



Borough Contaminated Land **Inspection Strategy**

Part 2A Environmental Protection Act 1990



Borough Council of
**King's Lynn &
West Norfolk**



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EXECUTIVE SUMMARY

This document details the arrangements which the Borough Council of King's Lynn and West Norfolk proposes to fulfil its legal responsibilities for strategic inspection under the contaminated land regime. The legal definition of Contaminated Land relates to unacceptable risks to human health and/or the wider environment.

In particular the aims of the Strategy are to:

1. Protect human health
2. Safeguard the Borough's heritage and the natural environment
3. Bring land back into beneficial use by voluntary remediation and partnership
4. Communicate findings to interested parties.

We will achieve the above through:

- Strategic inspections to find where we may need to find out more about the land or where we don't need to take any more action.
- Detailed inspections on priority sites to place them in category 1 to 4 as set out in the Statutory Guidance.
- Where remediation is required we will carry out a cost benefit analysis.
- Serving a remediation notice or agreeing voluntary action to ensure that the benefits of remediation outweigh the costs.
- Carry out cost recovery for remediation where we are entitled but also consider any hardship which the recovery could cause.
- Provide written statements and risk summaries to explain what we have found on each site.
- Provide access to information about contaminated land inspections through our website or by contacting our office.

1.0 INTRODUCTION AND BACKGROUND

In April 2000 legislation was implemented and local authorities were given the duty of identifying contaminated land and addressing the risks which arise from it in accordance with statutory provisions. The current risk based approach to the investigation of contaminated land was introduced by Part 2A of the Environmental Protection Act, 1990 (EPA, 1990).

Since production of the earlier versions of the strategy some changes have been made to the statutory regime. The most recent revision was to the Statutory Guidance in April 2012. As a result of the new Statutory Guidance and progress made with inspections, this version of Contaminated Land Inspection Strategy updates previous versions. This document should be read in conjunction with the previous versions which set out further background to the UK contaminated land regime and Council policy.

The overarching objectives of the government's policy on contaminated land and the Part 2A regime are set out in the Statutory Guidance:

- (a) To identify and remove unacceptable risks to human health and the environment.
- (b) To seek to ensure that contaminated land is made suitable for its current use.
- (c) To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of sustainable development.

This document details the Borough Council's approach to carrying out its inspection duty under section 78B(1) of Part 2A EPA 1990 which is that: 'Every local authority shall cause its area to be inspected from time to time for the purpose - (a) of identifying contaminated land; and (b) of enabling the authority to decide whether such land ... is required to be designated as a special site.'

The Statutory Guidance suggests that local authorities take a strategic approach to carrying out the inspection duty and that the approach should be rational ordered and efficient, reflecting local circumstances. This document sets out the Borough Council's approach as a written strategy which has been formally adopted and published.

1.1 Aims

The primary aim of the Borough Council is to fulfil its statutory obligations under the Part 2A regime and to achieve the objectives set out in the Statutory Guidance. The Borough Council aims to:

1. Protect human health
2. Safeguard the Borough's heritage and the natural environment
3. Bring land back into beneficial use by voluntary remediation and partnership
4. Communicate findings to interested parties.

1.2 Objectives

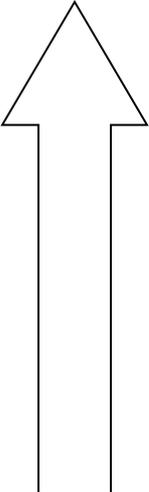
In order to achieve the aims, the Borough Council will:

- Prioritise sites for inspection;
- Carry out Strategic inspections of priority sites;
- Carry out Detailed Inspections of sites there is a reasonable possibility that a significant contaminant linkage could exist;
- Carry out Risk Assessment to determine if a significant contaminant linkage exists;
- Communicate the findings and inform interested parties of inspections through Written Statements and Risk Summaries;
- Determine whether land is contaminated land as defined by Part 2A EPA 1990;
- Consider how contaminated land should be remediated, the cost and benefits of remediation and where appropriate issue a remediation notice;
- Establish who is liable to pay for remediation actions;
- Recover the costs of remediation where possible.

