



Environmental Health

Contaminated Land Inspection Strategy Review April 2013

In April 2000 new legislation (Part 2A of the Environmental Protection Act 1990) (Ref 1) was introduced with the aim of providing an improved system for the identification and remediation of contaminated land.

Local authorities were given a duty to inspect their area to identify contaminated land, and powers to ensure that any necessary remediation is carried out if contamination is found that is, or is likely to be, causing a significant risk of harm to people or the environment. Each authority was required to produce a Strategy outlining how they would inspect their area. Taunton Deane's Inspection Strategy was adopted in June 2001. More details are given in Appendix 1.

The Environmental Protection Team also works with Development Management at Taunton Deane Borough Council to ensure that any developments on potentially contaminated land do not pose any risks to future users of the sites or the environment.

In April 2012 the Department for Environment, Food and Rural Affairs (Defra) published revised Contaminated Land Statutory Guidance (Ref 2), the first update since the legislation was introduced. Local authorities should review their Strategy to make sure that it is in line with the new Statutory Guidance.

Progress in line with Taunton Deane Borough Council's Inspection Strategy

The timescales in the Strategy proposed to have completed the assessment of all potentially contaminated land by December 2005. However, as the investigation progressed a large number of low priority sites were found, for example, nearly 2000 sites were found that could be classed as quarries/unknown filled ground. It would not have been possible to assess this number of sites within the proposed timescales, therefore, in 2006 the timescales were extended to allow these sites to be assessed over a number of years.

In 2010 the number of staff in the Environmental Protection Team was reduced as a result of the Core Council Review and the work carried out by the Team was reviewed to determine what should be a priority. It was decided to continue to work with Development Management and review information on sites through the planning process, however, the assessment of the remaining low priority sites would be put on hold. The status of any site can be reviewed if any further information is found or there is a change in a site's use.

Assessment of sites through the Planning process.

The remediation of brownfield sites through the planning process can be an effective way of dealing with the legacy of potentially contaminated land. This is in line with the

Council's policy of ensuring that priority is given to the development of previously used brownfield sites. The Taunton Deane Local Plan 2004 identified urban brownfield sites as having the potential to provide 57% of new dwellings in the Borough

The work carried out as part of the inspection process provides information on the location of sites where there is the potential for contamination to be present. If a planning application is received for one of these sites the Council could ask for a risk assessment and investigation to be submitted with the application, or require it as a planning condition. Planning conditions can also be used to ensure that the developer carries out any required remedial works. Under the National Planning Policy Framework 2012, where a site is affected by contamination responsibility for securing a safe development rest with the developer and/or landowner

Review of 2011 and 12

During this period no information was found that required any potentially contaminated sites to be investigated or reviewed in line with the Inspection Strategy.

During 2011 and 2012 the Environmental Protection Team recommended planning conditions relating to contamination on 77 applications. Over the same period information requiring comments from the Team was submitted for 31 applications. The information that is being dealt with vary from small reports relating to developments of agricultural buildings or builders yards, to investigations and risk assessments for developments of hundred of houses on commercial land.

Both the number of applications being received and reports being submitted were lower than the previous year. This is likely to be a result of the slow down in the economy. Also, a lot of the new houses being built in the borough are on greenfield sites which do not normally require as detailed an investigation or any remedial work. There are a number of large developments on brownfield sites in the Borough, however, these are progressing slowly or are on hold.

Revised Statutory Guidance

In April 2012 the Department for Environment, Food and Rural Affairs (Defra) published revised Contaminated Land Statutory Guidance sets out how local authorities should implement the contaminated land legislation. The guidance was revised to try and take into account any issues that were found during the years that the previous guidance had been in place.

The new guidance emphasises the need to take a risk based approach, focusing on land that poses the greatest risk. The objectives state that the starting point when making an assessment "should be that land is not contaminated land unless there is reason to consider otherwise" and that "only land where unacceptable risks are clearly identified, after a risk assessment has been undertaken in accordance with this Guidance, should be considered as meeting the Part 2A definition of contaminated land".

The new guidance also introduces four categories to try and help explain what is meant by "contaminated land". These are defined as:

Category 1 - where "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".

Category 2 - where "there is a strong case for considering that the risks from the land are of sufficient concern, that the land poses a significant possibility of significant harm".

Category 3 – where there is not the strong case described in the test for Category 2. This 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 – where there is no risk or the level of risk posed is low.

This same 4 category system has also been introduced to assist in identifying whether there is a significant possibility of significant pollution of controlled waters.

If a site meets the criteria for category 1 it would be classed as “contaminated land” under the legislation and appropriate action should be taken. A Category 4 site is low risk and so can be ruled out of any further inspection. The more difficult decision will be between category 2 and 3 sites where a local authority would have to decide whether or not there is a “significant possibility of significant harm”.

Defra are proposing to introduce guidance on what level of contamination in soil can be considered to be no or low risk, allowing a site to be classed as Category 4. The aim is to “screen-out” low risk sites to allow resources to be spent on areas where it is more likely that there could be a risk to health or the environment.

Taunton Deane’s Inspection Strategy is in line with the requirements of the new guidance and it will not need to be rewritten. There is no requirement to reclassify sites that have been previously assessed sites in the new category 1- 4 format. However, the new guidance will need to be followed if any sites are found that need to be investigated under the Environmental Protection Act 1990.

