



Contaminated Land Inspection Strategy

Reigate & Banstead Borough Council

2021 – 2025 (Version 3)

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1 Introduction

The contaminated land regime in Part IIA of the Environmental Protection Act 1990 (hereafter referred to as Part IIA) was introduced by Section 57 of the Environment Act 1995. The regime came into force in April 2000. Under this regime local authorities in England are required to prepare, implement and keep under periodic review, a Contaminated Land Inspection Strategy.

The council's first strategy was published in September 2002 (version 1). The council's second strategy was published in July 2015 and this strategy updates this.

1.1 Definition of Contaminated Land

Section 78A(2) of the Environmental Protection Act 1990 defines contaminated land in relation to Part IIA as 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:

- significant harm is being caused or there is significant possibility of such harm being caused; or
- pollution of controlled waters is being, or is likely to be, caused.

1.2 Strategy Aims

This strategy outlines how the council will meet its statutory duties as required by Part IIA and the Contaminated Land Statutory Guidance issued by the Department for Environment, Food and Rural Affairs (Defra) in April 2012. This strategy will work in tandem with the wider aims and objectives of the National Planning Policy Framework and the council's corporate plan 2020-2025 (5 year plan) and Core Strategy documents. This strategy should be read in conjunction with the statutory guidance, as it contains the legal and scientific detail on which this strategy is based.

1.3 Strategy Objectives

The council's objectives echo those of the statutory guidance, and these are as follows:

- To identify and remove unacceptable risks from contaminated land to human health and the environment;
- To seek to ensure that contaminated land is made suitable for its current use;

- 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.

2 Characteristics of the Local Area

The administrative area of Reigate and Banstead Borough Council lies mid-way between London and the Sussex Coast. The borough covers an area of approximately 50 square miles and has a population of approximately 140,000 people. The natural landscape is varied, ranging from the relatively wooded spaces of the North Downs to the agricultural land of the Mole Valley. In particular the borough is characterised by a relatively large proportion of green belt land (72%). This has the effect of concentrating development in the towns and increasing the pressure to reuse existing land.

The Surrey Hills have been designated an Area of Outstanding Natural Beauty (AONB) following the full length of the North Downs Escarpment from Pebble Coombe Hill in the West to Alderstead Heath in the East. There are also four Sites of Special Scientific Interest (SSSI's) designated by Natural England and twelve Areas of High Ecological Quality (AHEQ's) designated by the Surrey Wildlife Trust.

The borough is located on the northern edge of the Wealden beds just before an incline below the Cretaceous chalk. On the surface the most obvious signs of this underlying geology is the escarpment of the North Downs which runs west to east and dissects the borough. The underlying geology typically comprises bands of clay in the south and chalk in the north. The whole borough is then further divided by the River Mole running south-east to northwest. As a result of the River Mole and its associated tributaries, there are also substantial sand and gravel deposits in the borough, which have been quarried. Before the waste management licensing provisions of the Environmental Protection Act 1990 (the act), these old workings were often utilised for landfill sites and were subject to little regulatory control. Historically, popular industries include brick and tile works, cement and lime works, sand extraction and extraction of fullers' earth.

Much of the borough is built on green sand which is known for its high levels of arsenic. This matter has been studied in some detail and although Environment Agency guidance states that approximately 32mg/kg is the usual threshold value for residential properties, based on local historic investigations it has been determined that levels of up to 50-60mg/kg, are actually more representative of the area.

3 Contaminated Land in the Borough Review

3.1 Progress to Date

In our 2002 strategy, the council detailed its strategic approach, which generally related to the gathering of information about potentially contaminated land and the subsequent assessment and prioritisation of these sites. The approach involved a number of stages, with each described in more detail, below. The stages are listed below and explored in detail throughout this chapter.

1. A framework for inspection of sites requiring urgent attention
2. Collection of information on potentially contaminated sites
3. Initial assessment of potentially contaminated sites
4. Compilation of a list of potentially contaminated sites
5. Risk-based assessment and prioritisation of sites
6. Detailed inspection of high risk sites from the priority list

3.1.1 Stage 1

Stage 1 commenced developing a framework around how to assess pressing sites that required urgent attention. These primarily included former landfills and a series of long term ground gas monitoring was undertaken, for instance.

3.1.2 Stage 2

At stage 2, information was gathered from a variety of data sources, including historic mapping and business directories, and collated in a database. This information was then used to compile a comprehensive list of sites where contaminated land could theoretically be present. Sites were added to the list where an information source indicated that a possibly contaminative use or activity had at some time taken place at the location.

