

# **CONTAMINATED LAND INSPECTION STRATEGY**

Revised Edition  
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## **EXECUTIVE SUMMARY**

The contaminated land regime was introduced as a means of dealing with the legacy of contaminated land which has mainly arisen from a wide range of historical industrial, mining and waste disposal activities. The Council's first Contaminated Land Inspection Strategy was published in 2012, this revised version consists of minor layout changes and updates to references to the legislation where appropriate. No significant changes to the Council's overall approach have been made.

BFC has two specific roles: firstly, to undertake an assessment of its area for contaminated land through a strategic approach and, secondly, where contaminated land posing an unacceptable risk to health/environment is identified, to ensure the contamination is remediated to reduce that risk to an acceptable level.

This document seeks to update the Council's approach for dealing with contaminated land issues. Taking a strategic approach has enabled the Council to identify in a rational, ordered and efficient manner where land contamination is more likely to be found. Then, by using what is known about those areas from a variety of sources to risk rate them. By identifying and ranking potentially contaminated land in this way, resources have been focused on those areas which merit individual inspection.

The strategy provides background to the issues and also details the key characteristics that make up the Borough. It provides clear priority actions and details the inspection programme and timescales, which have been and will continue to be adjusted according to findings as work progresses and changes to the official guidance.

Addressing the issues of contaminated land is not a short-term project and the Borough Council has looked to ensure that a holistic and rational long-term approach is adopted. The history of industry and development in the Borough does not lend itself to the creation of numerous high-risk sites of contaminated land. Through the approach detailed in this document the Borough Council continues its commitment to ensuring that all potentially contaminated sites receive a clear, efficient and all-encompassing assessment.

Further documentation and updates will be published in the future, illustrating the evolving picture and highlighting areas of concern or requiring additional actions and/or resources.

## GLOSSARY OF TERMS

The Act	Environmental Protection Act 1990
The Regulations	The Contaminated Land (England) Regulations 2006 The Contaminated Land (England) (Amendment) Regulations 2012
The Guidance	Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance – April 2012
Apportionment	As defined by the Act, means: Any determination by the enforcing authority under section 78F(7) (that is, a division of the costs of carrying out any remediation action between two or more appropriate persons).
Appropriate Person	As defined by section 78A(9) of the Act, means: Any person who is an appropriate person, determined in accordance with section 78F of the Act, to bear responsibility for anything which is to be done by way of remediation in any particular case.
Class A Person	As defined by paragraph D.5(a) of the Guidance, is a person who is an appropriate person by virtue of section 78F(2) (that is, because he has caused or knowingly permitted a pollutant to be in, on or under the land).
Class B Person	As defined by paragraph D.5(c) of the Guidance, is a person who is an appropriate person by virtue of section 78F(4) or (5) (that is, because he is the current owner or occupier of the land in circumstances where no Class A person can be found with respect to a particular remediation action).
CLEA	A set of generic guidelines, and a risk assessment model – The Contaminated Land Exposure Assessment published by DEFRA.
Contaminant	As defined by paragraph 3.8 of the Guidance, is a substance that is in, on or under the land and which has the potential to cause significant harm, or to cause significant pollution of controlled waters.
Controlled Waters	As defined by section 78A(9) by reference to Part III (section 104) of the Water Resources Act 1991, which includes territorial and coastal waters, inland fresh waters, and ground waters.
Enforcing Authority	For land not designated as being a ‘special site’, the enforcing authority within the Borough of Bracknell Forest is the Council. For land designated as being a ‘special site’, the enforcing authority is the Environment Agency.
Exclusion	Any determination by the enforcing authority under section 78F(6) (that is, that a person is to be treated as not being an appropriate person) <i>Paragraph D.5(d)</i> .
Local Authority	BFC
Owner	As defined by section 78A(9) of the Act as being: “a person (other than the mortgagee not in possession) who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land, or where the land is not let at a rack rent, would be so entitled if it were so let.”
Part IIA	Means Part IIA of the Environmental Protection Act 1990.
Pathway	As defined by paragraph 3.8 of the Guidance, is one or more routes or means by, or through, which a receptor is or might be affected by a contaminant

Precautionary Principle	<p>Article 130 of the “Treaty on European Union” places the basis for environmental protection upon the ‘Precautionary Principle’. The Principle has been carried forward in the Environmental Principles Policy Statement published by DEFRA in 2022. Where, in the absence of firm scientific evidence regarding the effects of a particular substance or activity, the protection of the environment should be the first concern. Furthermore, there is no need for scientific proof before preventative action is taken.</p> <p>In summary, the reduction of risks to the environment by taking avoiding action before any serious problem arises.</p>
The Polluter Pays Principle	<p>Article 130 of the “Treaty on European Union” looks to ensure that the costs of environmental damage caused by polluting activities are borne in full by the person responsible for such pollution (the polluter). The Principle has been carried forward in the Environmental Principles Policy Statement published by DEFRA in 2022.</p> <p>The principle accepts that: (i) the polluter should pay for the administration of the pollution control system; and (ii) the polluter should pay for the consequences of the pollution (e.g. compensation and remediation).</p>
Receptor	As defined by paragraph 3.8 of the Guidance, is something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem or controlled waters.
Register	The public register maintained by the Council under section 78R of the Environmental Protection Act 1990.
Remediation	<p>As defined by section 78A(7) of the Act, means:</p> <p>The doing of anything for the purpose of assessing the condition of: (i) the contaminated land in question; (ii) any controlled waters affected by that land; or (iii) any land adjoining or adjacent to that land;</p> <p>The doing of any works, the carrying out of any operations or the taking of any steps in relation to any such land or waters for the purpose: (i) of preventing or minimising, or remedying or mitigating the effects of, any significant harm, or any pollution of controlled waters, by reason of which the contaminated land is such land; or (ii) of restoring the land or waters to their former state; or the making of subsequent inspections from time to time for the purpose of keeping under review the condition of the land or waters.</p> <p>Cognate expressions shall be construed accordingly.</p>
Remediation Action	As defined by paragraph D.5(f) of the Guidance, is any individual thing that is being, or is to be, done by way of remediation.
Remediation Package	As defined by paragraph D.5(g) of the Guidance, is all of the remediation actions, within a remediation scheme, which are referable to a particular significant pollutant linkage.
Remediation Scheme	As defined by paragraph D.5(h) of the Guidance, is the complete set or sequence of remediation actions (referable to one or more significant pollutant linkages) to be carried out with respect to the relevant land or waters.
Risk	As defined by paragraph A.9 of the Guidance, is the combination of (a) the probability, or frequency, of occurrence of a defined hazard (e.g. exposure to a property of a substance with the potential to cause harm), and (b) the magnitude (including the seriousness) of the consequences.
Special Site	Land that has been designated as such by virtue of sections 78C(7), 78D(6), or 78Q(4) of the Act, and that further defined within regulations (2), (3), and schedule (1) of the Regulations.
Substance	As defined by section 78A(9) of the Act, means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

