

APPENDIX F

WAVERLEY BOROUGH COUNCIL

EXECUTIVE - 6 NOVEMBER 2012

Title:

REVISED CONTAMINATED LAND STRATEGY FOR WAVERLEY

[Portfolio Holder: Cllr Brian Adams]

[Wards Affected: All]

Summary and purpose:

The revised Contaminated Land Strategy for Waverley replaces the existing approach and reflects new government guidance. The revised Strategy will inform Waverley's Contaminated Land regime and inform Waverley's planning responses in relation to Contaminated Land. Executive to endorse the approach of this report.

How this report relates to the Council's Corporate Priorities:

Leisure and Lives:

The Strategy may identify land that can be brought back into recreational or leisure use without full remediation measures.

Value for Money:

The Strategy ensures capital funding is directed towards the highest risk sites first and incorporates contractual procedures following GPS¹ approved framework.

Equality and Diversity Implications:

Potentially contaminated land exists in numerous locations across Waverley; the vast majority of remediation is carried out through the Planning and Development process. Sites that remain for assessment may include areas of social or low cost housing built before this regime was created. The strategy therefore can be of benefit to low income families.

Environment and Climate Change Implications:

Many potentially contaminated sites, once risk-assessed, will require no further action. If other sites are to be developed suitable sustainability conditions can be applied through the Planning and Development process. The Strategy may enable potentially contaminated sites to be brought back into use.

¹ The Government Procurement Service (now under the Cabinet Office) created a national procurement framework for specialist contractors in order to improve efficiency and accountability

Resource/Value for Money Implications:

Central government provides a small non-ring-fenced budget to Waverley through its capital support grant. This is used to fund specialist staff and the upkeep of software, licences, etc. Waverley has to fund detailed inspection work from its capital budget. Once a potential significant contaminant linkage has been identified it is usually possible to apply to the Defra capital grants scheme for further investigation or remediation works.

This programme offers financial support to local authorities, including County Councils and National Park Authorities, in investigating and remediating contaminated land that falls under Part 2A of the Environmental Protection Act 1990. It does not cover work undertaken under the planning regime, work to facilitate the sale or development of the site or contamination arising from a breach of waste or pollution control licensing.

Waverley made successful applications for funding under the programme in order to complete the investigation works at Weydon Lane Landfill and the former Farnham Gasworks sites in Farnham. The amount of money available nationally under the Capital grants programme has been reduced in recent years. It is not certain whether these funds will be available in future years.

The proposed Strategy identifies spending of the annual budget through a risk based procedure: the highest risk sites being the first to be assessed. It proposes to use GPS recognised contractors where necessary for specialist investigations. The investigations will commence under the new strategy in 2013-14 as a continuation from this year's sites which are underway through the existing Strategy.

The contaminated land database is currently being refined and recently introduced software will allow for the production of individual, site-specific reports. These will be of interest to householders and developers and will generate a small income depending on demand.

Legal Implications:

These are addressed within the body of the report.

Background

1. Local Authorities have a legal duty to meet the requirements of the Environmental Protection Act 1990 s.78B by producing and publishing a Contaminated Land Strategy. Waverley published its 'Contaminated Land Inspection Strategy' in 2000.
2. Since then the processes and requirements have become familiar to Local Authorities and developers alike – the bulk of remediation being achieved through the Planning process. Nonetheless a decision to review Waverley's Strategy led to an updated draft in 2009.

3. However, before this was finalised a major overhaul of the central government guidance was announced and the review was put on hold pending this new information. The new guidance was finally published in the spring of 2012.

Introduction

4. Whilst the original Waverley Strategy was a detailed document – informing and guiding interested parties through a new and complex process – the proposed Strategy (Annex 1) is simplified. This is due in the main to the revised approach from government making the identification of land in need of attention much more straightforward.
5. The new process is based on a traffic light system where Category 1 (Red) identifies Contaminated Land in need of immediate action, Category 4 (Green) identifies land where action is unlikely and Categories 2 & 3 (Amber/Red & Amber/Green) require further consideration.
6. Alongside these changes the National Planning Policy Framework (NPPF) was released. A major change to Contaminated Land guidance under the NPPF is the repeal of PPS23. Future guidance to developers will be locally framed and Waverley's new Strategy will incorporate an appendix specifically for this purpose (based on the existing "Contaminated Land Planning Guidance") which will be recognised as a matter of material consideration.
7. This planning guidance is supplementary to the overall Contaminated Land Strategy and this approach will ensure developers receive consistent and current information as the guidance can be reviewed automatically when changes in legislation, knowledge & understanding or good practice occur.
8. The final document will be published on the Council's website. The first of the risk-rated sites for investigation under the new regime will receive attention from 2013-14 onward. Any existing investigations started under the existing Strategy will be interpreted in light of the new Guidance.