1.3 Priorities

Section 1.2, outlined the Council's aims. Specific inspection priorities are outlined in table 1.

Table 1 – Specific Inspection Priorities

Scenario	Priority
1 Land where significant harm is being caused or there is significant possibility of such harm being caused to human health	Highest 
2 Pollution of controlled waters is being or is likely to be caused and where the EA advises the Council that prompt action is required (eg land within Source Protection Zones or affecting potable water supply)	
3 Land where significant harm is being caused or there is a significant possibility of such harm being caused to ecological systems or living organisms within protected locations	
4 Land where significant harm is being caused or is likely to be caused to property (in the form of crops, produce, livestock, owned or domesticated animals, wild animals subject to shooting or fishing rights and buildings)	

2.0 THE BOROUGH COUNCIL AREA

Earlier versions of the strategy set out the geographical context of the King's Lynn and West Norfolk administrative area.

2.1 Water Resources

The underlying geology in the Borough reflects the general dip of the bedrock towards the east and there is a clear divide between groundwater sensitivity in the east and west of the Borough. In the east, bedrock contains principal aquifers (a rock formation that holds a significant amount of water) including the Chalk, Sandringham, Mintlyn and Leziate Sands. There are a number of zones which have been delineated to protect public water supply. To the west of the region the Kimmeridge and Ampthill Clay Formations are not significant for water supply. The bedrock is overlain by various superficial deposits and river channels, some of which are secondary aquifers supporting water supply on a smaller scale.

2.2 Historical Land Use

Historical land use in the Borough is dominated by the agricultural sector, food processing and associated infrastructure. Manufacturing and engineering have also formed part of the area's industrial history. Towns, villages and large country houses had coal gasworks and landfills. The area also had a number of sites used as airfields during WW2.

To date, investigation of land affected by contamination has been predominantly through the planning process when sites are proposed for redevelopment.

For example, the former gas works site on the outskirts of Hunstanton was successfully remediated and redeveloped for a new Tesco store.

Strategic inspections of a number of additional sites have also been completed in accordance with the Statutory Guidance. Sites have

included landfills, railways, WW2 airfields, gasworks, docks and food processing. To date no land has been determined as contaminated land as defined in Part 2A.

The infilled former Wisbech Canal was investigated to demonstrate that development alongside it did not pose an unacceptable risk to people or the wider environment.

Major redevelopment of the Nar Ouse Regeneration Area (NORA) is underway south of King's Lynn. NORA was previously a major coal gas works and fertiliser factory. Parts of the area have been remediated as part of groundworks and construction. This regeneration project has received the active consideration of the Borough Council in co-operation with a number of external partners. Hardings Pits, in the same area, is a former brickworks and landfill, now a 'doorstep green'. The site has been investigated to show that recreational use does not pose an unacceptable risk to site users.

Land formerly belonging to Morston was investigated when the company went into receivership. An Environmental Site Assessment and Risk Assessment were completed. It was concluded that the site does not pose an immediate risk to human health.

3.0 WIDER APPROACH

The analysis of environmental issues formed a key part of constructing Corporate Strategy. Therefore many of the underlying corporate objectives are environmentally based. The Borough Council's Environmental Statement presents progress and future plans in the context of these corporate objectives. The Environmental Statement reports the Council's environmental aims and activities and includes progress on Part 2A.

Policies on land use and development reflect the Government's policy of encouraging sustainable development as set out in the National Planning Policy Framework (NPPF).

As part of the Local Plan, The Borough Council's Core Strategy sets out the spatial planning framework for the development of the Borough up to 2026, and provides guidance on the scale and location of future development in the Borough. It contains strategic policies on a range of topics that include: the environment, employment, infrastructure, and housing.