Suitable for Use	<p>The 'suitable for use' approach, as defined by the Statutory Guidance, consists of 3 elements:</p> <ol style="list-style-type: none"> <li>1. Ensuring that land is suitable for its current use through the identification of land where contamination is causing unacceptable risks to human health and the environment, assessed on the basis of the current use and circumstances of the land, and returning the land to a condition where such risks no longer arise. The new contaminated land regime provides the mechanism to achieve this.</li> <li>2. Ensuring that land is made suitable for any new use, as planning permission is given for that new use. This is achieved by assessing the potential risks from contamination, on the basis of the proposed future use and the circumstances, before official permission is given for the development and, where necessary to avoid unacceptable risks to human health and the environment, remediating the land before the new use commences. The Town and Country Planning and Building Control regimes provide the mechanism to achieve this.</li> <li>3. Limiting requirements for remediation to the work necessary to prevent unacceptable risks to human health and the environment in relation to the current use or future use of land for which planning permission is sought.</li> </ol>
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## **1 BFC'S KEY OBJECTIVES**

### **1.1 One of the Council's Strategic themes, as set out in the Council Plan is:**

**'Protecting and enhancing our environment', one aim of which is to ensure Bracknell Forest remains clean and green**

### **1.2 The Borough Council's Aims in Respect of Contaminated Land**

- Preventing the creation of new contaminated land.
- Identifying land within the area of Bracknell Forest that is causing an unacceptable risk to human health, controlled waters, or the environment. Ensuring that, where present, the most urgent problem land is identified first, taking into consideration the seriousness of any actual or potential risk.
- Ensuring that contaminated land is returned to beneficial use.
- Ensuring that all land owned by the Council is inspected for contamination and ensuring that the risk of harm to human health, controlled waters, or the environment is minimised.
- Ensuring that contaminated land is given due consideration in all land development, redevelopment and acquisition decisions.
- Ensuring that all Borough Council Directorates take a holistic and consistent approach in addressing issues relating to contaminated land.
- Ensuring that the Council's method of handling information, and its consultation and involvement with relevant organisations and agencies are open, transparent, consistent, and comprehensive.
- Enabling all problems resulting from contamination to be handled as part of the same process (previously separate regulatory action was needed in respect of human health and the water environment), thus ensuring consistency in the approach taken in the treatment of contaminated land within the Borough.
- Ensuring that the Borough Council provides information to the Environment Agency for its report on contaminated land.
- To periodically review the Borough Council's Contaminated Land Inspection Strategy.

### **1.3 Development of the Strategy and Action to Take**

The purpose of this updated strategy is to set out the approach the Council has adopted in the inspection of Bracknell Forest for 'contaminated land' and provide updates where appropriate. The methodology adopted is designed to ensure that the Borough Council fulfils its responsibilities in respect of the contaminated land provisions set down by the Environmental Protection Act 1990 (as amended) (EPA), The Contaminated Land Regulations 2006 as amended in 2012 and in so doing meet the requirements of the Statutory Guidance as amended in April 2012.

### **1.4 Internal Consultation on the Strategy**

The Statutory Guidance states "Contaminated land is an archetypal example of our failure in the past to move towards sustainable development". In order to ensure that a corporate approach for Bracknell Forest continues to be taken to overcome the problems associated with any contaminated land within the Borough, this updated strategy has been the subject of consultation within the council.



## **1.5 External Consultation on the Strategy**

The opinion of the following external regulatory organisations was sought during the development of the original strategy:

The Environment Agency

English Heritage

English Nature

Department of Environment, Food and Rural Affairs (DEFRA)

The Food Standards Agency

In view of the continuity of approach adopted in this updated strategy it was not considered necessary to repeat the external consultation exercise.

## **1.6 The Contaminated Land Inspection Strategy and Other Council Strategies and Plans**

The following strategies (updated versions noted where appropriate) were referenced as relevant to the original Contaminated Land Inspection Strategy. Any subsequent relevant strategies have been included in this update.

### **1.6.1 Bracknell Forest Biodiversity Action Plan (2018-2023)**

The aim of the Bracknell Forest Biodiversity Action Plan (BAP) is to conserve and enhance biological diversity within the Borough. This will be achieved by: proactive policies to ensure important sites are protected in the planning process; positive management to maintain, restore and create key habitats; targeted monitoring of priority species and habitats and effective communication between partners, landowners and the general public.

### **1.6.2 Bracknell Forest Parks and Open Spaces Strategy (2012)**

The Bracknell Forest Parks and Open Spaces Strategy (BFPOSS) deals with the provision, management and future development of parks and open spaces across the Borough, including sites managed by the Borough Council and by Town and Parish Councils. The BFPOSS considers both the quantity and quality of parks and open spaces in the Borough and provides strategic direction for future management and development of these spaces.

### **1.6.3 The Bracknell Forest Rights of Way Improvement Plan (2017-2027)**

The Bracknell Forest Rights of Way Improvement plan (ROWIP2) sets out how BFC as the Highway Authority intend to manage, provide, improve, protect and promote the rights of way network.

The vision is for a thriving and accessible Public Rights of Way and greenspaces network in Bracknell Forest that provides opportunities for open-air recreation and enjoyment of the area, and which supports wider interests including sustainable transport, the local economy, tourism and health and wellbeing benefits.

### **1.6.4 Waste Local Plan for Berkshire**

The Waste Local Plan for Berkshire was prepared under the Town and Country Planning Act 1990 and was adopted in 1998. It provided:

- A framework for the development and use of land for waste management facilities consistent with the objectives and policies of the Waste Management Strategy and with national, regional and local planning policies.
- A selection of identified sites to ensure that enough sites are available to accommodate the facilities required to put the Waste Management Plan into effect.
- A detailed policy framework for deciding individual planning applications.
- A framework that aims to minimise the harm to the environment caused by the development of waste management facilities.

The Waste Local Plan covered the period to 2006. In 2007 many of the policies in the Plan were saved and continue to form part of development planning in Bracknell Forest.

The Replacement Minerals Local Plan for Berkshire, 2001, was intended to ensure minerals were extracted at the right place to the end of 2006 and that there were enough permissions until 2013. Several of the policies have been saved.

Minerals and waste planning policy is currently under review. Bracknell Forest Council, Reading Borough Council, the Royal Borough of Windsor and Maidenhead and Wokingham Council are working in partnership to produce a Joint Minerals and Waste Plan. The draft new plan has been submitted to government for examination and the Inspector's decision letter is currently awaited following consultation on proposed modifications.