3.1.3 Stage 3

Stage 3 made provision for the initial assessment of potentially contaminated site. At this stage the council had an appreciation for what would likely be high and low priority sites on face value.

3.1.4 Stage 4

By stage 4, some 1,166 *potentially* contaminated sites had been identified in the borough. However, in practice, it is very likely that the vast majority of these sites are not contaminated land as defined by the Act.

3.1.5 Stage 5

Stage 5 involved the use of specialist prioritisation software (Groundview) to rank the sites identified at stage 4 thereby determining our contaminated land priority inspection list. This software was used as a tool to calculate scores that represent the approximate inherent risk posed by the sites to sensitive receptors in the borough such as humans, wildlife and watercourses.

The list is divided up into four categories, based on the site calculated risk ranking. A Band 'A' Site is of high priority for further detailed investigation. Examples of typical Band 'A' Sites are landfills, gas works, tanneries, brick works and engineering works. Band 'D' sites are of very lower priority, due to their perceived lower risks land uses and receptors present and typically comprise very old small infilled ponds, infilled land drains, lime kilns and previously investigated sites. The bands are further explained below.

Band A- High potential for SPOSH to exist. Distinct possibility land remediation may be required.

Band B- Moderate potential for SPOSH, a degree of land remediation may be required but is unlikely.

Band C- Elevated potential risk of contaminated land, unlikely to represent SPOSH. Land remediation is considered unlikely to be required.

Band D- Likelihood of contamination is considered low, but the potential for a degree of ground contamination to be present still exists but unlikely to pose a significant risk to receptors.

SPOSH= Significant Possibility of Significant Harm

The prioritisation inspection list was formally completed in 2010 and this will be updated as new information comes to light and as such is considered an ongoing process.

The spread of Band 'A' to 'D' sites are shown graphically in Figure 1.

3.1.6 Stage 6

Stage 6 commenced in 2010. The council has undertaken four detailed site inspections from high priority sites on our prioritisation inspection list, with the assistance of the Defra Capital Grant Fund (at the time this strategy was produced). The inspections included both desktop studies and intrusive site investigations assessments. No land has been found to meet the statutory definition of contaminated land within our borough when this strategy was produced.

In general, intrusive investigatory works won't commence on a 'new' site whilst existing Part 2A investigations are underway on another priority investigation site(s). This prioritisation approach is to ensure satisfactory resourcing levels are maintained for a robust assessment and delivery of a high level of service.

3.2 Future Focus 2020-2025

When carrying out our duties, the council must consider the resources and funding it has available and the need to target limited resources to where they can be of most benefit. The council considers it to be unacceptable to start a project without ensuring enough resources to fully see all aspects of the project through to conclusion.

Contaminated land investigations can take from a few months to several years to fully complete. Intrusive site assessments cannot feasibly be started until enough detailed data has been collected to suggest the site could meet the statutory definition of contaminated land. The council aims to investigate sites as quickly and efficiently as possible, to minimise any potential issues such as property blight or any stress to residents during our investigations.

Our priority inspection list is ever evolving. When sites are investigated and not deemed to meet the statutory definition of contaminated land, they will be effectively removed from the list by virtue of being relocated to Band D Status (the lowest priority for investigation). Where new sites are identified then these will be prioritised and added to our inspection list and database in a rational and ordered manner.

The detailed inspection of individual sites can be a large financial commitment, time consuming and potentially a controversial task, as affected properties may suffer from blight and financial burden during the overall investigation process. While this would likely be justified for sites where significant risks to sensitive receptors have

been identified, certain sites may require a different approach. This would likely comprise the production and subsequent implementation of a risk management and mitigation strategy for the short, medium or long term. Decisions on the above will be taken on a case by case basis having full regard to our statutory duties, resources and information available to the council at that time

3.3 Investigatory Tools

Below is a non-exhaustive list of the various investigatory tools open to the council to investigate potentially contaminated land. They are listed in the order of priority the council will aim to utilise the tools.

3.3.1 Overarching Aim

The council aims to where practicable to seek to work with third parties on a voluntary basis to manage the risks from land contamination without the need to exercise our regulatory powers.

3.3.2 National Planning Policy Framework (NPPF)

Having regard to Section 3.2 , the council's overall aims and objectives as set out in our corporate plan 2020-2025 (five year plan) and core strategy and the overarching development management processes, the main tool to carry out our statutory duties relating to the investigation of land contamination will be via the National Planning Policy Framework (NPPF) (the town and country planning process).

