

Contaminated Land Strategy
Inspection strategy as required under Part 2A of the
Environmental Protection Act 1990
2016 – 2021

Aims

This strategy outlines how Maidstone Borough Council (the council), 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) referred to as the statutory guidance. This strategy should be read in conjunction with the statutory guidance, as it contains the legal and scientific detail behind the Maidstone Borough Council strategy. Reference is also made to supplementary planning guidance which details this Council's expectations of how contaminated land issues will be addressed by developers submitting new planning applications. This guidance is currently being developed and is intended to be adopted as part of the councils formal planning policy. This strategy reflects the financial constraints that the council is now facing and will continue to face over the coming years.

Objectives

- To take a proportionate approach to the risks raised by contamination whilst ensuring that any unacceptable risk to human health or the wider environment is resolved.
- All investigations and risk assessments will be site specific, scientifically robust and will ensure only land that poses a genuinely unacceptable risk is determined as contaminated.
- The Council will consider the various benefits and costs of taking action, with a view to ensuring that corporate priorities and statutory requirements are met in a balanced and proportionate manner.
- The Council will seek to maximise the net benefits to residents taking full account of local circumstances.
- The Council will seek to assist and enable residents who live on potentially contaminated sites to gather further information when that site is not scheduled for investigation by the council in the short term.
- The Council will develop a hardship policy to ensure fair allocation of costs, in accordance with the Secretary of States Guidance

Area Overview

The borough of Maidstone covers 40,000 hectares and is situated in the heart of Kent. Maidstone is the county town of Kent and approximately 70% of its 155,143 population live in the urban area. The urban area, located in the north west of the borough, has a strong commercial and retail town centre with Maidstone comprising one of the largest retail centres in the south east. A substantial rural hinterland surrounds the urban area, part of which enjoys designation as Area of Natural Beauty due to its high landscape and environmental quality. The borough encompasses a small section of the metropolitan green belt (1.3%), and 27% of the borough forms part of the Kent Downs Area of Outstanding Natural Beauty (AONB).

The borough is relatively prosperous with a considerable employment base and a lower than average unemployment rate compared to Kent. However the borough also has a low wage economy that has led to out-commuting for higher paid work. The local housing market crosses adjacent borough boundaries into Tonbridge and Malling Borough Council and Ashford, and is influenced by its proximity to London, resulting in relatively high house prices.

There are parts of the borough that are in need of regeneration, primarily the pockets of deprivation that exist in the urban area. The rural service centres and larger villages provide services to the rural hinterland and some smaller villages also play a vital part in the rural economy. There are a number of significant centres of economic activity in and around the rural settlements, and smaller commercial premises are dotted throughout the borough. Agriculture remains an important industry to Maidstone including the traditional production of soft fruits and associated haulage and storage facilities.

The borough is fortunate to benefit from a number of built and natural assets including 41 conservation areas, over 2,000 listed buildings, 28 scheduled ancient monuments and 15 parks and gardens important for their special historic interest. Seven percent of the borough is covered by areas of ancient woodland

There are 63 local wildlife sites, 34 verges of nature conservation interest, 11 sites of special scientific interest, two local nature reserves and a European designated special area of conservation. The River Medway flows through the borough and the town centre and, together with its tributaries, is one of the borough's prime assets.

The geology of the area is varied. To the north is the chalk escarpment of the North Downs which runs across the Borough from west to east. To the south, running through the centre of the district, is a smaller escarpment formed by the Hythe beds of the Lower Greensand. There is a broad band of Weald clay across the southern portion of the Borough interspersed with the Hastings Beds. The Folkestone beds, which form the third major aquifer in the Maidstone area, are situated to the north-east of the Borough and run parallel with the Hythe beds.

What have we done already?

There are currently approximately 1000 sites in our database. The vast majority of these are likely to be low risk sites for instance where small to medium areas of ground have been in-filled with inert or unknown material over time. These sites will not be investigated further unless developed or new information is found. 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 statutory guidance encourages private land owners to

carry out their own assessment. The council if satisfied with the work undertaken will accept their conclusions and enter them into the database.

The Council has determined one site as contaminated under Part2A of the Environmental Protection Act 1990. This site is known as Furfield Quarry and was determined in 2002. A copy of the determination will be made available for inspection upon request. The site does not appear on the councils register of contaminated land as no remediation notice was served. The site and a full program of mitigation measures is now controlled and ensured by a section 106 agreement.

What do we need to do?

The Statutory Guidance requires the council to continue to identify and prioritise sites that may be potentially contaminated by their historic or current use, followed by detailed inspections/investigations of sites where a need for further investigation has been identified.

How are we proposing to do it?

