both the Council and Environment Agency and deal with current industrial practices. The latter regulations apply to both imminent threats and actual cases of pollution damage and give the Council statutory powers to carry out action against current operators to prevent damage or further damage.

## Chapter 3: Strategy Aims

### 3.0 Aims of the Updated Strategy 2023

The Council will continue to prioritise sites of interest for detailed inspection. The main impetus for assessing potentially contaminated sites within the borough is through the planning process. This will be carried out in line with the below:

- To fulfil the request by DEFRA to adopt and publish a formal strategy under Part 2A;
- To continue to protect human health, water resources, the natural and built environment and property;
- To encourage the redevelopment of brownfield land in the borough.
- To adopt new contaminated land planning conditions which are in accordance with the updated LCRM.
- Make a layer of Previously Developed Land available on the Council's internet mapping webpage.
- To guarantee that a strategic and systematic approach is employed for addressing contaminated land and that development within the borough effectively deals with contamination.

### 3.1 Progress with the previous Contaminated Land Strategy

Further to the 2001 Strategy development, the Council set about the process for strategic inspection of the Borough. The following work was completed as part of the initial Strategy by the Council:

- identified and recorded sites of potential concern based on information from historical mapping dating from the 1860s (1:1250 and 1:2500 scale);
- previously developed land from the historic maps was recorded on a geographic information system (GIS) and the GroundView contaminated land database;
- identified and recorded maintained datasets relating to 'current' land uses were utilised to identify locations of current receptors. Receptors were split into the following broad categories, with a focus on assessing potential risks to human health,
  - Residential land (flats, housing with and without private and communal gardens);
  - Educational land (schools/nurseries);
  - Office/Retail/ Commercial land use (offices, hotels, shops); and
  - Ancient monuments/listed buildings/park and open spaces (gardens, parks, allotments/nature conservation areas etc);
- assessed information provided by the EA;
- assessed geological and groundwater data for the borough;
- the GIS was used to identify sites where contaminant linkages may exist;
- risk ranked these potential sites into low, medium or high based on historical use and the sensitive current users of the sites;
- prioritised the risk ranked sites for further inspection based on qualitative risk assessment;
- completed detailed desk-top studies of priority sites;
- completed site walkovers of priority sites;
- reviewed radioactive uses across the borough; and
- secured funding for the detailed inspection of high priority sites.

The Council carried out an initial round of inspections in between 2005 and 2011, and the contaminated land inspection programme successfully assessed priority sites. During the programme, some twenty sites were subject to detailed evaluation at a total cost of £2.5 million, much of the cost being grant funded by central government.

As a result of the inspection programme one site, the Wantz Lane Depot (now Pondfield House), was designated as contaminated land under Part 2A. Voluntary remediation of the groundwater pollution was agreed between the Council and the EA. A copy of the Public Register entry for Wantz Road is available on the [Council's website](#).

In the case of all the other inspected sites, the outcome of the investigation was a decision that no further action under Part 2A was required to be taken. The findings revealed that these sites did not meet the legal definition of contaminated land. This means that they do not pose a significant possibility of significant harm to human health, as set out the Statutory Guidance 2012.

### 3.2 Future Progress

The current CLIS update involved an assessment of whether the Council's approach was sufficient with respect to updated government guidance and whether any new information was available. High priority sites were identified, and the inspections of land conducted between 2001 and 2011 were thorough. The changes in policy focus (and assessment criterion) led to the conclusion that any further round of inspection of the sites already identified would be unlikely to identify areas of land for detailed inspection. It is highly unlikely that any sites with a lower priority meet the legal definition of a significant possibility of significant harm to human health.

Currently, no new information has been uncovered that would warrant any further detailed land inspections. However, in the event that information comes to light in the future that was not previously available to the Council, preliminary risk assessments would be undertaken in accordance with the LCRM Guidance. The procedures set out in Chapter 4 of this document would be.

Statutory Guidance specifies that enforcing authorities should seek to use Part 2A only where no appropriate alternative solution exists. The Council has adopted a proactive approach to the remediation of brownfield land through the planning regime and reactive approach to pollution incidents. The ability to respond to incidents which might cause land contamination rests with the Environmental Protection Team.

## Chapter 4: Procedures

### 4.0 Inspection Strategy Procedures

The updated Statutory Guidance has been refined to give greater clarity to Local Authorities as Part 2A legislation enforcers, who decide when land does and does not meet the legal definition of contaminated land. The updated Statutory Guidance is shorter, simpler, and more focused towards achieving optimum results in terms of dealing with sites most in need of remediation.

The following procedures will be acted upon should information about the potential contamination of land in the borough come to light in the future, which the Council was not previously aware of.

### 4.1 The Definition of Contaminated Land

The legal definition of contaminated land, set out in Section 78A of the Environmental Protection Act 1990, is:

*“Contaminated land” is any land which appears to the local authority in whose area it is situated to be in such a condition, by reason 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) significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused.*

Where ‘harm’ means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property.