Conclusion

The Inspection Strategy has allowed the Council to take a strategic approach to the inspection of the Borough in line with the Government’s objectives by allowing a large number of sites across the Borough to be prioritised and assessed. No sites have been found where the contamination was significant enough for the area to be classed as “contaminated land”.

The Council notes the new Statutory Guidance that has been introduced in 2012 and will follow this when carrying out any future inspections or assessments under the legislation.

The work carried out as part of the inspection of the Borough has resulted in the collation of a large amount of information on land use across the Borough which is proving to be useful when liaising with Development Management and developers during the development of previously used land.

It has been decided to continue to allocate resources to dealing with sites through the planning process rather than review the large number of low priority sites that have

been highlighted while gathering information for the Inspection Strategy. However, the work on the strategy is an ongoing process and if any new information is found, or changes made to legislation or guidance the assessment of sites can be reviewed.

Since the legislation was introduced in 2000 Defra and previous government departments have indicated that they would produce technical guidance to help local authorities understand what is meant by a significant harm to health (i.e. a level of risk that is unacceptable). This would help when deciding what level of contamination in soil on a site would mean that the land could be classed as “contaminated land” under the EPA 1990. The proposed new guidance levels for Category 4 sites will help decide if a site is low risk, and not contaminated land; however, they will not address the concerns about what level of risk is considered unacceptable and would require intervention from the local authority.

The importance of ensuring that a site is developed safely has been highlighted by cases such as that against Corby Council who carried out work at a large former steelworks in the 1980s and were subsequently taken to court by local residents who alleged that they were affected by contamination from the site (Ref 3). It is hoped that an increased awareness of land contamination, improved practices among developers and stronger regulation by local authorities and the government mean that these problems are a thing of the past.

References.

- 1) HM Government (1990) Environmental Protection Act 1990. HMSO
- 2) HM Government (2012) Environmental Protection Act 1990: Part 2A. Contaminated Land Statutory Guidance. HMSO
- 3) Corby Group Litigation v. Corby Borough Council [2009] EWHC 1944 (TCC).

Appendix 1

Outline of the Inspection Strategy

The Strategy explains the steps that will be taken by the Council to identify any contaminated land.

For land to be classed as “contaminated land” the council has to find contamination in the ground and show that it is coming into contact with people or the environment. The contamination has to be causing harm to people’s health or damaging the environment. There may be sites where there are high levels of contamination but they are not affecting the environment or people, therefore, the site cannot be classed as “contaminated land”.

The initial work involved gathering information on historical land uses; setting up a geographical information system (GIS) and creating a database for sites with uses that had the potential to cause contamination. An initial survey identified over 2000 sites with “potentially contaminative uses” (although a lot of these are small quarries or filled ditches and ponds). These sites are now being assessed as follows,

1st Stage prioritisation Sites with a past/current land use with the potential to cause contamination are identified and prioritised (high, medium or low) according to the risk associated with the type of use.

2nd Stage prioritisation Sites are prioritised according to their proximity to receptors (People; water; environmentally sensitive areas; property such as buildings, crops or livestock). The “high” rated sites from Stage 1 will be prioritised first.

3rd Stage risk assessment Sites will be assessed in the order of the second stage prioritisation. More detailed information will be gathered to help characterise a site. This will include factors such as groundwater vulnerability, distance to nearest residential premises and condition of the site surface. If any potential hazards are identified a more detailed investigation and risk assessment will be carried out.

Timescales given in Taunton Deane’s Inspection Strategy

Task	Complete by	Current status (June 2008)
Gather Information - on sources of contamination, receptors and pathways	July 2002	Completed July 2002 - Information gathered on sources of contamination (inc past land uses), receptors and pathways.
Consolidate the information management system	July 2002	Completed Sept 2002 - Flare premises database created - Information added to CIS computer mapping system

Prioritise Sites (1 st Stage) Depending on the potential risk posed by land uses and proximity of receptors	September 2002	Completed Sept 2002
Risk assess and inspect high priority site (2 nd and 3 rd Stages)	December 2003	Completed January 2004 - 230 sites assessed. A small number are under review.
Assess and inspect medium priority sites (2 nd and 3 rd Stages)	December 2004	Completed December 2004 270 sites assessed (other than "unknown filled ground" see below), and a small number are under review.
Assess and inspect low priority sites (2 nd and 3 rd Stages)	December 2005	Completed December 2005 Assessment of all Low priority sites other than "quarries" (see below)

The information from historic maps that was purchased by the Council in 2001 included over 2000 sites shown as "unknown filled ground" or "quarries". Because of the large number of sites it was not practical to carry out a detailed assessment of each of them within the timescales given in the Strategy. It was decided that a detailed assessment of these sites would be carried out only where there are records of waste disposal or where a site has had other uses with the potential to cause contamination. All the low priority sites other than quarries and unknown filled ground were assessed during 2005.

There were approximately 2000 quarry/unknown filled ground sites remaining on the database. Most of these appeared to be filled ditches or ponds, or small, disused quarries. In 2006 it was decided that an assessment would be carried out on these sites using information available on the council's mapping system (historic maps, aerial photographs etc), and to assess approximately 250 a year. This would progress the inspection strategy while allowing time to deal with higher priority sites and sites being developed through the planning process.

In 2010 the inspection of the low priority quarry/unknown filled ground sites was put on hold. Sites will still be dealt with through the planning process, or if any evidence is found to indicate that the site could be a higher priority.