Identification of potential sites and prioritisation

The council has built a database of potentially contaminated sites across the Borough. The new Geoenvirom software package will rank the sites according to priority for inspection based on presence of receptors (e.g. land use, geology, water supplies, rivers, property) and sources (potential or confirmed contaminants present). This database will be 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). The list will be changed as more information is found about different sites, or the risk rating revised or new sites are added. **The list of potential sites is not a public document.** Any land that is formally determined as contaminated and requires that remediation notices are served will be put on the register which is a public a document.

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

The detailed inspection of a site will start with a site walkover and desktop study. The Council will progress these first elements of detailed inspection using the available annual budget. The data gathered will be used to update the council's data base of potentially contaminated sites. At this point the council will consider whether and when the funding necessary to undertake further investigation can be released on a site specific basis.

The detailed inspection of a site will not go beyond a site walkover and desktop study unless it is identified that there is a reasonable possibility that a significant pollutant linkage may exist at the site. The council 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 potential for a significant pollutant linkage is identified, preliminary soil and groundwater tests may be carried out. Where appropriate this will be on verges, public areas, in areas likely to cause least disruption, but may include garden areas. This is likely to

be carried out by an outside consultant providing specialist services to the council. All reasonable efforts will be made to contact and inform site owners, tenants, users, and other interested people before starting a detailed inspection of a site.

Only where a significant harm or a significant possibility of significant harm to a qualifying receptor (see statutory guidance) is identified will the site be designated as contaminated land/a special site. If appropriate the council will proceed to secure satisfactory remediation of the site, identify liable persons and recover costs in accordance with the Act and the statutory guidance.

It is expected that the majority of the investigation and remediation of the sites identified will happen during the development or redevelopment of those sites. Where a “brownfield” site is developed particularly for a more sensitive ‘end use’ e.g. residential with gardens the planning system is designed to ensure that it is suitable for its use after the development.

The council will use existing resources to focus on identifying former potentially contaminated land sites that have already been developed. This will be largely confined to “desktop” based work adding to and refining the information that we currently have. Where we establish that a site is of a particular concern the responsible officer will present the information to the council/senior management on site specific basis and if agreed funds will be allocated to enable further investigation.

Special Sites

There is a category of contaminated site that is termed a special site. These are sites that meet a specific set of circumstances, generally where the main receptor is some form of controlled water such as a river or an aquifer. The detailed definition is found in the statutory guidance. Where the council thinks that a site might be a special site it will request that the Environment Agency take over as the lead authority for it. The mechanism for this is also within the statutory guidance. The council will then work with the Environment Agency as the site is investigated and remediated if necessary.

Enabling Residents

Where any resident lives on or near a potentially contaminative (land) former land use, they may wish to engage the services of a professional consultant to investigate their property. This circumstance may occur if the site is considered to be of low risk by council, so not scheduled for further inspection in the near future, but a mortgage lender will not lend without clearing any uncertainty. In these cases the council will provide as much assistance as it can to the resident in the form of liaising with any consultants on the scope of proposed investigations, and reviewing any results and reports. Where no contamination is found the council will provide confirmation of this in writing for the use of the resident. If unacceptable levels of contamination are found, the council will revise the priority rating for the site.

What are the possible outcomes of a detailed inspection?

Detailed inspection and risk assessment may show that an unacceptable risk is being caused. If it is, the council will have to determine the site and place the records on a public register. The council will then decide based upon all of the available information and the statutory guidance if remediation of the site should be carried out. It remediation is carried

out this will be only be done where necessary and the council will work with residents to keep them informed and minimise disruption as much as possible.

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 the council will consult the Environment Agency.

Risk Ratings and Outcomes

The table below shows the categories that sites may be allocated and the action likely to be taken by the council. Sites will be put into these categories based upon the information known about it. This will begin at the initial prioritisation and if necessary continue through to the remediation of the site. A site could move between categories as more information is found about it and risk assessments revised.

Table showing risk ratings categories.

| Category | Description |
|----------|---|
| 1 | Probable Contaminated Land- Intrusive Investigation necessary. Full review of existing site data required to develop detailed investigation strategy and conceptual model. The council will seek funding to do the investigation, from an original polluter or developer if possible or from council funds on a site by site basis up to the point of formal determination. |
| 2 | Medium Risk - Intrusive investigation required to resolve potential risks. Clean up considered likely under part IIA and priority action recommended. The council will seek funding to do the investigation, from an original polluter or developer if possible or from council funds on a site by site basis up to the point of formal determination. |
| 3a | Low to Medium Risk- Intrusive investigation recommended to resolve potential risks. Clean up can not be excluded under part IIA. Initial site investigation will not be funded by the council as this will divert available funds from high risk sites. Residents will be assisted to undertake their own investigations and risk assessments. Should these assessments indicate that the site should be reassessed as category 1 or 2 the council will re-evaluate its position. |
| 3b | Low to Medium Risk- Intrusive investigation recommended to resolve potential risks. Clean up can not be excluded under part IIA. Residents will be assisted to undertake their own investigations and risk assessments. Should these assessments indicate that the site should be reassessed as category 1 or 2 the council will re-evaluate its position. |
| 4 | Low risk- Likelihood of contamination is considered low and if present the impact is such that clean up could not be reasonably justified. It is highly unlikely that further work will required on these sites. Should residents wish to do so the same approach to category 3 sites will be followed. |

Who pays for all this?