At the time of writing, the Borough Council is consulting on the detailed policies and sites plan. This plan aims to support the Core Strategy by providing detailed policies and guidance. The document also contains 'Area-wide Policies' which are detailed policies for particular issues and types of development. The Environmental Quality Team have had an input on these policies as they can impact on land affected by contamination.

The Borough Council's Corporate Enforcement Policy explains in general terms the approach adopted by the Council when carrying out its duty to enforce a wide range of legislation. Central to this Enforcement Policy is the aim to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens.

3.1 Planning

The approach to contamination issues is predominantly through the planning system. Remediation has been secured by planning conditions and negotiations with the developer. The council's approach was guided by Planning Policy Statement 23 (until its withdrawal in 2012) and Norfolk wide technical guidance. NPPF states that:

Planning policies and decisions should ensure that

- the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities

such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation;

- after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part 2A of the Environmental Protection Act 1990; and
- adequate site investigation information, prepared by a competent person, is presented.

3.2 Regeneration

King's Lynn was designated Growth Point status in May 2008 to support the housing and jobs required in the town. It is envisaged that up to the period 2021 the population of the urban area of King's Lynn will grow from 41,500 to 50,000 people and will accommodate 7,000 of the 12,000 new houses earmarked for the borough. New development will primarily be located on the previously developed brownfield land.

The integrated programme of development is based on the regeneration policy framework called the Urban Development Strategy. The Strategy was adopted in 2006 to guide the overall regeneration of King's Lynn and is part of a family of documents from the Urban Renaissance Strategy.

3.3 Brownfield Register

The Housing and Planning Act 2016 has the objective to increase the number of new build homes. One requirement is for councils to compile a register of brownfield land suitable for housing. This will make it easier for developers to identify and build on brownfield sites.

Information from Contaminated Land inspections will be made available to help compile the brownfield register.

4.0 APPROACH TO STRATEGIC INSPECTION

4.1 Objectives

Strategic Inspection aims to collect information to make a broad assessment of land and then identify priority land for more detailed consideration.

To achieve this aim we will carry out:

- Summary Desk Study
- Site visit and walkover survey
- Outline conceptual model
- Identify potential unacceptable risks
- Report including recommendations for further action

4.2 Risk Based Prioritisation of Inspection Activities

We will comply with the requirements and advice set out in section 2 of the statutory guidance which relates to local authority inspection duties of land. BS 10175 (published in January 2001) and other good practice documents (e.g. CIRIA documents, EA R+D publications, British Standards) are used as a basis for the investigation of potentially contaminated sites. Procedures are provided in the Environment Agency & DEFRA document 'Model Procedures for the Management of Land Contamination' (CLR11), 2004. Although some of the terminology used has changed since the revision of statutory guidance, the procedures provide a technical framework for applying the risk management process.

The process involves identifying, making decisions on, and taking appropriate action to deal with land contamination in a way that is consistent with government policies and legislation within the UK.

Priority will be given to the identification and inspection of areas of land where it is most likely that a pollutant linkage will exist involving human health. For example land where people live and have a garden where they grow vegetables to eat.

If we consider it likely that land might be contaminated land on the grounds that significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused, it will consult the Environment Agency and have regard to the Agency's advice.

We have already decided which sites are a priority for strategic inspection. On all sites where we have found a previous contaminative use, a score has been allocated according to the types and number of sources and receptors present and the likely pathways. The highest scoring sites are being inspected first. These initial inspections are the 'strategic inspections'.

Depending on the individual site, the risk assessment process may be stopped part way through. For example, if enough is known about risk either to leave the process altogether or to move to the next part of the process – options appraisal. If after a strategic inspection, the site is no longer a priority for inspection then we will produce a written statement explaining how this has been decided.

4.3 Written Statements

The statutory guidance states that 'the local authority is likely to inspect land that it then considers is not contaminated land.' For example where inspection is ceased because there is little or no evidence to suggest the land is contaminated land. 'In such cases, the authority should issue a written statement to that effect'.