The legal definition of contaminated land is slightly different if harm is due to radioactivity, as defined in Regulation 5 of The Radioactive Contaminated Land (England) Regulations 2006:

*‘Any land which appears to the local authority in whose area the land is situated to be in such a condition, by reason of substances in, on or under the land, that*

- (a) harm is being caused; or*
- (b) there is a significant possibility of harm being caused.’*

With regards to radioactivity, ‘harm’ means lasting exposure to any human being resulting from the aftereffects of a radiological emergency, past practice or past work activity.

### 4.2 Determination of Land Deemed as ‘Contaminated Land’

Given the above legal definitions, land can only be formally determined as contaminated land for one or more of the following:

- Significant harm is being caused.
- There is a significant possibility that significant harm could be caused.
- Significant pollution of controlled waters is being caused.
- Significant pollution of controlled waters is likely to be caused.

- Harm attributable to radioactivity is being caused.
- There is a significant possibility that harm attributable to radioactivity could be caused.

### 4.3 Pollutant Linkages

The existence and magnitude of harm is determined via a risk-based approach. In order for a risk to be present from land (or water) contamination, there needs to be an associated Source – Pathway – Receptor linkage, which effectively links a contaminant to a receptor. Figure 1 is a simple depiction of a pollutant linkage:

**Figure 1. Pollutant Linkage Model**



For example: a **Source** could be asbestos contaminated soil; its **Pathway** would be inhalation if the soil was disturbed or touching the soil and ingesting the asbestos, and a **Receptor** would be human beings.

Once a pollutant linkage has been established the important consideration is that a pollutant needs to be present at a relevant concentration and form to cause harm, and in a location that makes it possible to come into contact via a practicable pathway (e.g. air, land, water) with a receptor i.e. humans, the environment and/or property.

### 4.4 Identifying Potentially Contaminated Sites

In order to carry out the inspection process, sites of potential concern must first be identified. The 2001 Strategy set out a systematic and logical approach to locating land which may need further assessment. The procedures are set out in Chapter 4 of the Council’s original Strategy. The methodology used is compliant with the updated Statutory Guidance 2012. The Council’s Environmental Protection team successfully identified potential sites in the borough in 2001. These sites were digitised on the ArcMap geographic information system (GIS).

A quality assurance check was undertaken in December 2022, which involved reviewing historical Ordnance Survey maps and it was found that some allotments, industrial sites and commercial uses had not been identified on the GIS. None of these new sites had pollutant linkages.

### 4.5 Prioritisation

Once potential sites have been identified, the Statutory Guidance then states that, “*the Council should seek to give priority to particular areas of land that it considers most likely to pose the greatest risk to human health or the environment.*”

The Environmental Protection team prioritised the sites identified using a contaminated land databased called GroundView.

When the Contaminated Land Regulations 2001 were published the Council secured considerable funding for its inspection programme, which ensured the work was conducted thoroughly. The methodology used has been reviewed and is consistent with the updated Statutory Guidance 2012 and Tier 1 Preliminary Risk Assessment outlined in the LCRM 2020 Guidance.

Sites were scored based on their historical, as well as current land use and this gave rise to identifying priority sites for further inspection. The process is presented in detail, in Chapter 4 of the original Contaminated Land Inspection Strategy and remains current.

After the initial detailed inspections were completed, the Council secured funding for sites deemed high priority, and preliminary risk assessments were completed. The information gained was used to further refine the order of priority of these sites.

## 4.6 Detailed Inspection Process

The detailed investigations completed by the Council adhered to the former best practice methodology set out in the Environment Agency's [CLR 11](#) guidance document. The current best practice methodology specified by the Environment Agency is the LCRM 2020 Guidance and [Tier 3: Detailed quantitative risk assessment](#) will be used for detailed inspections.

In the event that information may come to light in the future, which may instigate further detailed inspections of land contamination under the Council's jurisdiction, then the assessment and management of the risks would adhere to current LCRM 2020 Guidance. This is for sites of most concern, those sites falling into Category 1 or 2 (refer to Section 4.7). The guidance specifies various procedures, practices, methodology, stages of the process and acceptable British Standards, as well as other [guidance documents](#) which can be used.

An intrusive investigation of the land will be commissioned. This may involve soil, water and gas sampling/analyses depending on the contaminants of concern and the pollutant linkage or linkages are identified.

The analyses derived from the sampling will be used to complete a Detailed Quantitative Risk Assessment (DQRA), the outcome of which is used as an indicator of the possibility of harm (refer to Section 4.7).

During the detailed inspection process, the Council will seek to gain voluntary cooperation with the owner or occupier of the land. It is beneficial to establish this early, particularly should further works and remediation be necessary. If there is no cooperation or the owner of the land cannot be found, the Council should then consider using their statutory powers of entry under section 108 of the Environment Act 1995.

When detailed inspections of potentially contaminated land are planned the steps outlined in Table 1 are followed.

### **Table 1: The Detailed Inspection and Investigation Process**

#### Stage 1: Risk Assessment

There is a tiered approach to risk assessment. The three tiers are:

1. Preliminary risk assessment.

2. Generic quantitative risk assessment.
3. Detailed quantitative risk assessment.

#### Stage 2: Options Appraisal

There are three steps to follow.