#### **1.6.5 Bracknell Forest Borough Local Plan**

The BFC Local Plan 2002 was prepared in the framework of national and regional planning advice, and the strategy statement of the Structure Plan. It sought to enable development to take place whilst minimising its effect on the environment and provided the opportunity to translate the principles of sustainability into practice at the local level. The Local Plan was adopted in January 2002 and although some of the policies are no longer used many were 'saved' in 2007 and remain in use.

The Council needs to review the Plan to ensure that it remains up to date and an Emerging Bracknell Forest Local Plan was submitted to government for examination in December 2021. The Stage 1 examination hearings were held in May/June 2022 and Stage 2 hearings are anticipated for October 2022. This plan, when adopted, will guide development in the Borough up to 2037. Section 19.4 'Pollution and Hazards' and Section 19.5 'Development of land potentially affected by contamination' of the Emerging Bracknell Forest Local Plan are relevant to this strategy.

#### **1.6.6 Bracknell Forest Core Strategy**

The BFC Core Strategy was adopted in 2008. This sets out the broad locations for delivering housing and other major development needs in the Borough such as employment, retail and transport until 2026. It does not deal with site-specific issues.

#### **1.6.7 BFC Site Allocations Local Plan**

Adopted in 2013 this plan helps implement the Core Strategy. It identifies sites for future housing development and ensures that appropriate infrastructure is identified and delivered.

### **1.6.8. Climate Change Strategy**

The BFC Climate Change Strategy was adopted in 2021. It commits the Council to becoming carbon neutral by 2050 through a range of actions set out in the Climate Change Strategy Action Plan.

## **1.7 Interaction with Other Regulatory Regimes**

In the fulfilment of its many functions, the Council deals with contaminated land using other regulatory actions as detailed within sections 1.7.1 to 1.7.6 below. The Statutory Guidance states that enforcing authorities should seek to use Part 2A of the Environmental Protection Act 1990 only where no appropriate alternative solution exists. Therefore, Part 2A should not be used where existing legislation may be enforced or where contamination has arisen due to a breach of an existing license or permit.

### **1.7.1 Town and Country Planning Act 1990**

In its function as the Local Planning Authority, the Council must consider the implications of land contamination in the development of its Local Plan. Furthermore, it is a material consideration in the determination of individual development applications submitted for planning permission. Many contaminated sites have already been dealt with through the application of planning controls during redevelopment. It is anticipated that the redevelopment of brownfield sites and derelict land within Bracknell Forest will continue to remain the primary mechanism for dealing with contaminated land. Any remediation agreed as a planning condition will be dealt with under planning controls and not under Part IIA of the Environmental Protection Act 1990.

Within both the Delivery and the Place, Planning and Regeneration Directorates the services work together to ensure that where redevelopment of land takes place within the Borough, the planning process deals effectively with any contamination so that the land is suitable for its intended use.

### **1.7.2 Environmental Permitting**

Site operators of industrial processes regulated under the Integrated Pollution Prevention and Control (IPPC) regime (which has been maintained under the EU Withdrawal Act 2018) are required to carry out a site survey to ascertain the baseline conditions of the land before being granted an operator's licence. Should the operator cause contamination of the site by breaching the conditions of the licence, the operator is required to remediate the land so that it is returned to its original baseline condition. This regime is enforced by the Environment Agency for A1 processes and the Borough Council for A2 processes. The Borough has no A2 processes and five A1 process sites.

### **1.7.3 Waste Management Licensing**

Where contamination of land has been caused through waste disposal activities and resulted from a breach of an operating licence, the Council cannot seek the remediation of that land by the service of a Remediation Notice. However, powers are available under the Waste Management Licensing Provisions of the Environmental Protection Act 1990 for dealing with the contamination of that land.

#### 1.7.4 **Water Pollution**

Section 161 of the Water Resources Act 1991 gives the Environment Agency powers to take action to prevent or remedy the pollution of controlled waters. There is considerable overlap between the Water Resources Act and Part IIA of the EPA in respect of dealing with contaminated land that has the potential to pollute controlled waters. Where contaminated land is causing or has the potential to pollute controlled waters then remediation will be brought about under Part IIA by the Council, through consultation with the Environment Agency.

Where there is historical pollution of groundwater, but where Part IIA does not apply, remediation will be carried out by the Environment Agency under the Water Resources Act. This may occur, for example, where the pollutants are entirely contained within the relevant body of groundwater or where the 'source' site cannot be identified.

#### 1.7.5 **Building Regulations**

In addition to the planning regime, Building Regulations (made under the Building Act 1984) require developers to take measures (e.g. installation of ground gas protection measures) to protect new buildings and their future residents from the effects of contamination.

#### 1.7.6 **Environmental Damage (Prevention and Remediation) Regulations 2015**

These regulations relate to liability for environmental damage and are enforced by the Environment Agency and Natural England.

## **2 CONTAMINATED LAND – THE LEGAL FRAMEWORK**

Widespread land contamination is a legacy of the United Kingdom's early industrialisation. Land contamination in England is estimated by Public Health England (2019) to account for approximately 296,000 hectares of land (equivalent to a city larger than Greater London). For many years, a methodology of dealing with this legacy was sought so that inner city and urban areas can be brought back into beneficial use, thereby enabling the regeneration of land and communities, whilst simultaneously relieving the pressure to build on 'greenfield land'.

After extensive consultation, on 1 April 2000, the contaminated land regime under Part IIA of the Environmental Protection Act 1990 came into force. The regime made provision for ensuring the remediation of historically contaminated land by imposing retrospective liability for historical contamination of land. It is intended that Part IIA complements the planning regime in that contaminated land can still be dealt with by the use of planning conditions as part of the redevelopment process. However, Part IIA allows local authorities and the Environment Agency to deal proactively with land that is not actively undergoing redevelopment, but is posing unacceptable risks to humans, controlled waters or the wider environment. This legislation is consistent with the 'Polluter Pays Principle' in that it seeks to place the cost burden of dealing with contamination on the polluter where they can be found, or the landowner/occupier where the polluter no longer exists.

Until Part IIA came into force, the public health implications of contaminated land were covered by Statutory Nuisance legislation. Historically these nuisance provisions originate from Public Health Acts ranging back to the 19th century but are now contained within the Environmental Protection Act 1990. Section 79 of this Act introduced the definitions of nuisance. Statutory nuisance provisions place a duty on

local authorities to inspect their area, from time to time, to identify any nuisances and to investigate any complaints of nuisance. Where the local authority is satisfied that a nuisance exists, or is likely to occur or reoccur, it must serve an Abatement Notice requiring that action be taken to remedy the nuisance. Where the notice is not complied with the authority can take action itself and institute 'works in default' to abate the nuisance, and then seek to recover its costs from the responsible person or persons. The contaminated land provisions of the Part IIA regime are modelled on the existing statutory nuisance provisions of the Environmental Protection Act 1990.

