

Contaminated Land Inspection Strategy – Update and Review

Application of Part IIA of the Environmental Protection Act 1990

Introduction

The Council's contaminated land inspection strategy was originally published during June 2001 following approval by members of the former Health & Housing Sub-Committee. Although the inspection strategy remains the 'core' document that will enable the Council to deliver its statutory duty, there have been a number of significant developments since it was prepared. These are discussed below and where necessary will modify the approach that is currently being adopted.

Objectives

The key objectives of the inspection strategy will continue to be those identified below,

- Demonstrate how the Council intends to satisfy the criteria contained in paragraph B9, B10 and B15 of the Statutory Guidance (refer to Appendix 1 of the strategy)
- Establish a framework for undertaking this work in a manner that is regarded by all stakeholders as fair and impartial
- Provide robust information to the Environment Agency for its report on contaminated land

Delivering the key objectives remains fundamental to the success of the inspection strategy.

Progress since June 2001

In anticipation of the publication of the inspection strategy, the Council purchased a risk evaluation software package and historical land use dataset to enable a preliminary or 'first pass' assessment of land that was believed to be potentially contaminated.

By January 2004 the risk evaluation software package contained 1161 records of specific sites. These sites varied in size from approximately 0.01 hectares to over 40 hectares and included features ranging from small in-filled ponds to large sites previously occupied by military and railway related uses.

At this point preliminary costs were then obtained to undertake a desk study of those sites considered to represent a potentially higher risk to sensitive receptors. A modest budget was subsequently agreed to allow a maximum of ten desk studies to proceed.

During June 2005 environmental consultants were then appointed to review the initial risk rating score previously applied during the preliminary or 'first pass' assessment of land that was potentially contaminated and to prepare a list of suitable sites for the desk studies. This work was subsequently completed during November 2005.

Between March and May 2006 environmental consultants provided the ten desk studies to allow the Council to decide how the next phase of the work should proceed.

During October 2006 the Council applied for capital funding from DEFRA to undertake a detailed inspection of one site in accordance with paragraph B20 of the statutory guidance. The application was subsequently approved during February 2007. Environmental Consultants were appointed to undertake the necessary work and reported the outcome to the Council during March 2008. On the basis of the evidence provided from the detailed inspection no formal determination was considered to be necessary.

Three further applications for capital funding have been submitted to DEFRA of which two were successful, grant offers being made during December 2007. In each case the Council has instructed environmental consultants to proceed with the necessary work. The final outcome of each detailed investigation is currently awaited.

However, another site has recently been identified which is currently public open space and will require detailed inspection in accordance with paragraph B20 of the statutory guidance. This site is likely to be investigated during the next financial year, subject to the award of capital funding from DEFRA.

Finally, during August 2008 the Council asked the Environment Agency to undertake a detailed inspection of land in accordance with paragraph B29 and B30 of the statutory guidance because it could be a special site if the groundwater was impacted. The Environment Agency has recently appointed environmental consultants to prepare a desk study and design for the site investigation with a view to securing capital funding from DEFRA during the next financial year.

Planning and Development Control

The inspection strategy has previously highlighted that the Ashford Local Plan (June 2000) encouraged the redevelopment of 'brown-field' land. Since the inspection strategy was published the Council has prepared the Local Development Framework Core Strategy (November 2006) which sets out the vision for development in the Borough for the period 2006 to 2021. Policies within the Ashford Local Plan expired on 27 September 2007, unless saved by a Direction from the Secretary of State for Communities and Local Government.

The Secretary of State for Communities and Local Government has issued a Direction dated 24 September 2007 which retains Policy No. GP9 entitled 'Making best use of urban land' for Ashford Town. This effectively continues to encourage the redevelopment of 'brown-field' land and therefore maintains an effective link between paragraph 2.11 of the inspection strategy and the planning and development control function.

Since March 2006 the Council has also adopted a more rigorous approach to applications involving the redevelopment of land with a former contaminative use and will normally request (as a minimum) a desk study and site walkover. The Kent Development Control Officers Group has also prepared advice relating to the validation of planning applications (February 2008) which includes further explanation about what should be provided.

Radioactive Contamination

Since 4 August 2006 the Part IIA regime has been extended by new regulations to include land that is contaminated land by virtue of radioactivity. Harm attributable to radioactivity is defined more restrictively than other types of harm, being confined to the lasting exposure of human receptors from the after-effects of a radiological emergency, or a past practice, or a past work activity. The definition of contaminated land (where attributable to radioactivity) does not cover any pollution of controlled waters.

The Council is only aware of one site, previously occupied by the military, where a past work activity resulted in localised radioactive contamination (radium 226). However, the necessary remedial works were undertaken prior to redevelopment and therefore Part IIA action is not required.

Dealing with Requests for Information

The inspection strategy has set out in paragraph 9.7 the approach taken by the Council when dealing with requests for information. Since the strategy was published new Environmental Information Regulations were introduced with effect from 1 January 2005. These regulations were revised to implement the United Nation's Aarhus Convention and reflect the first European Directive on access to environmental information (90/313/EEC).

Prospective purchasers of land have routinely enquired about the current status of land in terms of historical contamination for a number of years. Following the introduction of the legal duty to inspect and the Environmental Information Regulations, the Council has generally responded to such enquiries by providing a suitable answer to the questions posed. For example, an enquiry may involve providing details of known former landfill sites within a specified distance of the land or site in question. A written response will normally be provided and the following disclaimer attached.

Every effort is made to ensure that the information provided in relation to enquiries received about contaminated land issues is up to date and accurate. However, Ashford BC does not accept responsibility for inaccuracies or omissions in the information supplied, particularly when such information has been compiled from

facts or opinions provided to the Council by a third party. Furthermore, the Council will not be held responsible for any loss caused from the use or misuse of the information provided.

With regard to ongoing Part IIA work, the Council's legal adviser has indicated that information derived from the preliminary risk assessment process should not be disclosed to a third party because it is essentially 'work in progress' and therefore subject to the exception contained in Regulation 12(4)(d) of the Environmental Information Regulations 2004. The Council's legal adviser has also indicated that information gathered during the course of an inspection of land should not be disclosed to a third party until the Council is satisfied whether or not the land is contaminated land. At this point inspection of the land is deemed to be completed and the exception referred to above will no longer apply. Further action by the Council (if necessary) involving determining the land as contaminated land should then proceed.

Other Issues

The Environment Agency has published its revised Contaminated Land Exposure Assessment technical guidance (commonly known as CLEA). The revised guidance will help in the assessment of potential risks to human health from long term exposure to soil contamination.

The revised CLEA guidance includes:

1. Human health toxicological assessment of contaminants in soil (the TOX Guidance Report), which replaces CLR9 Contaminants in soil: collation of toxicological data and intake values for humans.
2. Updated technical background to the CLEA model (the CLEA Report), which replaces CLR10 the Contaminated Land Exposure Assessment (CLEA) model: technical basis and algorithms.
3. A review of body weight and height data used within the Contaminated Land Exposure Assessment model (CLEA)
4. CLEA Software Version 1.03 beta and CLEA Software (Version 1.03 beta) Handbook, which replaces the CLEA UK software, which assessors can use to help estimate exposure and assess risks.

The updated guidance is designed to be clearer and more accessible. It sets out the method for deriving Health Criteria Values and Soil Guideline Values and represents a positive starting point for considering risks to health from long term exposure to soil contaminants.

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