1. Identify feasible remediation options.
2. Do a detailed evaluation of options.
3. Select the final remediation option.

#### Stage 3: Remediation and Verification

There are four steps to follow.

1. Develop a remediation strategy.
2. Remediate.
3. Produce a verification report.
4. Do long term monitoring and maintenance, if required.

### 4.7 Significant Possibility of Significant Harm

The updated Statutory Guidance in 2012 gave clarity to the definition of significant harm which is the key legal determinant for determining land as contaminated. The Local Authority should consider whether or not the land poses a Significant Possibility of Significant Harm (SPOSH).

The updated Statutory Guidance brings clarity to the use of Generic Assessment Criteria (GAC) and states:

*GACs [sic] relating to human health risk assessment represent cautious estimates of levels of contaminants in soil at which there is considered to be no risk to health or, at most, a minimal risk to health. With regard to such GACs:*

- (a) They may be used to indicate when land is very unlikely to pose a significant possibility of significant harm to human health. This is on the basis that they are designed to estimate levels of contamination at which risks are likely to be negligible or minimal and far from posing a significant possibility of significant harm to human health.*
- (b) They should not be used as direct indicators of whether a significant possibility of significant harm to human health may exist. Also, the local authority should not view the degree by which GACs are exceeded (in itself) as being particularly relevant to this consideration, given that the degree of risk posed by land would normally depend on many factors other than simply the amount of contaminants in soil.<sup>2</sup>*
- (c) They should not be seen as screening levels which describe the boundary between Categories 3 and 4 in terms of Section 4 (i.e. the two Categories in which land would not be contaminated land on grounds of risks to human health). In the very large majority of cases, these SGVs/GACs describe levels of contamination from which risks should be considered to be comfortably within Category 4.3*
- (d) They should not be viewed as indicators of levels of contamination above which detailed risk assessment would automatically be required under Part 2A. (e) They should not be used as generic remediation targets under the Part 2A regime. Nor should they be used in this way under the planning system, for example in relation to ensuring that land affected by contamination does not meet the Part 2A definition of contaminated land after it has been developed.*

The updated Statutory Guidance in 2012 also revealed four risk categories for sites to be allocated into when assessing the possibility of significant harm to human health from the land.



*In deciding whether or not land is contaminated land on grounds of significant possibility of significant harm to human health, the local authority should use the categorisations described in paragraphs 4.19 – 4.30 (refer to Table 2). Categories 1 and 2 would encompass land which is capable of being determined as contaminated land on grounds of significant possibility of significant harm to human health. Categories 3 and 4 would encompass land which is not capable of being determined on such grounds.*

## **Table 2**

### **Category 1**

Sites where the LA considers there is an unacceptably high probability, supported by robust science-based evidence, that significant harm would occur if no action is taken to stop it, similar land or situations are known, or are strongly suspected on the basis of robust evidence, to have caused such harm before, significant harm may already have been caused by contaminants in, on or under the land, and that there is an unacceptable risk that it might continue or occur again if no action is taken.

### **Category 2**

Sites where the LA considers pose a significant possibility of significant harm. This may include land where there is little or no direct evidence that similar land, situations or levels of exposure have caused harm before, but nonetheless the authority considers on the basis of the available evidence, including expert opinion, that there is a strong case for taking action under Part 2A on a precautionary basis.

### **Category 3**

Sites where the LA considers a strong case does not exist, and the legal test for significant possibility of significant harm is not met. May include land where the risks are not low, but nonetheless the authority considers that regulatory intervention under Part 2A is not warranted.

### **Category 4**

Sites where the LA considers there is no risk or that the level of risk posed is low. Sites can include land where no relevant contaminant linkage has been established, normal levels of contaminants in soil, exposure to contaminants in.

## **4.8 The Determination of Contaminated Land**

Following a detailed inspection, the Wantz Road Depot (now known as Pondfield House) was entered on the Public Register of Information in Respect of Contaminated Land. The pollutant linkage involved pollution of controlled waters and a Remediation Statement has been published by the owner/occupier of the Land (the London Borough of Barking and Dagenham). Remediation is ongoing and involves using an active containment system.

In the future, once the Council is satisfied that an unacceptable risk is present, the Council should inform the owners and occupiers of the land and any other person who appears to be liable to pay for remediation.

At this stage the Council will also consider whether to:

- (a) *Give such persons time to make representations (for example to seek clarification of the grounds for determination, or to propose a solution that might avoid the need for formal determination) taking into account: the broad aims of regime; the urgency of the*



*situation; any need to avoid unwarranted delay; and any other factor the authority considers to be appropriate.*

*(b) Inform other interested parties as it considers necessary, for example owners and occupiers of neighbouring land.*

The Council may choose to postpone the determination of contaminated land if the land owner or some other person undertakes to deal with the problem without determination, and the authority is satisfied that the remediation will happen to an appropriate standard and timescale. This is the preferred option, however if an agreement cannot be made then the Council will proceed to determine the land as contaminated land.