## **2.1 Underlying principles and objectives of the regime**

The principal objective of the regime is to provide an improved system for the identification and remediation of land where contamination is causing unacceptable risks to human health, or the environment, assessed in the context of the current use and circumstances of the land. Other objectives include:

- To ensure urgent and real problems are dealt with first, but in an orderly and controlled fashion in which the economy at large, individual businesses and landowners can cope with.
- To ensure that the procedure of risk assessment is used to determine if land is categorised as 'contaminated', as defined by the Act.
- To ensure that the 'suitable for use' approach is taken, such that remediation of land is carried out to a standard where contamination no longer poses unacceptable risks to human health or the environment, taking into account the use of the land and its environmental setting.
- To return contaminated land to beneficial use.
- To prevent or minimise further contamination through enforcement of existing statutory provisions which include: Parts I and II of the Environmental Protection Act 1990; the Pollution Prevention and Control (England) Regulation 1999; the Town and Country Planning Act 1990 and the Water Resources Act 1991.
- To ensure that the 'Polluter Pays Principle' is used in the determination of liability for remediation costs.
- To ensure that the process is reasonable, effective and transparent, ensuring that a strategic approach is taken in respect of dealing with the problems of land contamination.
- Provide a tailored regulatory mechanism, including liability rules, able to reflect the complexity and range of circumstances found on individual sites.
- Encourage voluntary remediation by site owners.

### **3 REGULATORY CONTEXT**

#### **3.1 BFC's Regulatory Role in Respect of Contaminated Land**

Section 78 of the Environmental Protection Act 1990 (as amended) gives the Borough Council a series of duties. In carrying out these responsibilities the Council shall:

- Prepare, publish and adopt a formal written strategy setting out the approach the Council will use in identifying contaminated land within the area of Bracknell Forest. The strategy must be kept under periodic review.
- Cause the Borough of Bracknell Forest to be inspected in order to identify contaminated land, and to prepare reports on local contamination.
- Determine whether any particular site within the area of Bracknell Forest is contaminated land, as defined by the Act.
- Act as the enforcing authority for all contaminated land within the area of Bracknell Forest that is not designated a 'special site'.
- Establish who may be the appropriate person/s to bear responsibility for remediation of contaminated sites.
- After consultation with appropriate person/s and other statutory bodies and organisations as necessary, decide what remediation might be required in any individual case.
- Ensure that such remediation takes place, either through agreement with the appropriate person, or by serving a remediation notice if necessary, or carrying out the work themselves.
- Determine who should bear what proportion of the liability for meeting the costs of the work where a remediation notice is served, or where the authority itself carries out the work.
- Record information on a public register about their regulatory actions.

#### **3.2 Regulatory Role of the Environment Agency**

The Environment Agency has four principal roles with respect to contaminated land under Part IIA, namely:

- To assist the Council in identifying contaminated land, especially where water pollution is involved. To this effect, where the Council is of the opinion that a site may be contaminated, it will consult with the Environment Agency.
- To provide site-specific information and technical guidance.
- To act as the enforcing authority for land designated as a 'special sites'. Special sites are the most complex and dangerous contaminated sites. They include defence and nuclear sites, and some sites involving water pollution (e.g. where drinking water is affected). The designation of contaminated land as a special site is made by the Council, or in cases of dispute, by the Secretary of State. Where the Council considers that any particular contaminated land might be a special site, the Council will seek the advice of the Environment Agency prior to designation. Designation as a special site can only take place after the Borough Council has formally identified the site as contaminated land, and if the site's contaminants match the descriptors detailed within regulations 2 and 3 of the Contaminated Land Regulations 2000. Also, see Glossary of Terms for further details.
- To periodically publish reports on contaminated land.

### **3.3 The Statutory Definition of ‘Contaminated Land’**

Section 78A (2) of the Environmental Protection Act 1990 gives the statutory definition of contaminated land as being:

"...any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in, on or under the land that –

- (a) significant harm is being caused; or there is significant possibility of such harm being caused; or
- (b) significant pollution of controlled waters is being caused or there is a significant possibility of such pollution being caused."

In determining whether any land appears to be such land, the local authority shall act in accordance with guidance issued by the Secretary of State.

### **3.4 The Statutory Definition of ‘Harm’**

'Harm' is defined by the Act as meaning "harm to the health of living organisms, or other interference with the ecological systems of which they form part and, in the case of man, includes harm to his property".

If there is no harm, land cannot be classified as being 'contaminated land' within the meaning of the Act, despite the presence of harmful matter. However, land can only be deemed 'contaminated' if the harm, or risk of harm to the non-aquatic environment "is significant", or there "is a significant possibility of such harm being caused". On the other hand, land is to be classified as 'contaminated' if there is a likelihood of it causing pollution to controlled waters.

### **3.5 Amendments and updates to Contaminated Land Regulations and Guidance**

DEFRA reviewed the contaminated land regime in England in 2012. The purpose was to consider whether improvements could be made to the regime, taking into account the experience of nearly ten years of delivery and the latest scientific evidence. The review found the primary legislation (Part 2A of the Environmental Protection Act 1990) remained fit for purpose, and there was a strong need to keep it. However, there were flaws in the accompanying Statutory Guidance which had undermined the effectiveness of the regime and created considerable regulatory uncertainty. Following on from this review a joint public consultation was conducted by DEFRA and the Welsh Assembly Government on proposals for changes to the contaminated land regime.

In 2012 revised Statutory Guidance was issued under Part 2A of the Environmental Protection Act 1990. This revised Statutory Guidance, while still taking a precautionary approach, allowed regulators to make quicker decisions about whether or not land is contaminated under Part 2A preventing costly remediation operations being undertaken unnecessarily. It also offers better protection against potential health impacts by concentrating on the sites where action is actually needed. A new four-category test has been developed to clarify when land does and does not need to be remediated. Ministers believed that by reducing regulatory uncertainty, this policy aims to make the regime target higher risk land more efficiently.

In 2016 the Environment Agency reviewed progress in dealing with contaminated land in England. The report noted that the proactive identification and remediation of contaminated land is an ongoing process that will take many years to complete. Further, public funding had an important role to play in delivering benefits from contaminated land being managed.

In 2014 (updated in 2019) the government published guidance on how planning can deal with land affected by contamination. In summary, this guidance set out how the planning system should be used to ensure a site is suitable for its new use and to prevent unacceptable risk from pollution.

Also, in 2014 (updated 2022) the Environment Agency published 'Land contamination: technical guidance'. This provides technical guidance on the management of contaminated land including how to investigate, assess and manage the risks.

