

CONTAMINATED LAND - UPDATE

1 SUMMARY

- 1.1 The purpose of this report is to update Members on current progress in implementing the Council's Contaminated Land Strategy, the joint countywide initiative of the Essex Contaminated Land Consortium and the Best Value Performance Indicators for Contaminated Land (BVPI 216a and 216b).

2 INTRODUCTION

- 2.1 Part 2A of the Environmental Protection Act 1990 ("Part 2A") requires Local Authorities to inspect their areas in order to identify Contaminated Land. This must be carried out in accordance with a written strategy. Rochford District Council's Contaminated Land Strategy was adopted and published in 2001 (Minute 122/01).
- 2.2 Our strategy details a risk based approach to identifying and remediating contaminated land whereby previous potentially contaminated sites are prioritised for more thorough investigation. This investigation may comprise of the following phases:-
- Phase 1 - detailed desktop study
 - Phase 2 - intrusive investigation involving the analysis of samples
 - Phase 3 - Remediation
- 2.3 Members were last updated on the progress of the implementation of Rochford District Council's Contaminated Land Strategy at the former Environmental Services Committee on 6 September 2005, when it was resolved that a further progress report would be made in two years (Minute 326/05).

3 THE CURRENT POSITION

Sites of Previously Potentially Contaminative Use

- 3.1 Within the Rochford District, a total of 328 Sites of Previously Potentially Contaminative Use have been identified for investigation since June 2002.
- 3.2 43 sites have now been subjected to a "Phase 1" detailed desktop investigation in order to establish whether they would be significant under the Part 2A regime.
- 3.3 As a result of these investigations, 41 sites have been considered not to require further risk management action at this time. Additional information will need to be obtained in order to decide whether the remaining two sites are Contaminated Land or not.

- 3.4 In the previous report to Members, two sites were reported to require more information before the risks could be characterised. For one of these sites, sufficient information has since been obtained to be able to judge that it is not contaminated land, whilst a decision has yet to be made on the other site.
- 3.5 In the year April 2007 to March 2008, work will be focussed on the investigation of a large, former landfill site within the district and the priority bid supported during the budget process to investigate sites identified on Foulness Island. It is anticipated that a considerable amount of officer time will be required before there is sufficient information to be able to judge whether or not the site could be determined as Contaminated Land. It is possible that a “Phase 2” intrusive investigation of the landfill site may be required before any decisions can be made. This will be dependent on the outcome of the initial Phase 1 desktop investigation.
- 3.6 No sites within the Rochford District have been determined as contaminated land.
- 3.7 Nationally, in the year 2006/7, only 9 local authority formal determinations of land as contaminated land were made under the Part 2A legislation.

Changes To The Contaminated Land Regime

Radioactive Contamination

- 3.8 On 4 August 2006, the statutory regime for the identification and remediation of contaminated land was extended to cover radioactive contamination in respect of harm to human health only. New statutory guidance has been published by the Department for Environment, Food and Rural Affairs (DEFRA) (Circular 01/2006): the Department of the Environment, Transport and the Regions Circular 02/2000 has been revoked.
- 3.9 The local authority is restricted to inspecting its area for radioactive contamination only where it has reasonable grounds to believe that the land may be contaminated by radioactivity.
- 3.10 The extension of the regime will apply to radioactivity arising from past activities or a radiological emergency only.
- 3.11 There is no requirement for Rochford District Council’s Contaminated Land Strategy to be updated to take radioactive contamination into consideration.
- 3.12 Additional funding has been allocated to each local authority by DEFRA to cover the perceived increased burden of extending the regime to include radioactivity. It is intended that Rochford District Council utilise this funding to train officers in use of exposure assessment modelling screening tools.
- 3.13 If any land is determined as radioactive contaminated land, the Environment Agency will become the enforcing authority. At this time, we have no

reasonable grounds for believing that any land within the Rochford District may be contaminated by virtue of radioactivity.

“Soil Guideline Values: The Way Forward”

- 3.14 DEFRA and the Environment Agency have previously produced technical guidance for assessing acceptable levels of a limited number of substances in soils, in the form of Soil Guideline Values (SGVs). In September 2005, DEFRA published Contaminated Land Advice Note (CLAN) 2/05. This effectively states that SGVs cannot be used to determine land as contaminated land. In November 2006, DEFRA published Contaminated Land Advice Note (CLAN) 6/06, entitled “Soil Guideline Values: The Way Forward”, which sets out proposed improvements to the guideline values. However, no decisions on the future of these values have yet been made.