## 4.9 Remediation

In the first instance, it is favourable to secure remediation without a remediation notice if the steps being taken achieve a standard of remediation equal to, or better than, what the authority would otherwise have specified in a remediation notice.

Alternatively, once land has been determined as contaminated land, the Council must consider how it should be remediated and, where appropriate, it must issue a remediation notice to require such remediation. The remediation notice shall specify what that person is to do by way of remediation and the periods within which they are required to do each of the things so specified.

In all instances, remediation should seek to prevent, minimise, remedy or mitigating the effects of, any significant harm identified in the pollution linkage. The Environment Agency or other professional and technical organisations provide guidance on appropriate steps and methodology for the remediation of contaminated land, radioactive land and controlled waters.

The Statutory Guidance clearly states that the Council needs to consider the reasonableness of any remediation proposed. The site does not need to be returned to its natural state, nor be remediated to a standard for any potential future uses. When considering the reasonableness of remediation various factors must be evaluated, including;

- (a) the practicability, effectiveness and durability of remediation;
- (b) the health and environmental impacts of the chosen remedial options;
- (c) the financial cost which is likely to be involved; and
- (d) the benefits of remediation with regard to the seriousness of the harm or pollution of controlled waters in question.

The vast majority of contaminated land issues have been and will continue to be directed towards and addressed through the Development Control regime, where contamination is a material consideration for the purposes of the Town and Country Planning Act 1990. National Planning and Policy Framework (NPPF § 183c.) provides advice to Local Authorities on dealing with contaminated land during the planning process.

The Environment Agency also recommends that developments should consider using the National Quality Mark Scheme for Land Contamination Management.

## 4.10 Liability

The Statutory Guidance clearly sets out the factors to consider and the steps to take in establishing liability for paying for remediation actions. The regime is retrospective in the sense that it imposes liabilities in respect of acts done in the past which did not give rise to such a liability as the law stood at the time the pollution occurred.

Liability is apportioned to parties defined legally as persons. When identifying appropriate persons, each significant contaminant linkage is treated separately (unless it is reasonable to treat more than one linkage together because the same parties are liable).

Section 78F of the legislation defines who may be an “appropriate person,” i.e., a person liable to remediate the contaminated land. In summary, a person is liable if they “caused or knowingly permitted” the contaminating substance(s) “to be in, on or under” the land in question. If no such person, “after reasonable inquiry”, can be found, the responsibility for remediation falls to the owner or occupier of the land.

For example, a developer who failed to take measures to remedy or mitigate significant harm when redeveloping industrial land to residential use, then sold the individual homes. If the developer’s company is dissolved and no longer operational, then an owner/occupier through no fault of their own, can be liable.

The Statutory Guidance specifies various classes of persons who are liable for the cost of remediation, (Table 4).

**Table 4: Classes of Persons Liable for Remediation Costs**

<b>Class A person</b>	Persons who caused or knowingly permitted each linkage
<b>Class B person</b>	The owners or occupiers of the land
<b>Class A person cannot be identified</b>	Class B persons are typically assigned liability
<b>Orphan linkage</b>	If no Class A or Class B persons can be found liable for a linkage

It is important to note that identifying the appropriate person can prove a lengthy process. This is due to the various exclusion tests outlined in the Statutory Guidance. In addition to this, complex sites may have an extensive historic succession of land ownership and different components of a contaminated site may be attributable to different polluters, over different epochs in time.

## 4.10 Special Sites

Not all land designated as contaminated land will be enforced by the Council. Some types of contaminated land are classed as special sites.

In these instances when a site is designated as a special site, the site is referred to an appropriate Agency. The Council maintains the register and serves any notices and the appropriate Agency adopts the notice. The enforcing authority for the purposes of remediation may be the local authority which determined the land, or the Environment Agency, which takes on responsibility once land has been determined if the land is deemed to be a special site.

Where appropriate the Council will also seek appropriate advice on the technical aspects of contaminated land from external agencies, including:

- EA for water resources and radiation;
- UK Health Security Agency for health related matters and radiation;

- Food Standard Agency for advice on farming;
- Natural England regarding environmental designations;
- English Heritage regarding historic buildings and monuments

## Chapter 5: Contaminated Land Register

### 5.0 Record of The Determination of Contaminated Land

The Council should prepare a written record of any determination of land that is determined as contaminated land. The record should clearly and accurately identify the location, boundaries and area of the land in question, making appropriate reference to Ordnance Survey grid references. The record should be made publicly available by means to be decided by the authority.

The record should explain why the determination has been made, including:

- (a) The risk summary required by Section 3 of this Guidance, and where not already covered in the risk summary:
  - i. a relevant conceptual model comprising text, plans, cross sections, photographs and tables as necessary in the interests of making the description understandable to the layperson; and
  - ii. a summary of the relevant assessment of this evidence.
- (b) A summary of why the authority considers that the requirements of relevant sections of this Guidance have been satisfied.

### 5.1 The Public Register

Part 2A specifies that the Council shall maintain a public register that will act as a full and permanent record of land of sites that have been formally determined as contaminated land.