### 3.6 The Principles of Pollutant Linkages

For land to be designated as statutory 'contaminated land' three criteria must be met. Namely, there must be an identified contaminant, an identified receptor that is likely to be harmed by the contaminant should the two come into contact and a feasible pathway by which the two can connect. Together these three criteria form what is known as a 'significant pollutant linkage' (SPL), as shown in figure 1 below.

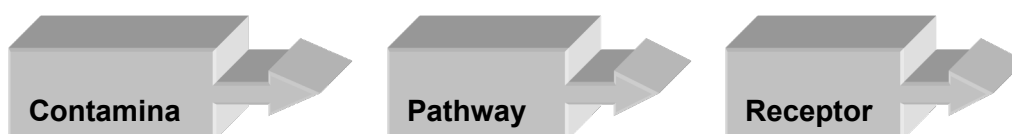


Figure 1, the significant pollution linkage (SPL)

### 3.7 The Principles of Risk Assessment

To ensure that any potentially serious risks are not overlooked, and that available resources are effectively targeted on those sites most in need of action to reduce or control unacceptable risks to health and/or the environment, the Council has adopted a four-stage approach in the identification of contaminated land within the Borough. The four stages of risk assessment are:

*Hazard Identification* – Identification of contaminant sources, pathways and receptors (pollutant linkages), taking into account the actual or intended use of the site and environmental setting.

*Hazard Assessment* – Consideration of the plausibility of pollutant linkages and determination of the potential for health and environmental risks.

*Risk Estimation* – Estimation of the risk(s) that the identified receptor(s) will suffer harm under defined conditions.

*Risk Evaluation* – Evaluation of the need for risk management action (i.e. risk reduction or control measures) having regard to the nature and scale of actual or anticipated risks, any uncertainties associated with the assessment process and where further action is required, the broad costs and benefits of that action.

The carrying out of these procedures will be assisted by reference to a wide range of published guidance documents. Key guidance documents for each phase of the above risk assessment procedures can be found referenced at Appendix 1. The most recent guidance 'Land contamination risk management (LCRM)' from the Environment Agency was published in 2020 with an update in 2021. It sets out how to assess and manage risks from contaminated land.

### 3.8 Strategic Approach to Inspection

The statutory guidance requires that a strategic approach be taken in the identification



of land that merits detailed individual study. In developing its strategic approach, BFC consulted with the Environment Agency and other appropriate public authorities.

The Council set out its approach as a written strategy, which it adopted and first published in July 2001. A copy of the strategy was sent to the Environment Agency. This approach remains appropriate. The strategic approach must:

- Be rational, ordered and efficient.
- Be proportionate to the seriousness of any actual or potential risk.
- Seek to ensure that the most pressing and serious problems are located first.
- Ensure that resources are concentrated on investigating in areas where the authority is most likely to identify contaminated land.
- Ensure that the local authority efficiently identifies requirements for the detailed inspection of particular areas of land.
- Take into account local circumstances of receptor types, geology, hydrogeology, available information on contamination, potentially contaminative industries, past redevelopment and remediation, interests of other regulatory authorities.

### **3.9 Powers of Entry**

Section 108 and Schedule 18 of the Environment Act 1995 give the Council authority to enter land so that it may fulfil its duties in respect of contaminated land. Unless it is considered that the land may present an imminent risk of serious harm to human health, or pollution of the environment, or such that it may be a danger to life or health, at least seven days written notice of the proposed entry will be given to the person seemingly in occupation of the land in question.

Where land is determined to be a 'special site', detailed investigation of that land will be carried out by the Environment Agency on behalf of the Council. As such, the Council will authorise a person nominated by the Environment Agency to exercise the above powers on its behalf.

### **3.10 Determination of Contaminated Land**

Where land appears to meet the statutory definition of being 'contaminated land', the Council will prepare a written statement of the fact that the land is contaminated. The Guidance requires that information contained within the statement includes, by reference to other documentation if necessary:

- A description of the particular significant pollutant linkage, identifying all three components of pollutant, pathway and receptor.
- A summary of the evidence upon which the determination is based.
- A summary of the relevant assessment of this evidence.
- A summary of the way in which the authority considers that the requirements of the Guidance have been satisfied.

### **3.11 Identifying and Notifying Responsible Persons**

For any land classified as being 'contaminated land', acting on the best information available at the time, the Council will, wherever possible, establish:

- Who is the 'owner' of the land?
- Who appears to be in occupation of all or part of the land?
- Who appears to be an 'appropriate person' to bear responsibility for any remediation action that might be necessary?

The Council will then give written notification to the above identified person(s), and the Environment Agency, that the land has been determined to be contaminated. The Council will also provide to the above identified person(s) and the Environment Agency, as appropriate, the following information:

- A copy of the written record of the determination made by the authority that the land appears to be 'contaminated land'.
- Information on the availability of site investigation reports, with copies of the full reports being available on request.
- An indication of the reason why particular person(s) appear to the authority to be 'appropriate person(s)'; and
- The names and addresses of other persons notified at the same time or previously, indicating the capacity in which they were notified (e.g., owner or appropriate person).
- Information relating to the 'tests of exclusion' from, and 'apportionment of liabilities. This information will enable those persons as identified above to know what information they need to provide to the Council, in order to make a case for their 'exclusion' from liability, or for a particular 'apportionment' of liability.

### **3.12 Liability of the Remediation of Contaminated Land**

'Liability' as described within this strategy is the bearing of responsibility for any particular thing required to be done by way of remediating contaminated land. As such, liability for the remediation of contaminated land is generally aligned with the 'appropriate person(s)'. In most instances the appropriate person is the person, or person(s), who knowingly caused or knowingly permitted the substance/s, by reason of which the land is considered to be 'contaminated'. Such an appropriate person is classified as being a 'class A' person. Where, after reasonable enquiry, a 'class A' person/s cannot be found, then the owner or occupier of the contaminated land is liable for remediation, as a 'class B' person.

Once the Council has determined that a site is contaminated and has specified what must be done by way of remediation, the Council will then determine who is liable for the remediation and what proportion they must contribute. In doing so, the Council will observe all relevant advice given in Statutory Guidance, which has established a complex structure for the apportionment of liability and cost.

### **3.13 Remediation and Remediation Notices**

Unless remediation of contaminated land is required urgently (see section 7.0 of this document), the Borough Council will encourage the appropriate person/s to remediate contaminated land through voluntary means wherever possible.

Where agreement cannot be reached, or where suitable remediation action is not being carried out, the Council will serve a remediation notice on the appropriate person(s). The notice will specify what is to be done to remediate the land, and the times by when the remedial measures must be completed. Where there are two or more appropriate persons, the remediation notice will state the proportion of costs which each of the persons are respectively liable to pay. The Council will determine the amount payable in respect of individual liabilities using procedures set down within the Statutory Guidance.