The Borough Council will produce written statements for all sites which have been subject to a strategic inspection and where we have decided not to proceed any further with inspection. The written statement will summarise desk study and walkover survey information and will include conclusions and recommendations for the site. The written statements will make it clear that on the basis of the assessment, we have

concluded that the land does not meet the definition of contaminated land under Part 2A.

4.4 Monitoring and Reporting Progress

Progress on achieving the objectives is reviewed and reported to Cabinet by the Environmental Health Manager. Section 7 details the progress that has been made with data acquisition and publication of the public register. Appendix 1 details progress that has been made with inspections up to December 2015.

An action plan has been produced to set out individual tasks and measure progress. Objectives have been set reflecting the Environmental Quality Section Plan and the Environmental Health and Housing Service Plan as part of the Department's Performance Management System.

5.0 APPROACH TO DETAILED INSPECTION

5.1 Aim

The aim of detailed inspection is to obtain sufficient information to decide whether the land is contaminated land. Where there is evidence that significant harm is being caused or that there is a significant possibility of significant harm, the site will be first priority. An example would be a site where contamination has been identified on the surface of a site where humans may come into direct contact.

Sites may also require detailed inspection because the findings of the strategic inspection recommend that we find out more information. The statutory guidance says that detailed inspections are required where it is considered that “there is a reasonable possibility that’s a significant ‘contaminant linkage’ exists”.

5.2 Detailed Inspection Procedures

A detailed inspection will be carried out when there is a reasonable possibility that a contaminant linkage exists because of:

- information or complaints received
- evidence gathered during strategic inspection

To achieve the aim of detailed inspection our objectives will be to identify and characterise:

- current use
- sources, contaminants & receptors
- the relationships between sources, contaminants & receptors (contaminant linkage)
- whether any contaminant linkage is significant

To achieve the above objectives the detailed inspection will include some or all of the following actions:

- i. detailed desk study
- ii. site visit and walkover survey
- iii. intrusive investigation

- iv. soil sampling
- v. chemical analysis of selected samples
- vi. generic quantitative risk assessment (GQRA)
- vii. detailed quantitative risk assessment (DQRA)
- viii. detailed inspection report including conclusions on whether or not the land might be contaminated land, including categorisation from 1 to 4 as set out in the statutory guidance
- ix. recommendations for further action.

We will consult the Environment Agency if the site may meet the definition of a Special Site as set out in Contaminated (England) Land Regulations 2006.

5.3 Risk Summaries

If enough is known about likely unacceptable risks and there is a risk of harm, the land will be determined as Contaminated Land. Determination is the formal process in the Statutory Guidance for Part IIA by which the Local Authority decides whether or not a particular area of land is contaminated land. The Local Authority has sole responsibility for determination although it can choose to rely on information provided by others, such as the Environment Agency or consultants. The responsible officer will collect sufficient information from a detailed inspection of a particular piece of land to determine whether or not the land is contaminated land, and will produce a written record of the decision.

The statutory guidance sets out categories of harm and pollution of controlled waters from 1 to 4. Risk summaries will be produced for sites in the categories 1 and 2. Written statements (see section 4.3 above) will be produced for land in categories 3 and 4.

The risk summary will include:

- a) a summary of our understanding of the risks including: contaminant linkages, potential impacts, estimated possibility that impacts may occur, timescale that impacts may happen.

- b) description of our understanding of the uncertainties behind the assessment.
- c) description of the risks in a context that is understandable to a non expert.
- d) Description of our initial views on remediation

5.4 Remediation cost benefit analysis

The statutory guidance states that the enforcing authority must decide if remediation actions are reasonable with regard to:

- i. The practicability, effectiveness and durability of remediation;
- ii. The health and environmental impacts of the chosen remedial options;
- iii. The financial costs which is likely to be involved;
- iv. The benefits of remediation with regard to the seriousness of the harm or pollution of controlled waters in question.