The contents of the public register should contain the following:

- Remediation notices
- Appeals against remediation notices
- Remediation declarations
- Remediation statements
- Appeals against charging notices
- Designation of 'special sites'
- Notifications of claimed remediation
- Convictions for offences under section 78M of the Environmental Protection Act 1990
- Site specific guidance issued by the Environment Agency
- Other environmental controls

A copy of the register is made available [on the Council's website](#).

## Chapter 6: Recovery of the Costs of Remediation

### 6.0 Costs Recovery

Significant costs can be incurred during both the detailed inspection phase as well as the remediation of a site. Determining costs can be complex due to variation in the history and ownership of land and liability for its remediation.

The statutory guidance advises that the Council have regard to the circumstances of each individual case and consider the following principles:

- (a) The authority will aim for an overall result which is as fair and equitable as possible to all who may have to meet the costs of remediation, including national and local taxpayers.
- (b) The “polluter pays” principle should be applied with a view that, where possible, the costs of remediating pollution should be borne by the polluter. The authority should therefore consider the degree and nature of responsibility of the relevant appropriate person(s) for the creation, or continued existence, of the circumstances which lead to the land in question being identified as contaminated land.

# Appendices

## Appendix 1: Characteristics of the London Borough of Barking and Dagenham.

### 2.1 Geographical Location

The London Borough of Barking and Dagenham is situated on the North bank of the River Thames to the East of London, just nine miles from the centre of London and only a few minutes' drive into the Essex countryside. The Borough comprises of a total land area of 3,419 hectares.

The Borough is located between three other London Boroughs. To the North is the LB Redbridge, to the East is the LB Havering and to the West is the LB Newham. The Boroughs Southern boundary is the River Thames.

### 2.2 – Brief Description/History

Until the 19th Century, the Borough was predominantly rural, dominated by agricultural uses, constrained in the north by Hainault Forest, to the south by the River Thames, in the west by the River Roding and to the east by the River Beam.

In the 19th Century the growth of London intensified pressure on agricultural land, and for a while Barking became the most important fishing port in England, only to decline in importance with the development of the rail network, pollution of the Thames and the advent of refrigeration technology.

In the 1920's work began on the Becontree Housing Estate in the Borough. Almost 3000 acres of land (1212 hectares) were used to develop a variety of terraced and semi-detached two storey dwellings on a new geometric road pattern, stretching from Goodmayes to Chadwell Heath and Dagenham Village.

The development of the Becontree Housing Estate created new demands for employment in the Borough and led to the establishment of heavy industry at Dagenham Marshes along the River Thames corridor, and the eventual development of the Ford Motor Plant in the south-east of the Borough. The Ford plant has since come to dominate the industrial landscape of the Borough in the same way as the Becontree Estate has dominated the housing landscape in the Borough.

Since World War II the industrial areas of the Borough have intensified and expanded and a great deal of in-fill development has taken place. This is mainly due to the fact that the Borough is in an area of flooding potential so the land has been raised to compensate for this.

The late 1960's and early 1970's saw the redevelopment of some of the newer housing in the Borough and the construction of high rise and other flatted estates at various locations within the Borough.

A period of great change is underway in Barking and Dagenham. The Borough is located within the Thames Gateway, which is the largest regeneration area in Europe. Much of the planned development will involve the conversion of existing brownfield sites to housing land.

The Key Regeneration Sites in Barking and Dagenham include:

- Barking Town Centre,
- Barking Riverside, and
- South Dagenham.

### **2.3 – Population and Health**

The population of the Borough is estimated to be 218,900 within an area of approximately 3,618 hectares.

- 57,150 children aged between 0 and 15, equating to circa 26% of the population (highest proportion of all local authorities in England and Wales)
- 142,700 people aged between 16 and 64, equating to circa 65% of the population
- 19,050 people aged 65 and over, reflecting around 9% of the population
- 69.1% non-White British population – 10th highest in the country

Health is also a concern in the Borough. Life expectancy is significantly below London and national averages for both men and women, and there are particular problems relating to cancer, heart disease and teenage pregnancy. As described in the Borough's Joint Strategic Needs Assessment (JSNA), we have a rapidly growing, young and diverse population as well as having the highest birth rate and rates of child poverty in London.

### **2.4 – Land owned by the Council**

Like most local authorities the Council has extensive land holdings in the Borough. Various Directorates are responsible for land within the Borough. The make-up of Council owned land is as follows:

- Schools and their open spaces such as playing fields.
- Social Services building such as Old Peoples and Children's Homes etc.
- Council owned Housing stock.
- Council owned buildings such as the Town Hall, Civic Centre and Council offices/buildings.
- Council owned Depots and Civic Amenity Sites.
- Council owned former landfill sites.
- Libraries/museums/youth clubs and centres.
- Parks and Open Spaces
- Lakes and watercourses
- Sports centres and their playing fields.
- Graveyards.
- Gypsy site.
- Highways, service roads and alleyways.
- Commercial property.
- Historic buildings e.g. Eastbury Manor House.
- Derelict land.
- Allotments.

