


Cabinet	
28 November 2017	
Report of: Ann Sutcliffe, Acting Corporate Director, Place	Classification: Unrestricted
Update of the Strategy for the Identification of Contaminated Land 2017	

Lead Member	Councillor Amina Ali – Cabinet Member for Environment
Originating Officer(s)	David Tolley – Head of Environmental Health and Trading Standards
Wards affected	All wards
Key Decision?	No
Community Plan Theme	A Healthy and Supportive Community

Executive Summary

This report sets out the Council's updated plan for identifying contaminated land which is a statutory requirement under Part 2A (P2A) of the Environmental Protection Act (1990). The objective of the strategy is to identify and take action to remedy any areas within the borough that may impact the health of residents.

This revision updates the Strategy for the Identification of Contaminated Land of June 2013 that was adopted on 8 May 2013. The revisions take account of:

- A review in line with the Contaminated Land Statutory Guidance (Defra)
- the progress that has been made with implementing the previous strategies; and
- the introduction of new technologies and systems within the Council.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve the Tower Hamlets Strategy for the Identification of Contaminated Land 2017.
2. Delegate to the Corporate Director of Place authority to make any amendments to the policy deemed necessary following consultation with the Corporate Director Governance.

1. REASONS FOR THE DECISIONS

- 1.1 Local Authorities are designated appropriate Agencies under Part 2a of the Environmental Protection Act (1990) who are responsible for identifying and determining contaminated land within their jurisdiction. From time to time Local Authorities are required by the aforementioned Act to review the inspection of land within their area.

2. ALTERNATIVE OPTIONS

- 2.1 If the Council takes no action they would be neglecting their duty to review the already adopted plan.

3. DETAILS OF REPORT

- 3.1 The Strategy incorporates the Council's objectives which are set out in the Community Plan and the Environmental Health and Trading Standards Service Plan. It is particularly relevant to the quality of life and health and wellbeing of residents of the Borough.
- 3.2 The overall objectives for the next five years are:
- Identify those sites where land contamination is presenting unacceptable risk to human health or the wider environment and ensure remediation takes place.
 - Identify Council-owned or occupied potentially contaminated sites which should be prioritised for remediation as part of asset management.
 - To promote the regeneration and safe redevelopment of former industrial land.
- 3.3 Each chapter of the Strategy reflects the progression through each phase of identifying contaminated land. Risk assessment protocols are detailed in the Strategy and sites are assessed accordingly at each phase in line with current best practice.
- 3.4 Sites with contaminative uses (e.g. chemical works) were originally identified from historical mapping. These sites were compared with current sensitive uses (e.g. residential) to prioritise potentially contaminated sites. Prioritisation is achieved by applying a risk model which combines weighting factors of the past use with current land use. The result is a score or risk rating of sites where there is a "potential pollutant linkage". The sites which have the greatest potential for contamination to be causing significant harm to human health and/or the environment are identified at this first stage.
- 3.5 The second phase involves undertaking a site reconnaissance of each of the priority sites in which further information is gathered to establish an "actual pollutant linkage" exists. The outcome of this is to produce a list of high priority sites which require a soil investigation.

- 3.5 The third phase involves reviewing the outcome of a soil investigation if contaminants are present at the site and whether they constitute “a significant pollutant linkage.” Furthermore, DEFRA introduced the concept of determining whether the contaminants are causing a significant possibility of significant harm (SPOSH) and the advice of a registered Toxicologist to evaluate SPOSH will be sought.
- 3.6 Once a site has been designated as contaminated land, in accordance with the statutory criteria, the Council will in the first instance engage the appropriate persons as defined in the legislation to clean up the site before formally declaring the site as contaminated land.
- 3.7 Previously, capital funding was received from DEFRA to investigate sites. This funding was which was matched by the Council. Site investigations were undertaken during 2016 and further sampling is required. These sites will be progressed and the further sampling completed within the next six months.
- 3.8 It should be noted that in the last 10 years the amount of DEFRA funding for investigating contaminated sites has decreased significantly.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report sets out the Tower Hamlets Strategy for the Identification of Contaminated Land for the next five years. The strategy provides for the Council being able to identify and take action to remedy any areas that impact on the health of residents. There is current provision in the capital programme 2017-18 to 2019-20 of £360k to fund identified Contaminated Land Works which includes a contribution of £98k from DEFRA.
- 4.2 The Council has been able to apply to DEFRA for reimbursement of costs associated with the site investigation and where the recovery of costs would cause financial hardship when a reasonable and fairness test is applied. The government guidance provides for a hardship policy that determines who pays for the costs of remediation of contaminated land. The Council is therefore able to recover costs from both residents and companies if found liable for contamination of the Land.
- 4.3 The report notes that Government funding for investigating contaminated sites has decreased over the last 10 years. The continual reductions in DEFRA funding could impact on the Council meeting its overall objectives. Therefore, where costs cannot be recovered, or continue to be reliant on reducing Government funding, the impacts will need to be considered as part of the Council’s capital strategy before any of the proposed actions can be implemented.