We will consider these factors as described in section 6(d) of the statutory guidance and report our findings and recommendations. If we serve a remediation notice we will require the 'best practicable technique' to be carried out. This will require the remediation action which has been identified as having benefits outweighing the costs.

At this stage the statutory guidance states that 'the financial standing of any person who may be required to pay for a remediation action are not relevant to the consideration of whether the costs of a remediation action are reasonable'. However, we will consider this factor as described in the next section below.

6.0 COST RECOVERY

The provisions for establishing liability are set out in Part 2A. The statutory guidance provides further guidance on circumstances where more than one person is liable to bear the responsibility for remediation. The statutory guidance further sets out what the enforcing authority should consider when making any cost recovery decision.

In general the Borough Council will:

- i. Seek to recover in full reasonable costs incurred when performing its duties in relation to remediation of contaminated land
- ii. Wherever possible apply the 'polluter pays' principle, whereby the costs of remediating pollution are borne by the polluter
- iii. Where cost recovery is not possible, seek sources of finance (external to the council) for remediation
- iv. Have due regard to the avoidance of hardship which the recovery of costs may cause
- v. Aim for an overall result which is as fair and equitable as possible to all who may have to meet the costs of remediation, including local and national taxpayers.

Section 5.4 set out the process of cost benefit analysis which will be used to decide if a remediation action is reasonable. These factors, particularly the financial cost of remediation, will also affect the decision on whether to recover costs. The statutory guidance states that 'the financial standing of any person who may be required to pay for a remediation action are not relevant to the consideration of whether the costs of a remediation action are reasonable, although they may be relevant in deciding whether the cost of remediation can be imposed on such persons.

The statutory guidance sets out some considerations which the enforcing authority should have regard to the following when making cost recovery decisions:

- i) Threat of closure or insolvency of a Commercial Enterprise

- ii) Availability of funds from a trust when the appropriate persons act as trustees
- iii) Impact on charity's activities
- iv) Impact on a social housing landlord to provide or maintain social housing
- v) If a person is likely to have profited financially from the activity which led to the land being contaminated land
- vi) Where another person is also responsible for the contamination but cannot now be found
- vii) Where the cost of remediation may exceed the likely value of the land after remediation.
- viii) Any increase in the value of the land
- ix) Precautions taken before land was acquired
- x) Where owner-occupiers did not know and could not reasonably have known that the land was affected by the contaminants in question

The Borough Council will also consider whether it could recover more of its costs by deferring recovery and securing costs by a charge on the land in question.

As recommended in the statutory guidance, we will have regard to the circumstances of each individual case. In deciding whether to recover costs we will report our reasoning to the Executive Director, Environment and Planning for approval.

6.1 Voluntary Action

Where appropriate remediation measures are being taken, we will not serve a remediation notice. The cost of remediation in this case would be borne by the person carrying out the remediation. In this case the statutory guidance states that the authority should assume that appropriate measures are being taken if (a) it is satisfied that the standard of remediation will be equal to or better than what would have

been specified in a remediation notice and (b) the authority is satisfied with the timescale.

6.2 Hardship

When making the decision to recover costs the Borough Council will consider: (a) the extent to which the liable person would suffer financial hardship were they required to pay the costs (b) all other circumstances as deemed relevant.

In the case of owner-occupiers of dwellings the Borough Council will apply an approach similar to that in the Council's Private Sector Housing Investment Policy (2013) and will take account of the liable persons means tested benefits or the Means Test as set out in the Private Sector Housing Investment Policy.¹

6.3 Contaminated Land Capital Projects Programme

In the past the Environment Agency ran the Contaminated Land Capital Projects Programme to help local authorities in England cover the capital cost of implementing the contaminated land. DEFRA funded this work.