It should be noted that as part of the Planning process, the Council has actively developed Council owned land to ensure that it does not remain in a derelict state. Remediation or clean-up operations have occurred, and continue to occur, on Council owned land that is found to be contaminated.

### **2.5 – Current land use characteristics**

There are extensive housing and industrial areas spread throughout the Borough. The Borough has some major industrial premises both past and present. These include:

- Motor manufacturing
- Old and new power stations
- Pharmaceutical manufacturing
- Paint manufacturing
- Road stone coating
- Asbestos manufacturing
- Ship building
- Dockside and rail-side handling
- Gravel extraction and Waste disposal including landfill
- Oil storage, mixing and blending
- Chemical works
- Gas works
- Lead battery works
- Radioactive materials processing and disposal
- Tanning and leatherworks.

## **2.6 – Protected Locations**

The natural features of Barking and Dagenham tend to be hidden by the urban development which has engulfed much of the Borough since the beginning of the 20<sup>th</sup> Century. However, there are within the Borough a number of Sites of Importance for Nature Conservation (SINC's) which are briefly described below.

### Sites of Metropolitan Importance

- The River Thames and Tidal Tributaries
- The Chase Nature Reserve
- Barking Reach Nature Reserve including the City Farm.

### Sites of Borough Importance (Grade I)

- River Roding
- Furze House Farm
- Dagenham Breach and the Lower Road Beam
- Lower Beam Valley and Dagenham Leys
- The Middle Beam Valley and Dagenham East Lake
- Eastbrookend

### Sites of Borough Importance (Grade II)

- Barking Park and Loxford Water
- Mayesbrook and associated water courses
- Mayesbrook Park Lakes
- Parsloes Park/The Squatters
- Lymington Field
- Whites Farm
- Goresbrook River
- Whalebone Lane Hedge
- Wantz Lake area

### Conservation Areas

- Barking Town Centre



- Former Gun Site at Marks Gate
- Dagenham Village
- Abbey Road Riverside

The Borough does not have any Areas of Outstanding Natural Beauty (AONB), RAMSAR sites, Special Areas of Conservation or Sites of Special Scientific Interest (SSSI's).

#### Sites of Local Importance

- Lady Trowers Trust Playing Fields
- Barking Abbey ruins and St Margaret's Churchyard
- Gascoigne Road Pumping Station Rough
- St Chad's Park
- Valence House Gardens
- Morrison road Rough
- Reed Road allotments, Pondsfield Road and adj. railside
- St Peter's and St Pauls' Churchyard, Dagenham

## **2.8 – Key Water Resources**

One of the major issues in dealing with contaminated land is the protection of controlled waters. The regulation of controlled waters rests with the Environment Agency. Three of the Boroughs four boundaries are comprised of rivers, including the Rivers Thames, Roding and Beam.

Essex and Suffolk Water supply the Borough's drinking water. There aren't any reservoirs located in the Borough, but one groundwater pumping station is located just outside the Borough's Boundary in Havering. (TQ 508842). In addition, Thames Water Utilities have a groundwater pumping Station located in Barking. (TQ 437842).

Both are within Source Protection Zones for which modelling has been done by the Environment Agency. These abstractions are taken from the Chalk and there is significant protection afforded by the overlying London Clay.

## **2.10 – Geological Characteristics**

Information published by the British Geological Society in Sheet 257 – "Romford" (1:50,000 series) shows that the majority of the Borough is directly underlain by the various river terraces of the Thames and Roding, including the Flood Plain Gravel, Taplow Gravel and Boyn Hill Gravel. Brickearth is shown overlying these deposits in some areas. River terrace deposits are shown to be scanty and discontinuous towards the north of the Borough (around Little Heath, Chadwell Heath and Mark's Gate) and much of this area is directly underlain by the solid geology of the Eocene: London Clay.

Younger (Holocene) Alluvium directly underlies the Borough on lower ground, next to major rivers, in particular the River Roding and River Beam. A more extensive cover of alluvium occurs to the south of the Borough, along the River Thames.

In most cases, the geology of the Borough consists of the following:

- Made ground
- Alluvium (clay and silt, with some peat)
- Thames gravels.

- London Clay – which varies in thickness across the Borough.

Four types of rocks compose the solid geology of the Borough. These are:

- London Clay
- Woolwich and Reading Beds
- Thanet sands and
- Chalk.

Extensive gravel extraction has, and continues to occur, in the Borough. Where gravel winnings have been undertaken, many of the gravel's pits have been infilled with waste. These make up the majority of the Boroughs landfill sites. However in some cases the gravel pits have not been infilled and now make attractive water features, such as those found at Eastbrookend Country Park.

Soil type is an important influence on land use, vegetation cover and, in terms of geomorphology, the sediment delivery within the Borough. The soil type of the Borough is such that they are dominated by clay based soils. These include well drained and slowly permeable calcareous clayey soils and associated brown earth. The clayey soils make for waterlogged soils but there is a small risk of water erosion due to the dominance of clay soil.