Conclusion

9. The new Strategy meets Waverley's statutory requirements and informs the public and developers alike of how potentially contaminated sites are now identified, risk-rated and investigated. The sites identified will be continually risk-assessed as and when new information comes to light, either through desk-top studies and site investigations, or from the public, developers or other agencies.
 10. It is presented in a relatively non-technical fashion to ensure understanding by the widest possible audience. To ensure the Strategy remains current a review period should be incorporated – this is suggested to be a maximum of 5 years.
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Recommendation

It is recommended that the Executive:

1. endorses the approach of the revised Contaminated Land Strategy for Waverley and delegates powers to update and amend the Strategy's planning guidance section to the Head of Environmental Services; and
2. determines a maximum period for the life of the Strategy until it is next revised.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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ANNEXE 1

[insert WAVERLEY LOGO]

Contaminated Land Strategy
Inspection strategy as required under Part 2A of the
Environmental Protection Act 1990

2012 – 2017

[insert PICTURE]

November 2012

Aims

This strategy will outline how Waverley will meet its statutory duties to investigate potentially contaminated land in the Borough as laid out in the Contaminated Land Statutory guidance April 2012 (DEFRA). The statutory guidance should be read in conjunction with this strategy as it contains the legal and scientific detail behind the strategy. This strategy will also outline this Council's expectations of how contaminated land issues will be addressed by developers submitting new planning applications.

Objectives

To take a precautionary approach to the risks raised by contamination whilst avoiding a disproportionate approach given the circumstances of each case. Waverley will consider the various benefits and costs of taking action, with a view to ensuring that we meet our corporate priorities and statutory requirements in a balanced and proportionate manner. We will seek to maximise the net benefits to Waverley customers taking full account of local circumstances.

Area Overview

Waverley Borough, which has a population of 120,300 is located in the southwest corner of Surrey. It is predominantly rural and extends to some 345 sq km (133 sq miles). The Borough contains four principal urban settlements of varying size. Each has a different character and distinctiveness, a defined town centre area and one or more conservation areas as well as a high number of listed buildings.

The distinctive natural environment in Waverley is generally of a very high quality. Approximately 92% of the Borough is rural; made up from 61% (21,000 hectares) within the Green Belt and 31% (10,624 hectares) designated as Rural Area Beyond the Green Belt. 80% of the countryside is designated as an Area of Outstanding Natural Beauty (AONB) and/or an Area of Great Landscape Value (AGLV). There are also significant ecological assets within and close to the Borough, and numerous areas which have one or more local, national or international policies to protect them. These include Special Areas of Conservation, a Ramsar Site, National and Local Nature reserves, Sites of Nature Conservation Importance. Waverley contains all or part of some 15 Sites of Special Scientific Interest (SSSIs). There are also three Special Protection Areas designated under the European Habitats Directive as being of European importance for its populations of wild birds; Thursley, Hankley and Frensham Commons (also known as Wealden Heaths Phase I), part of Wealden Heaths Phase II and a small part of the Thames Basin Heaths SPA.

Waverley's landscape has a distinctive wooded character, at 31%, which is the highest proportion in the country. Rivers flowing through the Borough include the River Wey (Alton to Farnham reach, Liphook to Tilford reach, Tilford to Godalming reach) and Cranleigh Water. The Wey and Arun Canal is gradually being restored in parts and its recreational value has increased.

Waverley has a rich historic heritage, with 44 Conservation Areas, and 1,741 listed structures. In addition, there are 23 Scheduled Ancient Monuments in the Borough, together with 11 County defined Sites of Archaeological Importance.

Waverley does not have an extensive legacy of heavy industry. Most of the significant sites that have been identified are landfill sites previously exploited for the extraction of sand or clay and former gasworks sites. The majority of identified sites are within the metropolitan centres. A large number of the identified sites are small to medium areas of previously in-filled land.