When specifying what must be done by way of remediation, the Council will require only those things that it considers to be reasonable, having regard to the cost likely to

be involved, and the seriousness of the harm, or pollution of controlled waters being caused. In doing so, the Council will ensure that a transparent and consistent assessment of the costs and benefits of the available remediation options is carried out.

### **3.14 Appeals against the Remediation Notice**

Section 78L(1) of the Environmental Protection Act 1990 makes provision for appeal against a Remediation Notice. To appeal against the service of a Remediation Notice, the person served has 21 days from the first day of its service to appeal to the Magistrates' Court. Where an appeal has been made, the Notice is suspended until the Court determines the outcome of the appeal, or the appeal is abandoned.

The Court may quash the Notice if there is a 'material defect' in it, or it may modify or confirm the Notice. Appeals against remediation served by the Environment Agency in respect of 'special sites' are made to The Planning Inspectorate (for contact details see section 9).

### **3.15 Non-Compliance with Remediation Notice(s)**

Unless there is a 'reasonable excuse', section 78M of the Act makes it an offence for the appropriate person(s) not to comply with the requirements of a Remediation Notice. Where a Remediation Notice is not complied with, where appropriate, the Borough Council will:

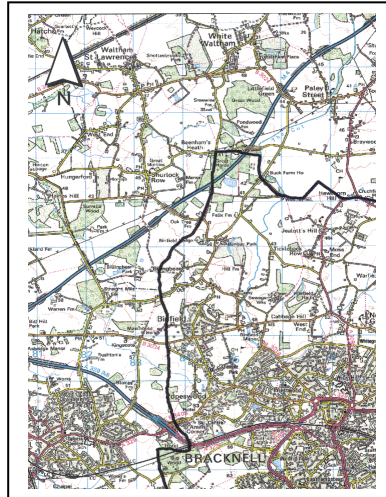
- Prosecute those served with the Notice - a person found guilty of the offence on summary conviction (i.e., within the Magistrates' Court) is liable to a fine of up to £5,000, plus an additional fine of up to £500 for each day after conviction that the action is not carried out. Where the site is an industrial, trade or business premises, the fine may be up to £20,000, plus an additional fine of up to £2,000 per day. The Council may choose to take proceedings within the High Court if it is of the opinion that such measures are necessary to secure an effectual remedy; and
- Carry out the remediation action itself and recover the costs incurred in doing so (Sections 78N and 78P of the Act refers).

## **4 CHARACTERISTICS OF THE BOROUGH OF BRACKNELL FOREST**

### **4.1 Geographical Location**

The Borough of Bracknell Forest is located in the South East of England between Reading to the West and London to the East and is bound by the M3 to the South and M4 to the North.

Centred on NGR: SU 487 169.



### **4.2 Brief Description/ History**

Bracknell Forest Borough covers an area of 10,944 hectares. It includes the towns of Bracknell and Sandhurst and villages of Crowthorne and Binfield along with a number of smaller settlements across Warfield and Winkfield. A high proportion of forest-park, which supports a diverse range of wildlife and recreational activity, breaks up the urban areas of the Borough.

In 1949 Bracknell and its surrounding area was designated as one of eight new towns to be built within a 30-mile radius of London. Bracknell has expanded rapidly since the 1960s and the development and enhancement of Bracknell Forest is still under way today.

Historically the main natural resource to be exploited in the area was clay for brickmaking. In the mid-1800s to early 1900s the brick-making industry grew considerably with the Thomas Lawrence Brickworks becoming world famous. There has been no other significant extractive or heavy industry.

The economy in recent decades has been buoyant with an emphasis on electronic, digital, information and communication activities.

### **4.3 Population Distribution**

The initial data from the 2021 census shows Bracknell Forest as having a total population of 124,600 people. The majority of the population live in Bracknell Town itself. The remainder live in the surrounding 5 towns and parishes.

### **4.4 Land owned by the Borough Council**

The total area of open space/natural asset owned by the Council is 567 hectares. Within the above figure, BFC's manages over 100 parks, recreation grounds, open spaces, play areas and nature reserves through its Parks and Countryside

Service. This area of land totals approximately 425 hectares. Most of these sites are situated within the town and in the urban fringe.

The Parks and Countryside Service has the responsibility also for the administration and management of 77.6 kilometres of Public Rights of Way.

#### **4.5 Current Land Use Characteristics**

The main use of the land, other than for residential use, is agriculture which is predominantly in the north of the Borough. In addition there are significant areas of forest cover (3793 hectares) and play and open spaces (453 hectares).

#### **4.6 Protected Location**

It is important to identify protected locations to ensure that they are not at risk from a contaminative source. Some such protected sites may be found to be at increased risk of contamination which may in turn threaten the natural habitat or endangered species residing on the land.

The Thames Valley Environmental Records Centre lists 53 local wildlife sites in Bracknell Forest.

#### **4.7 Key Property Types**

Bracknell Forest, although known as a new town, has a number of listed buildings, ancient monuments and conservation areas, in addition to having a number of areas of archaeological interest. Approximately 35% of Bracknell Forest is Green Belt.

#### **4.8 Key Water Resource/Protection Issues**

South-East Water supplies the majority of the Borough's drinking water, the remainder is supplied by Affinity.