Paragraph 178 of the NPPF states: Planning policies and decisions should ensure that:

- a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);
- b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and

c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.

Should the council identify a potential contaminated land issue with a site, that is subject to a planning application, then it is likely detailed contaminated land and/or ground gas conditions will be required to be placed on any future planning permission (if granted) to mitigate these potential issues. These conditions will likely require the investigation of ground conditions across the site in question in a phased manner. This will likely start with a desktop study, then move onto phased intrusive site investigation (if required) whereby soil samples/gas monitoring is undertaken, then should any issues become evident these will be remediated (cleaned up) to ensure the site is not capable of being determined as contaminated land.

3.3.3 Self-Serve Assessments

The notion of self-serve assessments encourages residents to 'do it themselves' as advocated in our corporate plan 2015-2020 (5 year plan). We can relate this philosophy to residential property transactions. The council supports 'self-serve' to help facilitate property transactions on potentially contaminated land where little or no information exists on ground conditions to ascertain the appropriate level of risk/liability. This is done with the view of facilitating a successful property transaction for all parties involved.

Self-serve would typically involve owners or prospective purchasers of property commissioning a suitably qualified person to carry out an appropriate intrusive site investigation, at their own cost, to ascertain the nature of ground conditions and thus qualify the environmental risk/liability associated with a property transaction.

It is strongly recommended this is done with prior consultation with the council to ensure a robust assessment is undertaken. In addition, works would need to be carried out by a suitably qualified environmental professional, to ensure best practice guidance, and the relevant British Standards are followed. The council is able to act as a qualified environmental professional in these instances as this type of services would be classified as a discretionary service. The council must however have full regard to all relevant legislation when offering professional discretionary service.

Assuming the investigation was carried out to our satisfaction the council would determine whether or not the land in question does constitute contaminated land or not. Should land not constitute contaminated land no further action by the council would be required and we would document this on our systems, effectively remove the land from our contaminated land priority inspection program and confirm this in writing.

Should the site constitute contaminated land then the council will carry out our duties as required by the relevant legislation and statutory guidance. Remediation of the land would likely be required.

3.3.4 Proactive Investigation

Where resources enable, the council will continue to investigate potentially contaminated sites and neighbouring areas (as required) that are present on our priority inspection list in a rational and ordered manner.

During the lifetime of our former strategy, we received just over £80k from Central Government Capital Grant Funding Programme. There is unlikely to be any more funding available to assist local authorities with investigations in the foreseeable future, due to national funding restructuring. As a result, investigations into the future would need to be in keeping with the council's overarching aims and objects as set out on our corporate plan 2020-2025 (5 year plan) and core strategy documents.

3.4 Newly Identified Potentially Contaminated Sites

There is the potential for the occasional newly identified potentially contaminated land site in the borough to be brought to our attention either by a third party or identified by our own in house investigatory process.

Newly identified sites will be suitably researched, appraised and entered accordingly on our Contaminated Land Priority Inspection List. Where actual ground contamination is known to be present (rather than likely present) the site will be placed at or near the top of the aforementioned list, whilst having regard to proximity to the sites sensitive and surrounding receptors.

3.5 Contaminated Land Register Entries

At the time this strategy was produced, the council has not formally designated any land as meeting the statutory definition of contaminated land within the borough. As a result, at the time of writing this strategy the register is empty. A copy of the register is located at the following web address:

http://www.reigate-banstead.gov.uk/info/20335/contaminated_land/435/contaminated_land_and_the_council

Hard copies of the register can be provided upon request and available to view by appointment at the Town Hall.

4 Determination and Remediation of Contaminated Land

4.1 Deciding if Land is Contaminated or Not

Under the contaminated land regime the starting point is that land is not contaminated land unless there is reason to consider otherwise. Where it is clear, following an inspection, that land does not meet the legal definition of contaminated land, the council shall cease its investigations and issue a written statement to that effect to the owners of the property and other interested parties. A copy of this statement will be kept on file, along with the reasons for making the decision. The council will not formally publish the information, but will keep a record of it in the event of receiving requests for information.

4.2 Determination of Contaminated Land

As the result of a detailed site inspection, should the council identify that **a contaminant** (e.g oils or lead) **a pathway** (a way for the contamination to move and transfer) and **a receptor** (humans, wildlife and watercourses etc) with respect to the current use of land and the council be satisfied that one or more of the following points, as outlined below, are met, then the site meets the statutory definition of contaminated land.