The Borough Council successfully bid for funding for intrusive investigation of the former Wisbech Canal. The subsequent report showed that the land is not contaminated land. The Borough Council now has information and resources to share with owners and developers of property in the area. This has reduced the burden and removed financial costs for people wishing to buy, sell or develop properties in the area. More information is available on our [webpage](#).

From April 2014 DEFRA no longer supports the cost of investigating and remediating contaminated land under Part 2A through the Contaminated Land Capital Project Programme. Lord de Mauley stated that a small contingency fund of £0.5m may be made available over three years for

¹ As defined and set out in the Housing Grants, Construction and Regeneration Act 1996, The Housing Renewal Grants Regulations 1996 and the Housing Renewal Grants (Amendment) (England) Regulations 2008 No. 1190

absolute emergencies 'subject to capital funding being available within Defra'. All funding will cease on 1 April 2017.

The Borough Council has a small fund available for initial inspections, if limited soil sampling is required. Where there is an immediate risk to public health a report and business case would be made to consider the resources required.

7.0 ACCESS TO INFORMATION

7.1 Communication

The Statutory Guidance suggests that we keep a record of our reasons for deciding if land is not contaminated land and that we should inform land owners and consider informing other interested parties. We will consider each site individually and let landowners have a copy of the Written Statements from strategic inspections. We will also make information available when the Environmental Quality team are consulted on an application for planning consent on the land.

We may let other interested parties such as neighbours and potential purchasers have the Written Statement if they want to know more about the land. For example, in response to 'failed' environmental searches. Written Statements will be published on our webpage unless there are exemptions under the Environmental Information Regulations.

If we are carrying out a detailed inspection we will let landowners and occupiers know. Before making a determination that land is contaminated land we will inform the owners and occupiers of the land and any other person who appears to be liable to pay for remediation, unless there is an overriding reason not to do so. We may also let owners and occupiers of neighbouring land know if they could be affected.

The statutory guidance sets out who we shall give notice to if we determine that land is contaminated land. A written record of the determination including the risk summary will be publicly available and published on our webpage.

7.2 Arrangements for giving access to information

Information on the progress of strategic and detailed inspections is managed using the Borough Council's IDOX Uniform IT system and displayed on our geographic information system. We can produce reports to manage our workload and to find information in response to customer enquiries.

Any information related to land contamination which appears as part of an application for planning consent with the Borough Planning Office is a public record by virtue of the Town and Country Planning Act 1990 and the Town and Country Planning (General Development Procedures) Order 1995 and is available at the Council's offices or via the website (www.west-norfolk.gov.uk).

Information which is recorded as part of the public register as required by Contaminated Land (England) Regulations 2000 is available to the public in the Environmental Health and Housing Department during normal office hours. Charges are made for the copying of such information to cover the costs reasonably incurred. Public Register information is also made available on the Council's website.

Requests for environmental information are subject to the Access to Environmental Information Regulations. They can be made in person, by post or email. A standard charge is made to cover research and administration costs. We can supply information collated as part of our strategic inspections, particularly on current Part 2A status, pollution incidents, complaints, historic land use, and historic landfill.

7.3 Public Register

The public register will record regulatory action taken on land determined as contaminated land. The register currently contains no entries; however the format is displayed on the Council's [website](#).

The register will form a publicly available source of information. The particular details to be included in the register are prescribed in regulation 15 of, and schedule 3 to, the Contaminated Land (England) Regulation 2000. This can include:

- remediation notices and appeals against such notices;
- remediation statements and declarations;
- appeals against charging notices;
- notices relating to the designation of land as a special site;
- notices relating to termination of designation as a special site;
- guidance issued by the Environment Agency;
- notification of remediation actions;
- convictions for offences under the legislation.

We have also included some sites which have been investigated but not included on the register as they are not contaminated land. The findings from these investigations are published on our website.

8.0 REVIEW

8.1 Timetable

Once adopted, this Strategy will apply until reviewed in 2019 or if there is a significant change in legislation.