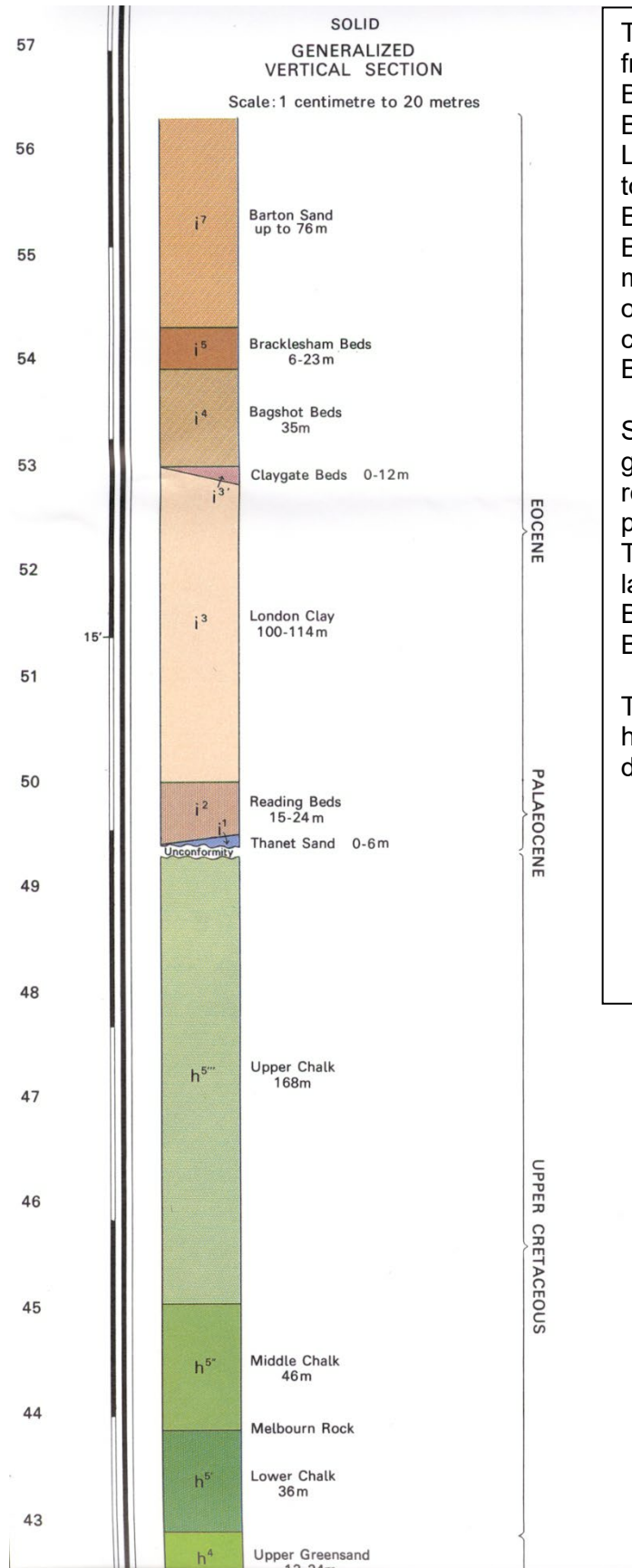
Water supplies for much of the Borough are abstracted from ground sources via boreholes at Hurley, with the remaining being abstracted from the River Thames and stored in the large reservoirs around Staines.

#### **4.9 Current and Past Industrial History**

The Borough of Bracknell Forest is not rich in raw materials such as coal and iron ore thus there is little heavy industry apparent in the historical make-up of the Town. Today the current two main areas of economic activity are information, communications and distribution. In the past Bracknell Forest has been home to a number of industries whose processes had the potential to contaminate land. These include:

- Breweries
- Brickworks
- Chemical works
- Gasworks
- Landfills
- Metal finishers
- Paper and printing works
- Petrol stations
- Scrap yards
- Sewage works and sewage sludge treatment

## 4.10 Broad Geological Characteristics



There is a change in the geology from north to south across the Borough. The north of the Borough is predominantly London Clay. As you move towards the south of the Borough Barton Sands, Bracklesham Beds and Bagshot Beds become more dominant. There are outcrops of plateau gravel, which cover the high ground around Bagshot and Crowthorne.

Soil is the upper layer of the ground consisting of weathered rock that supplies mineral particles, together with humus. The soil layer rests on a base layer of London Clay and/or the Barton/Bagshot/Bracklesham Beds.

The diagram to the left shows how various soils have been deposited.

#### **4.11 Broad Hydro-Geological Characteristics**

The hydrogeology of the Borough is greatly affected by the geology. The North of the Borough is a non-aquifer, meaning it is negligibly permeable and has formations that are generally regarded as containing insignificant quantities of groundwater. However, some groundwater does flow through such rocks, although they are mostly impermeable, and needs to be considered in assessing the risk associated with certain pollutants.

The remainder of the Borough falls into a minor aquifer category, meaning it is variably permeable. This includes the areas covered by geological strata known as the Barton Beds, Bracklesham Beds, Bagshot Beds, Reading Beds, alluvium and Gravel deposits. These minor aquifers will seldom produce large quantities of water for abstraction although they are important for local supplies and in the supplying of base flow to the two rivers that run through the Borough of Bracknell Forest. The Cut runs through the north of the Borough and the Blackwater River forms the Borough's southern boundary.

The extreme north of the Borough is covered by a source protection zone where the catchment of a borehole on the boundary draws on the ground water reserves of the Borough. This area encroaches on the Chalk Aquifer of the Thames region. Chalk is the most important aquifer for the Berkshire area. Within Bracknell Forest the chalk is confined by the London Clay formation (a non-aquifer) which acts as a protective layer as London Clay has low permeability.

Bracknell Forest has areas of high leaching potential. This is where areas of the Borough, particularly the south, straddle gravels, sands and other alluvium deposits. High leaching potential means that soils can transmit a wide range of pollutants. The Borough is also home to soils that readily transmit liquid discharges because they are shallow or susceptible to rapid by-pass flow directly to rock, gravel or ground water. The north of the Borough has the ability to attenuate absorbed pollutants due to its clay structure.

#### **4.12 Specific Local Features**

The Bagshot Beds that cover much of the Borough are naturally acidic, therefore, the water likely to be held by the Bagshot Beds may have the potential to enhance solubility and migration of certain pollutants.

## **5 PROCEDURES**

### **5.1 Internal Management Arrangements for Inspection and Identification**

The Delivery Directorate has responsibility for the implementation of Part IIA of the Environmental Protection Act 1990. The Public Protection Partnership carries out the implementation.

The designated lead officer for Contaminated Land co-ordinates the routine implementation of the strategy and reports to the Assistant Director, Contract Services.

Should remedial works need to be carried out on sites identified as being contaminated, suitably qualified environmental consulting agents may be appointed to work in conjunction with the designated case officers.

### **5.2 Local Authority Interests in Land**

BFC has had many interests in land and property in the area over time. This land is, or has been, owned or controlled by various departments throughout the Council. In respect of their potential liabilities, the Council will continue to consider all:

- Sites that are or have been owned by the Council;
- Sites that are or have been occupied by the Council;
- Sites that it may own or occupy in the future.

To facilitate managing any Council owned, occupied or controlled land found to be contaminated and to action the procedures in the event of land determined as being contaminated, the Delivery Directorate will utilise the skills available from various services across the Council. Where appropriate, contaminated land consultants will be sought to assist the Council in the remediation of the identified site.

Where land is determined by the Delivery Directorate to be contaminated and is found to be owned, occupied, or controlled by the Council, the Assistant Director of the service having control over that land will be informed immediately.