Note: A CDROM has been provided by the EA. This includes information on the Hydrogeology of the area. This information will be loaded on the GIS system when it comes "live." (Geological information is available from the British Geological Survey).

## **2.11 – Hydrogeological Characteristics**

Three of the four Borough boundaries are watercourses. To the East is the River Roding, to the West is the River Beam and to the South is the River Thames. These are classified as Main Rivers. In addition to this the Borough has some further main rivers such as the Rivers Mayesbrook, Goresbrook and Wantz.

The National Rivers Authority (now the Environment Agency) Groundwater Vulnerability Maps provides the information on the water beneath the land in the Borough. It shows that the Borough has no "Principal Aquifers" within its boundary. The area is designated as "Secondary A Aquifers" or "Secondary B Aquifers or Unproductive Strata".

However, the DEFRA Magic Map indicates a small area of Principal Chalk to the south-west of the Borough where Barking Creek meets the River Thames. The Borough also contains one Water Framework Directive Groundwater Water Body – Greenwich Tertiaries and Chalk (GB40602G602500), which currently has a 'poor' quantitative, chemical, and overall status.

## Appendix 2: Special Sites Legal Definition

Please refer to the full legislation for the legal definition in its entirety. Contaminated land of the following descriptions is prescribed for the purposes of section 78C(8) as land required to be designated as a special site:

- (a) land affecting controlled waters in the circumstances specified in regulation 3;
- (b) land which is contaminated land by reason of waste acid tars in, on or under the
- (c) land;
- (d) land on which any of the following activities have been carried on at any time
  - (i) the purification (including refining) of crude petroleum or of oil extracted from petroleum, shale or any other bituminous substance except coal; or
  - (ii) the manufacture or processing of explosives;
- (a) land on which a prescribed process designated for central control has been or is
- (b) being carried on under an authorisation, where the process does not solely consist of things
- (c) being done which are required by way of remediation;
- (d) land on which an activity has been or is being carried on in a Part A(1) installation or
- (e) by means of Part A(1) mobile plant under a permit, where the activity does not solely consist
- (f) of things being done which are required by way of remediation;
- (g) land within a nuclear site;
- (h) land owned or occupied by or on behalf of—
  - (i) the Secretary of State for Defence;
  - (ii) the Defence Council,
  - (iii) an international headquarters or defence organisation, or
  - (iv) the service authority of a visiting force, being land used for naval, military or air force purposes;
- (i) land on which the manufacture, production or disposal of:
  - (i) chemical weapons,
  - (ii) any biological agent or toxin which falls within section 1(1)(a) of the Biological Weapons Act 1974(6) (restriction on development of biological agents and toxins), or
  - (iii) any weapon, equipment or means of delivery which falls within section 1(1)(b) of that Act (restriction on development of biological weapons), has been carried on at any time;
- (j) land comprising premises which are or were designated by the Secretary of State by an order made under section 1(1) of the Atomic Weapons Establishment Act 1991(7) (arrangements for development etc of nuclear devices);
- (k) land to which section 30 of the Armed Forces Act 1996(8) (land held for the benefit of Greenwich Hospital) applies;
- (l) land which is contaminated land wholly or partly by virtue of any radioactivity possessed by any substance in, on or under that land; and
- (m) land which:
  - (i) is adjoining or adjacent to land of a description specified in any of sub-paragraphs (b) to (k); and
  - (ii) is contaminated land by virtue of substances which appear to have escaped from land of such a description

## Appendix 3: Part 2A Contaminated Land Statutory Guidance, Strategic Inspection

2.3 The local authority should take a strategic approach to carrying out its inspection duty under section 78B(1). This approach should be rational, ordered and efficient, and it should reflect local circumstances. Strategic approaches may vary between local authorities.

2.4 The local authority should set out its approach as a written strategy, which it should formally adopt and publish to a timescale to be set by the authority. Strategies produced in accordance with previous versions of this Guidance should be updated or replaced to reflect this Guidance. The authority may choose to have a separate strategy document and/or to include its strategy as part of a wider document.

2.5 The local authority should keep its written strategy under periodic review to ensure it remains up to date. It is for the authority to decide when its strategy should be reviewed, although as good practice it should aim to review its strategy at least every five years.

2.6 The local authority should include in its strategy:

- (a) Its aims, objectives and priorities, taking into account the characteristics of its area.
- (b) A description of relevant aspects of its area.
- (c) Its approach to strategic inspection of its area or parts of it.
- (d) Its approach to the prioritisation of detailed inspection and remediation activity.
- (e) How its approach under Part 2A fits with its broader approach to dealing with land contamination. For example, its broader approach may include using the planning system to ensure land is made suitable for use when it is redeveloped; and/or encouraging polluters/owners of land affected by contamination to deal with problems without the need for Part 2A to be used directly; and/or encouraging problematic land to be dealt with as part of wider regeneration work.
- (f) Broadly, how the authority will seek to minimise unnecessary burdens on the taxpayer, businesses and individuals; for example by encouraging voluntary action to deal with land contamination issues as far as it considers reasonable and practicable.