5. LEGAL COMMENTS

- 5.1 LBTH adopted a Contaminated Land Strategy which was first published in July 2001. The Strategy was last reviewed and adopted in May 2013. and detailed how the Council intended to respond to the statutory duties in relation

to contaminated land. The legislative framework which governs the Council's responsibilities in this area is contained in Part 2A of the Environmental Protection Act (EPA) 1990, together with regulations which elaborate on details of the Part 2A regime, such as dealing with issues like what qualifies as a "special site"; public registers; remediation notices; and the rules for how appeals can be made against decisions taken under the Part 2A regime.

The Contaminated Land Statutory Guidance, published by the Department for Environment, Food and Rural Affairs in April 2012 is the latest guidance provided.

- 5.2 Part 2A of the EPA 1990 defines 'Contaminated Land' and gives a number of functions to local authorities. In accordance with Part 2A, the Council has to do the following:
- carry out inspections of the land that may be contaminated;
 - find out who is responsible for causing the contamination;
 - formally designate land that is found to be contaminated;
 - agree on the required action to clean up (remediate) the land; and
 - keep a Public Register of designated contaminated sites in the borough, specifying how the land was cleaned up and what, if any, legal action was taken.
- 5.3 The Council is required to act in accordance with statutory guidance issued by the Secretary of State when carrying out specified functions under the Part 2A of the EPA 1990. This includes the carrying out of inspections under section 78B of the Act for the purposes of identifying contaminated land and determining whether it should be designated as a special site. The statutory guidance states that the Council's approach to inspections should be rational, ordered and efficient and it should reflect local circumstances. The statutory guidance proceeds to state that 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, which should be at least every five years.
- 5.4 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 specify that any function relating to contaminated land is a local choice function, which may be but need not be the responsibility of an executive of the authority. In Tower Hamlets the decision was taken to make functions in relation to contaminated land a council-side function, as listed in paragraph 5 of section 3.1.3 of the Council's Constitution (page 87). Accordingly, the responsibility of making the contaminated land strategy is not an executive function.
- 5.5 Before adopting the revised contaminated land strategy, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. Information is provided in paragraph 6.1 of the report relevant to this. Where land contaminated land is identified it will be necessary to carry out further EAQA checklists.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 An equality analysis quality assurance checklist has been completed as part of this review in compliance with relevant legislation.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The Council is fulfilling its best value duty by ensuring that staff resources are targeting the higher risk potentially contaminated sites as determined through the process of risk assessing and prioritising sites. The acquisition of consultancy services to deliver soil investigations is subject to Council procurement procedures. Tenders are assessed based on quality and cost.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The aim of this Strategy is to improve land quality within the borough and increase the quality of life for residents.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 The Council as a enforcing Authority is the primary regulator for implementation of Part 2A of the Environmental Protection Act 1990 which establishes a legal framework for dealing with contaminated land in England. The updated Strategy for the Identification of Contaminated Land sets out how the Council will fulfil its obligations under this legislation.
- 9.2 Failure to ensure that the council discharges its responsibilities can have serious consequences for the Council and these are set out below.
- 9.3 Should the Council not exercise its duties to inspect and determine contaminated land in its area it would be considered negligent if it were proven that residents' health was impacted by contaminated land when the Council had not taken action.
- 9.4 The Part 2A legislation does not specify what occurs should the Council not fulfil its obligations as specified above. However, should this eventuate the risk to the Council would be loss of reputation. It is possible that DEFRA whom are responsible to the Secretary of the State may re-delegate enforcement powers to another authority to exercise them on its behalf. In 2014 pressure groups lobbied for the delegation of Part 2A enforcement powers to a single English authority, for instance to the Environment Agency (EA). However, this has been shelved due to Brexit preparations.
- 9.5 In delivering the Strategy for the Identification of Contaminated Land, the Pollution Team is reliant on the Services of other key Teams such as Legal Services, Communications and Public Health to provide support to meet the objectives of the Strategy.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 There are no crime and disorder reduction implications with this report.

11. SAFEGUARDING IMPLICATIONS

11.1 There are no safeguarding implications with this report.

Linked Reports, Appendices and Background Documents

Linked Report

None

Appendices

Appendix 1 – Strategy for the identification of contaminated land

Appendix 2 – Equalities Impact Assessment – Checklist

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

None

Officer contact details for documents:

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