Central government provides a small non-ring-fenced sum through its capital support grant. This is used to provide a small budget for emergency works, and commissioning of specialist services if required. The Council has to make site specific bids to fund detailed inspection work from its capital budget. Part2A of the Environmental Protection Act 1990 makes clear that wherever possible the original polluter and/or a developer that knowingly developed a contaminated site without ensuring suitable levels of remediation are completed should pay for any remediation needed in later years. The council will make every effort to ensure that this is the case. However the legal process is time consuming and difficult particularly when pollution and/or development was many years ago, or the people and companies involved no longer exist. Where it is not possible to make the original polluter or developer pay for remediation the legislation makes the current person in ownership (residents) of the land a responsible person for funding remediation. Where this situation occurs the council will work with residents and apply a hardship policy to fairly identify the level of contribution that may be required from all parties and any contribution that can be made by the council itself.

Investigating report of possible land contamination

If there are reports that a piece of land is or has been contaminated either historically or recently this will be investigated according to standard complaints investigation procedures. If the problem can be resolved directly as a result of the investigation either by giving advice or taking enforcement action this will be done. If not then the results of the investigation will be used to inform the council's overall prioritisation of potentially contaminated sites data base.

What are the wider benefits of this strategy?

As a result of the data collated during the initial prioritisation the council has a searchable layer for specialist officers which links directly to the Planning and Building Control registration. This ensures that the appropriate officers of the council are consulted on any planning application that may be at risk from land contamination. The council can provide more detailed and useful replies to environmental information requests (e.g. from solicitors when people are moving house). It has also enabled the council to focus its attention on the highest risk sites that have been identified. The work on enabling residents to access professional services to do their own site investigations and risk assessments will benefit all residents on sites which are not scheduled for further investigation by the council but which due to the historic use of the site may face difficulties when selling their property.

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 add more detailed knowledge about sites each year using existing resources. This increased knowledge will enable the council to refine the prioritisation further, reduce the number of sites that need more detailed investigation and identify those that need detailed investigation most urgently.

How does this strategy interact with the planning system?

The statutory guidance and the new National Planning Policy framework (NPPF) both have the concept that potentially contaminated land must be shown to be suitable for its use. As an absolute minimum this means that the site must be incapable of being designated as contaminated land as defined under Part2A of the Environmental Protection Act 1990. The council, will as a general rule, expect that a standard higher than this minimum level will be achieved. It is considered that someone purchasing a new build home is entitled to a high degree of confidence that if remediation was needed, it has been completed to better standard than the minimum under this legislation.

For larger developments or where there may be a question over the viability of the application due to contaminated land the council will expect any planning application for land which may be affected by contamination to be accompanied by the report of a desktop study 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, to 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.

Detailed guidance on what the council expects from developers in relation to contaminated land can be found in the council supplementary planning guidance on contaminated land. This can be downloaded from the council website.

Summary Section

- The council has identified and prioritised a large number of potential sites.
- Most of them are low risk and will not be investigated further.
- A small number will be investigated further to see if they are contaminated and need to be remediated.
- First phases of investigation will be done using existing resources.
- Second phases will need site specific funding from the council based upon the specific circumstances at the time.
- Where residents need contaminated land investigations done, in cases where the council is not scheduled to do so, it will provide advice and assistance to the appointed contractor.
- Investigations might show that unacceptable risk is being caused. The council will ensure that only land that poses a genuinely unacceptable risk is formally determined. It will then be remediated if that is the most appropriate thing to do.
- The council will work with residents to ensure that they are involved in and informed of any site investigation and remediation that affects them. Officers will work to avoid any unnecessary disruption or distress.
- The council will try to make previous polluters or developers pay for remediation. Where this is not possible, residents will be required to contribute and we will work with them and apply a hardship policy to make sure that this as fair as possible.
- The council will investigate reports about potentially contaminated land and either give advice or take action accordingly.

Contact us

If you would like to talk about this strategy or other matters related to contaminated land in detail please contact the Environmental Protection Team at EnvironmentalHealthAdminTeamTWBC@MidKent.gov.uk