- Significant harm is being caused to that receptor; or
- There is a significant possibility of significant harm being caused to that receptor; or
- Significant pollution of controlled waters is being caused; or
- There is a significant possibility of pollution of controlled waters.

Should land be deemed contaminated land, then the council will produce relevant detailed risk summaries for the site as required by the statutory guidance and will give written notice of the intention to determine the land contaminated land to the following interested parties:

- The owner of the land;
- Any person(s) appearing to the council to be in occupation of the land;
- Any person(s) appearing to the council to be an 'appropriate person' (as defined by the act); and
- The Environment Agency.

4.2.1 Special Sites

Should a site meet the special site definition, as defined by the act, the Environment Agency will be informed as soon as reasonably practicable and the Agency would normally carry out inspections to determine whether the land is contaminated or not.

Special sites include land that meets at least one of the typical requirements below:

- seriously affects drinking waters, surface waters (for example lakes and rivers) and important groundwater sources
- has been, or is being, used for certain industrial activities, such as oil refining or making/processing 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 responsibility for formal designation remains with the council at this stage. If the land has been determined as contaminated land and if the council and the Environment Agency (if necessary the Secretary of State as well) agree that the site is a special site, the Environment Agency will take over the role of enforcing authority.

Where a special site is identified the council will aim to work in partnership with the Environment Agency and include them early on in the decision making process.

4.3 Remediation

Remediation is the term used to describe the 'clean up' of contaminated land. There are many different ways land can be remediated but this essentially is concerned with removing a contaminant source or reducing the risk posed to receptors to an acceptable level. The council will make reasonable enquiries in order to identify all of the appropriate persons to pay for any remedial action with respect to each pollutant linkage that may be required. These persons constitute the liability group for a pollution linkage. Thus, for each pollutant linkage that may be identified, either a Class A liability group comprising persons who caused or knowingly permitted the pollutant to be present, or a

Class B liability group comprising persons who are the current owners or occupiers of the land, could take on liability for that pollution linkage.

Having regard to the statutory guidance, once the relevant people have been notified of the intention to determine the land in question as contaminated land, the council has provision to postpone this determination. This can be done if the owner or some other person agrees to undertake to deal with the contamination issues in a suitable way and timescale. This is called voluntary remediation and is similar in nature to Section 3.3.3 'self-serve assessments'.

In such cases, the persons responsible for carrying out the remediation will usually be required to prepare a remediation statement and submit this to the council for prior authorisation before remedial works commence. Depending on the nature of the site and size of the land affected the council may prepare a remedial strategy (clean up specification) in-house. The strategy will detail the clean-up works required to be carried out by the land owner and the works would be required to be independently validated to ensure the necessary works have been carried to an acceptable standard. It should be noted that these works would likely need to be completed by a suitably qualified persons. If required the council can validate remedial works.

After reasonable consultation, if appropriate remediation cannot be secured by an agreement, the council has powers to serve a remediation notice on appropriate persons. The notice will state what measures need to be carried out to remediate the contaminated land and the timescale for the work to be carried out. For multiple appropriate persons, the notice shall state what proportion of costs each one is to bear. A remediation notice cannot be served within three months of a person being notified that the land in question is contaminated land.

It is an offence under Part IIA not to comply with a remediation notice without reasonable excuse. If the council decides to carry out the remediation actions itself, it can recover its reasonable costs from the appropriate person. Any person who receives a remediation notice has 21 days from the date of the notice to appeal against the notice. The following sections explore in detail if the council was to carry out remediation itself how it would go about recovering these costs.

4.4 Hardship and Cost Recovery Policy Statement

This hardship and cost recovery policy statement is aimed at the scenario that the original polluter (Class A Person(s)) can't be identified/found, a successful legal case against the Class A Person(s) has not been won or the relevant exclusion tests outlined in the statutory guidance are met. As such liability legally falls to the current legal land owner of the land in question (Class B Person(s)).

The council's corporate plan 2020-2025 (5 year plan) outlines the financial pressures we face with ongoing funding reductions required and a move towards financial self-sufficiency is a necessity. Specific contaminated land funding through the Capital Grants Programme has been effectively withdrawn by Central Government in late 2014. As a Local Authority we must have regard to how any future decisions can affect local tax payers and impact on how the council provides key services throughout the Borough.