Future Changes

- 3.15 The changes to the definition of contaminated land in relation to “controlled waters” referred to in the last report to Members have still not been commenced.

The Essex Contaminated Land Consortium

- 3.16 The Essex Contaminated Land Consortium (ECLC) continues to progress county-wide initiatives in relation to contaminated land. Rochford has now taken over as Chair of the ECLC.
- 3.17 In 2006, the ECLC facilitated a workshop for planning and building control officers, to provide awareness training with regard to their obligations relating to contaminated land, particularly in relation to Planning Policy Statement 23 (PPS23).
- 3.18 The ViewEssex system of securely holding and transferring contaminated land data from all Essex authorities is now established. Provision of historic maps of Rochford District through this vehicle has resulted in a considerable cost saving to the authority.
- 3.19 The ECLC will be revising their guide “Land Affected by Contamination. Technical Guidance for Applicants and Developers” to take into account changes in the regime since its original publication in 2004.
- 3.20 Discussion on the production of a set of standard planning conditions relating to contaminated land for the use of all Consortium members has now been abandoned, as national conditions are due to be published by the Department of Communities and Local Government (DCLG) shortly.

Best Value Performance Indicator BV216

- 3.21 The Best Value Performance Indicators for contaminated land (BV216a and BV216b) came into effect on 1 April 2005. Advice on how to populate these

indicators has been received from DEFRA [Contaminated Land Advise Note 2/06(CLAN 2/06)]. However, some definitions are still ambiguous and local authorities have interpreted these in different ways. Consequently, it is difficult to make comparisons with other authorities from the published data. Additionally, this indicator encouraged an approach that is not compatible with our risk based methodology.

- 3.22 As Members may know, the whole regime relating to Best Value Performance Indicators is currently under review and significantly fewer indicators will be in place next year. If, however, this one is retained, it is hoped that further advice and clarification will be received from DEFRA.
- 3.23 For the year 2005/6, data published by the Audit Commission shows that the return for Rochford for BV216b, at 7%, was just below the top quartile of 8%. Figures for the year 2006/7 have not yet been published.

Other Contaminated Land Work

- 3.24 Consultations from Building Control or the Local Planning Authority on sites where there are potentially issues relating to contaminated land are dealt with as they arise.
- 3.25 Local Land Charge Enquiries relating to contaminated land are answered on request.
- 3.26 All planning applications on the weekly planning list are checked to ensure that there are no known issues relating to contaminated land, for each site and its proposed use. A copy of the ECLC technical guidance document is sent to all applicants proposing construction of new properties.
- 3.27 Several other local authorities have now adopted the procedure that was created by Rochford for supplying information on contaminated land under the Environmental Information Regulations 2004. It is envisaged that all of the Essex local authorities will eventually be providing information about contaminated land to members of the public in fundamentally the same way.
- 3.28 A leaflet entitled “Contaminated Land Enquiries” has now been produced and is available to members of the public. This sets out the way that information can be obtained about contaminated land under the Environmental Information Regulations 2004 when purchasing a property. A copy of this leaflet has been placed in the members’ library.

4 RISK IMPLICATIONS

Resource Risk

- 4.1 Should any land be determined as contaminated land or require further detailed investigation before such a decision could be made, there could be significant financial and human resource implications.

Strategic Risk

- 4.2 Investigation of the large former landfill site is likely to take up a large amount of officer time. This is likely to result in a lowering in the return of Rochford District Council's Best Value Performance Indicator, BV216b, for the year 2007/8.

5 ENVIRONMENTAL IMPLICATIONS

- 5.1 The remediation of contaminated land and, where appropriate, its utilisation for development will improve the natural environment of the District and reduce pressure on land within the green belt.

6 LEGAL IMPLICATIONS

- 6.1 The contaminated land regime is a statutory function of the local authority.

7 FINANCIAL IMPLICATIONS

- 7.1 As part of the 2007/08 budget process, funding of £10,000 was agreed for the investigation of contaminated land, whereby a consultant was employed for a period of ten weeks to cover the post of the Senior Environmental Health Officer, who is undertaking a review of a large potentially contaminated site within the district.
- 7.2 The funding referred to in Paragraph 3.12 was a grant of £1,130 paid under Section 31 of the Local Government Finance Act 2003, to cover the additional costs of investigating radioactivity.

8 RECOMMENDATION

- 8.1 It is proposed that the Executive Board **RESOLVES**

That progress with implementation of the Contaminated Land Strategy be noted and a further progress report be made in two years.

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Background Papers:-

“Contaminated Land Enquiries. Environmental Information Regulations 2004”.
Rochford District Council Environmental Protection Unit, April 2007.

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