What do we need to do?

The government require Waverley to carry out two tiers of inspection, a strategic inspection to start with in order to prioritise sites in order of urgency of need for action followed by detailed inspections of sites where a need for further works has been identified.

How are we proposing to do it?

Strategic inspection leading to detailed inspection

The implementation of our first contaminated land strategy (2000 – 2012) means that we have built a database of potentially contaminated sites across the Borough. The Geoenvirom software package can rank the sites according to priority for inspection based on presence of receptors (e.g. landuse, geology, water supplies, rivers, property) and sources (potential or confirmed contaminants present). This database is regularly updated as new information becomes available. The software enables us to produce a list of sites for detailed inspection according to highest potential risk (priority).

Detailed inspection of a site will establish whether pathways are present between the source (e.g. oil) and the receptors (e.g. children playing in a garden). This is known as a contaminant linkage. For a site to meet the statutory definition of Contaminated land there needs to be a significant possibility of significant harm to an identified receptor. This is a stringent test (more details in statutory guidance).

The detailed inspection of a site will commence with a site walkover and desktop study. Where the potential for a significant contaminant linkage is identified preliminary soil and groundwater tests may be carried out (e.g. on verges, public areas, in areas likely to cause least disruption). This may be carried out by a member of Waverley staff or an outside consultant depending on timescales and cost benefits. If a site is in Waverley ownership it is likely that independent consultants will be employed. All reasonable efforts will be made to contact and inform site owners, tenants, users, and other interested people before we undertake a detailed inspection of a site.

The detailed inspection of a site will not progress beyond a site walkover and desktop study unless a reasonable possibility that a significant contaminant linkage may exist at the site is identified.

We will follow the detailed statutory guidance at all points of the process and will work with the Environment Agency and external experts where appropriate.

Where the site walkover and desktop study with / without preliminary sampling indicates that a significant contaminant linkage may be present, Waverley will seek funding to proceed with further investigation. Where a significant harm or a significant possibility of significant harm to a qualifying receptor (see guidance) is

identified the site will be designated as contaminated land / a special site and we will proceed to secure satisfactory remediation of the site, identification of liable persons and cost recovery in accordance with the Act and the statutory guidance.

What have we done already?

There are currently approximately 1100 sites in our database. The vast majority of these are probable low risk sites where small to medium areas of ground have been in-filled with inert or unknown material over time. The information in the database is regularly updated as new information becomes available or sites are redeveloped and remediated e.g. through the planning system. The guidance encourages private land owners to carry out their own assessment. Waverley should accept their conclusions and enter them into our database, where the works have been completed to accepted industry standards.

Three sites have undergone detailed inspection. One has been designated a special site (the former Cranleigh Brick and Tile site, Knowle Lane, Cranleigh) and two have been investigated and not found to meet the definition of contaminated land under the Act (Weydon lane former landfill and the former Farnham gasworks). These works have been funded by DEFRA with part funding supplied by Waverley. Further details are available on our website at www.waverley.gov.uk/contaminatedland .

What are the possible outcomes of a detailed inspection?

The statutory guidance describes in detail the possible outcomes of detailed inspection for all receptors. Sites will be assigned categories (1-4). Generally, sites in category 1 will require immediate action (designation as contaminated land); sites in category 2 may require immediate action. Sites in category three may not meet the stringent definition of contaminated land but may require observation or monitoring and sites in category four are unlikely to meet the definition of contaminated land. For controlled water receptors Waverley will consult the Environment Agency.

Who pays for all this?

Central government provides a small non-ring-fenced sum through its capital support grant. This is used to fund specialist staff and the upkeep of software licences etc. Waverley has to fund detailed inspection work from its capital budget. Once a potential significant contaminant linkage has been identified (e.g. from the results of a site walkover and desk study followed by limited preliminary soils sampling) it is usually possible to apply to the DEFRA capital grants scheme for funding for further investigation or remediation works.

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What are the wider benefits of this strategy?