## Appendix 4: List of persons consulted in the preparation of this strategy

A public consultation was undertaken between 28<sup>th</sup> June 2023 and 23 August 2023. The Draft Contaminated Land Inspection Strategy 2023-2028 was placed on the Council's website and was sent to the following people and organisations:

### Internal Consultees

- Cabinet Member for Enforcement & Community Safety
- Director of Inclusive Growth
- Director of Policy & Participation
- Head of Regulatory Services
- Operational Director Enforcement, Regulatory & Community Safety
- Planning
- Public Health
- Building Control

### External Consultees

- Environment Agency
- Food Standards Agency
- UK Health Security Agency
- English Heritage
- Natural England
- Adjacent London Boroughs
  - LB Newham
  - LB Redbridge
  - LB Havering

## Appendix 5: Glossary of Terms

### Appropriate Person

Defined in Section 78A(9) as: 'any person who is an appropriate person, determined in accordance with section 78F, to bear responsibility for anything which is to be done by way of remediation in any particular case.'

### Aquifer

An aquifer is soil and/or rock that contains water that may be used for local, regional or national water supply.

### Brownfield Land

Formerly developed or industrial land where there is the possibility of the ground being contaminated e.g. gas works

### Conceptual Model

A drawing or schematic showing how, in theory, the contaminant can get to the receptor and which pathways it will use

### Contaminant

A substance which is in, on or under the land and which has the potential to cause significant harm or to cause pollution of controlled waters.

### Controlled Waters

Defined in section 78A (9) by reference to Part 3 (section 104) of the Water Resources Act 1991; this includes territorial and coastal waters, inland fresh waters and ground waters.

### Contaminant linkage

The situation where a contaminant source, pathway and receptor are present resulting in the potential for effects upon the receptor to occur.

### CLR 11

[Contaminated Land Report number 11](#): Model Procedures for the Management of Land Contamination, was published by the Environment Agency and withdrawn in 2020. It was superseded by the [Land Contamination Risk Management \(LCRM\) Guidance document](#).

### Critical Receptor

The receptor (person, building or ecosystem) that is most affected by the contamination on site. In cases where houses are to be built this is taken to be a female 6 year old child living there for life. This is because they will be most damaged if the contamination is not dealt with.

### Detailed Quantitative Risk Assessment (DQRA)

A detailed assessment of potential contaminant exposure and risk carried out on a site specific basis using measured site parameters wherever possible. This level of assessment gives the most realistic appraisal of the likely levels of risk present.

### EA

Environment Agency, an executive non-departmental public body whose principle aims are to protect and improve the environment, and to promote sustainable development.

### Generic Quantitative Risk Assessment

An assessment of risk from contaminants in soil by comparing site specific contaminant concentrations with generic screening criteria developed for general use in line with best practice guidance. Such criteria are typically very conservative in their assumptions about allowable exposure and risk

### GIS

Geographical Information System

### LCRM

The [Land Contamination Risk Management \(LCRM\) Guidance document](#) is the currently approved guidance for the management of land contamination. This document was published by the Environment Agency.

### LQMS

Land Quality Management System.

### Pollutant

A contaminant which forms part of a pollutant linkage.

### Pollutant Linkage

The relationship between a contaminant, a pathway and a receptor.

### Part 2A

Part 2A of the Environmental Protection Act 1990.

### Pathway

One or more routes or means by, or through, which a receptor: (a) is being exposed to, or affected by, a contaminant, or (b) could be so exposed or affected.

### Register

The public register maintained by the enforcing authority under the enforcing authority under section 78R of particulars relating to contaminated land.

### Remediation

Remediation is the process of cleaning up contaminated land so that the contamination is no longer affecting the users of a site/adjacent site. The level of remediation that must be achieved is set out within statutory guidance.

Section 78A(7): Defines "remediation" as: "(a) the doing of anything for the purpose of assessing the condition of – (i) the contaminated land in question; or (ii) any controlled waters affected by that land; or (iii) any land adjoining or adjacent to that land; (b) the doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land for the purpose – (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm (or significant pollution of controlled waters), by reason of which the contaminated land is such land; or (ii) of restoring the land or waters to their former state; or (c) the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters.

### Remediation Statement

Is defined by Section 78H(7) of the Environment Protection Act 1990 and is a statement prepared and published by the responsible appropriate person detailing the remedial actions which are being, have been, or are expected to be done, together with the periods within which each of the things

specified are being or will be done

### Special Site

Land meeting the definition of a Special Site as described within the Contaminated Land (England) Regulations 2006.

### SSSI

Site of Special Scientific Interest

### Statutory guidance

This refers to the Contaminated Land Statutory Guidance published in April 2012, which sets out guidance to local authorities on how the contaminated land regime should be implemented

### Surface Water

Any water that sits on the surface of the land. Main sources of surface water include the sea, lakes, reservoirs, rivers, canals and ponds.

### Verification Reporting

Verification reporting is reporting that contains evidence of what work has been carried out to remediate a site. This may include the technical details of the remediation, evidence that the remediation has been carried out successfully and monitoring to show that the remediation is working and any risks have been addressed.