As a result of the above, the council has appraised its various options regarding the possibility of waiving or reducing remedial costs. The council will therefore not 'waive' or 'reduce' remediation costs that legally should be borne by the appropriate person(s) as defined in the primary legislation and with regard to the various exclusion tests outlined in the statutory guidance. As a result the council will seek to recover **all** of its reasonable costs. This position will be subject to review in the future (as required).

The council will have full regard to the relevant legislation and provisions laid out in the primary legislation and Statutory Guidance that relate to hardship and cost recovery issues. The council will endeavour to make provisions to ensure the costs of remediation does not cause or add to existing hardships. Therefore our overall approach can be summarised as follows:

- Seek to recover in full its reasonable costs incurred when performing its statutory duties in relation to the remediation of contaminated land.
- Wherever possible, apply the "polluter pays" principle, whereby the costs of remediating pollution are borne by the polluter.
- Where this is not possible, seek all sources of finance (external to the council) for remediation (if available).
- Have due regard to the avoidance of hardship which the recovery of costs may cause.

- 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.

To allow us to be fair to our residents and assess individual cases we have a number of options open to us that are explored in the following sections.

4.4.1 Hardship

Hardship in the terms of this policy relates to financial hardship that would be exacerbated or brought on as a result of an appropriate person(s) being liable and thus paying for proportionate remediation costs.

If the appropriate person(s) has been served a charging notice of the remediation cost payment/recovery by the council, then they will have up to 21 days, from the date of the notice, to inform the council that they wish to be considered as a hardship case. The council will then send out an application form that will require the applicant to provide various financial information about income, expenditures and benefits etc, within 21 days from the date of the communication.

The council will utilise this information and the steps provided in the Statutory Guidance to assess a hardship case using a council approved means testing tool to assess each case individually. Should an applicant be successful they will be contacted and arrangements made to develop a suitable cost recovery programme that best reflects their needs. Should an applicant not be successful they have a right to appeal and further scrutiny of their situation will be required. The options of cost recovery are non-exhaustive and presented in Section 4.4.2 below.

4.4.2 Cost Recovery

The council will seek to recover **all** reasonable costs associated with required remediation we can legally recover in a proportional manner, the council will not waive or reduce costs that legally should be borne by another party. The council will however have regard to any relevant requirements and tests set out in the legislation and statutory guidance relating to matters of hardship and cost recovery.

To compliment this policy statement the council has several options available that are broadly outlined below. Note this list is non- exhaustive and other potential options may be available/considered.

1. Payment in full of relevant remediation costs within a specified time frame.
2. A percentage (%) part payment supplemented with regular monthly payments over a prescribed period of time.
3. If none of the above options are deemed feasible then the council can consider the option of putting a 'charge' on the land in question. This is whereby the amount of the remediation costs is secured against the land in question and that money will be returned to the council in full when the property legally changes ownership i.e sold.

5 Review Mechanisms

5.1 Strategy Reviews

The council will review its written strategy periodically to ensure it remains up-to-date and reflects any significant changes in legislation, statutory guidance, best practice or any other relevant matters.

The next scheduled strategy reissue review (as version 4) is early 2025. However, this may be brought forward should any statutory changes or new guidance require it.

5.2 Decision Reviews

All decisions made with regard to contamination need to be made objectively, consistently, transparently, and with proper regard to uncertainty. One important aspect of managing contaminated land is the need to review decisions made about particular sites, to establish whether any material changes have occurred. Examples of factors which influence the decisions and which have the potential to change include:

- Change of site use
- New information comes to light (i.e site investigation report)
- Complaints from residents regarding ground conditions
- Change of use of adjoining land
- Climatic or meteorological change
- Change in physical characteristics e.g. the water environment
- Legislative or internal or external policy changes
- Changes to technical standards or procedures
- Actions taken by a third party to reduce the effectiveness of remedial measures.

All decisions made under Part IIA will therefore be made and recorded in a consistent manner that will allow for the effective review, as and when circumstances require.

5.3 Decision Outcomes

The main outcome of a decision is likely to involve the site in question being re-categorised in that its site investigation priority will change. This could either increase the priority for investigation or decrease the priority for investigation. However, should any new information come to light that indicates that there is a high risk of SPOSH or other imminent danger then consideration for immediate or emergency action may be required.

Document End

Figure 1

**Original Site Band Boundaries derived from
generated Site Prioritisation Scores**

Figure 1: Site Band Boundaries derived from generated Site Prioritisation Scores