As a result of the data collated during the initial prioritisation stage of the contaminated land strategy we have been able to provide a searchable layer on the corporate intranet enabling interested parties e.g. planners, building control, property section and public visitors to planning reception to check an address for historical potential contaminative uses. Communication and consultation with planning and building control has been substantially standardised, improved and made more efficient and timely and more detailed and useful replies have been provided to environmental information requests (e.g. from solicitors when people are moving house).

A searchable tool is to be added to the Waverley website indicating all known areas of potential contamination within the Borough.

How will we measure our progress in implementing this strategy?

The strategic inspection process is by nature an iterative process. It is normal that sites will be added and removed from the database as information becomes available. We aim to continue detailed inspection of the highest priority sites with a target of assessing six sites per calendar year. This target may need to be adjusted where particularly complicated issues arise.

How does this strategy interact with the planning system?

The statutory guidance and the new National Planning Policy framework both enshrine the concept that potentially contaminated land must be shown to be suitable for its proposed use. As an absolute minimum this means that the site must be incapable of being designated as contaminated land as defined under the Act. As a general rule we will expect any planning application for land which may be affected by contamination to be accompanied by the report of a desktop study and site walkover as defined in British Standard BS10175: 2011 "Investigation of potentially contaminated site – Code of Practice". This report should identify that the site has been assessed as suitable for use or in the event that further works are needed detail them and discuss how the site can reasonably be made suitable for the proposed use. All reports should be completed by a suitably qualified "competent" person as defined in the NPPF.

Appendix I

Contaminated Land Planning Guidance

I want to submit a planning application to Waverley Borough Council for a new development, what do I need to do to meet my obligations with respect to potentially contaminated land?

Establish the previous use of your land. This can be done by a combination of local knowledge and historical mapping. You can consult our online planning map system http://www.waverley.gov.uk/news/article/735/waverley_planning_maps for information on previous land uses, planning history and whether we have recorded a potentially contaminative former land use. Please note that our online maps are an ongoing project and it is possible that a potentially contaminated site may not be included yet. You can also contact the contaminated land officer to discuss the site.

Where your planning application is for a change of use to a more sensitive use or a significant redevelopment for similar use of a potentially contaminated site, Waverley will require any planning application to be accompanied by the report of a desktop study and site reconnaissance. This report should meet the requirements of British Standard BS10175: 2011. "Investigation of potentially contaminated sites – Code of Practice". The report should identify that the site has been assessed as suitable for use or in the event that further works are needed detail them and discuss how the site can reasonably be made suitable for the proposed use. All reports should be completed by a suitably qualified "competent person" as defined in the National Planning Policy Framework (NPPF DCLG March 2012).

This report will help the contaminated land officer assess the planning application, whether the site can reasonably be made suitable for use and what conditions may need to be attached to the application to ensure that any works needed are completed.

Failure to submit a suitable report when required may result in a recommendation to refuse the permission and / or unnecessary delays in determining your planning application.

At every stage in this process the contaminated land officer may be contacted for any questions and queries. Our aim is to help wherever possible to enable planning applications to proceed smoothly whilst ensuring that sites are made suitable for the proposed use.

FAQ's

What is a more sensitive land use?

Examples are:-

petrol station to housing

light industrial to day-care nursery

an existing development (new housing / school) completed before planning regulations were introduced that has been identified to be on a former gravel pit and therefore potentially land-filled.

What is the report of a desk study and site reconnaissance?

To complete a desk study a consultant will need to visit a site and discuss its proposed, present and past uses. They will inspect databases of previous pollution incidents, historical maps, geological and hydrogeological maps and devise a conceptual site model for the site. This is a basically an overview of the local environment, all the potential users and contaminants at the site and how they might interact. The conceptual site model should identify any potential links between contaminants (e.g. an oil spill) and the local environment (e.g. a river) and users of the site (e.g. children playing in a garden). These potential links are known as pollutant linkages. Where pollutant linkages are identified they need to be assessed and where necessary broken (remediation).

Can I do the work myself?

Generally it is not recommended to complete the work yourself unless you have previous experience of contaminated land assessment. The NPPF specifically refers to the relevant British standard and that a suitably qualified competent person should carry out the work.

Desk studies can be procured at a reasonable price and a good desk study can help identify and deal with potential contaminated land issues up front and save money on nasty surprises during development.

Who can I call for advice?

The contaminated land officer can be contacted through the environmental health service 01483 523393 and environmentalhealth@waverley.gov.uk