### **5.3 Evaluation of Information**

The detection of contaminated land involves the identification of potential sources, pathways and receptors for contamination, through the study of historical land use and other environmental information that often dates back to the middle of the 19<sup>th</sup> century. The risk a contaminant represents on a site is dependent upon the use of the land. This is because the use determines who and what may be at risk, and the routes by which they may become exposed. Therefore, information identified within this section will be evaluated to:

- (i) Determine the potential presence of contaminants, receptors and pathways.
- (ii) Assess the significance of any contamination sources, the receptor(s), and the pathway(s) between them.
- (iii) Assess the significance of any actual harm or pollution of controlled waters.
- (iv) The effectiveness of previous remedial action or regimes in preventing or dealing with contamination.
- (v) Identify gaps in information and how these are to be remedied.
- (vi) Identify sites that may be classified as 'Special Sites'.



### 5.3.1 Information held by the Council

#### May 1999 and June 2000, Survey of Borough

In May 1999 and June 2000, a survey was carried out by contractors to identify sites within, and up to 250m beyond, the boundary of BFC that may be contaminated due to past or present land use. The survey identified some 2,500 potentially contaminated sites within the Borough. Information sources referenced within the survey included:

#### Ordnance Survey maps (1870-2000)

1870 - County Series - 25 inch  
1899 - County Series - 25 inch  
1912 - County Series - 25 inch  
1933 - County Series - 25 inch  
1939 - County Series - 25 inch  
1960 - National Grid Series - 1:2500  
1970 - National Grid Series - 1:2500  
1980 - National Grid Series - 1:2500  
1990 - National Grid Series - 1:2500

#### Trade directories (1883-2000)

Trade directories typically detail the names and addresses of individuals and trades. They were used within the survey to infer the processes taking place at sites/premises marked on maps as '*Works-use*' (unknown use). This was done by comparing the given addresses of industries with the streets in which grid references fell.

Dates that companies were in operation, according to trade directories, were compared to the dates which sites had been identified on the maps as being in existence. This process of inference has limitations as some of the companies may have erroneously been omitted from or incorrectly recorded in the trade directories. In some instances it was not possible to match an unknown site use.

#### Other information

Various services within the Council hold a variety of information relevant to the identification of contaminated land. In addition, the Environment Agency submitted information held by them to the Council. Such information includes:

- Aquifer locations and characteristics
- Surface and ground water quality
- Surface and groundwater resources – including pollution incidents
- Abstraction licences
- Location and type of discharge consents and ground water regulations authorisations
- Location (current and historic) of Integrated Pollution Control authorised sites including brief details on authorised processes/substances
- Location of licensed nuclear sites and sites where radioactive substances are regulated
- Location of closed landfill sites and waste management licensed sites – including brief details on types of waste deposited/waste management activity
- Listed buildings and archaeological sites and buildings
- Historical information relating to site investigation reports and remediation actions undertaken on land which has been subject to 'Development Control'

- Derelict land
- Allotments
- Schools and nurseries
- Playing fields and parks
- Various strategies and action plans held by the Council at the time (e.g. the Local Plan, the Minerals Local Plan, the Waste Management Plan, and the Biodiversity Action Plan)
- Heritage Land Statistics

### **5.3.2 Information obtained**

- Geological Maps were obtained from the British Geological Society. These maps provide information relating to the solid and superficial geology underlying the Bracknell Forest area.
- Groundwater Vulnerability Maps (1:100,000 series) (West London Sheet 39) prepared by the Environment Agency.
- Information relating to ecology was obtained from English Nature and the appropriate Council Services.

## **5.4 Information and Complaints**

### **5.4.1 Dealing with enquiries**

Members of the public can make an enquiry as to the condition of any piece of land within the Borough in accordance with The Freedom of Information Regulations by contacting the Council's Information Compliance Officer. Requests will be responded within 20 working days. The first day of the 20 is the first working day after the request was received, unless it is considered that a more urgent response is required.

### **5.4.2 Confidentiality**

Whilst names and addresses will be requested from persons providing the Council with information about potentially contaminated sites, their identities will, as far as is practicable, remain confidential.

### **5.4.3 Dealing with anonymously provided information**

The Delivery Directorate uses its discretion when determining whether action will be taken in respect of anonymously provided information.

## **5.5 Information Management**

Information used for the assessment of contaminated land is stored electronically using a geographical information system, and associated data management system designed specifically to aid the compilation of a comprehensive database of all potentially contaminated sites. The data management system is also designed to allow the prioritisation of sites according to the potential risk they pose to various receptors. Some information is also held in a paper format.

## **5.6 Assessment of Risk**

Information on contaminants will be evaluated in the first instance using current government guidelines, or by use of prescribed risk assessment models.

### 5.6.1 **SGVs**

A set of soil guidelines values (SGVs) have been produced by the Environment Agency. These provide detail as to the acceptable levels of contaminants in soils depending on the land use (residential with gardens for example).

### 5.6.2 **Risk Assessment for other substances**

SGVs are not given for all substances; in such instances risk assessment will be made by reference to authoritative sources of information, and generic guidelines adopted by other countries. Where guidelines from other countries are referred to, it is important to bear in mind the significant differences in remediation standards that exist between the United Kingdom and other countries, and also what assumptions or reference standards may have been made or used in developing these standards. BFC uses data from WS Atkins who provide information, such as guideline values, that is regularly updated in line with new guidance.

### 5.6.3 **Risk assessment models**

Whilst SGVs are used in the first instance, to further define the risk, a risk assessment model is used. CLEA continues to be the preferred option. However, other risk assessment models that adopt either deterministic or probabilistic methods of deriving the risk will be considered if appropriate.

### 5.6.4 **Risk assessment for controlled waters**

Where controlled waters are potential receptors in a particular pollutant linkage, then the advice of the Environment Agency will be sought. Risk assessments and remediation will be carried out in accordance with up-to-date Environment Agency guidance.

### 5.6.5 **Potential Special Sites**

As discussed in section 3.2, special sites are the most complex and hazardous contaminated sites. Where the Council considers that any particular contaminated land might be a special site, the Council will seek the advice of the Environment Agency. Once the Council has, in consultation with the Environment Agency, determined that a site is classified as a special site, it will give written notification of the fact to the Environment Agency; the owner of the land; any person who appears to be in occupation of all or part of the land; and each person who appears to be an appropriate person. The Environment Agency may also consider sites that should be designated as special sites, should it so determine that a site be designated a special site, it must notify the Council of this fact. If the Council disagrees with the Environment Agency, the Secretary of State will designate the site as appropriate.

### 5.6.6 **The Historic Environment**

Historic England is the Government's statutory adviser on all aspect of the historic environment, including historic buildings and areas, archaeology and the historic landscape. Historic England has a duty to promote public understanding and enjoyment of these.

The statutory guidance for contaminated land identifies scheduled ancient monuments as one of the receptors that could be subject to harm by contaminated land. In carrying out its duty to identify contaminated land, the Council will consult with the local

Historic Environment Records (HERs) to identify all known archaeological sites, including scheduled ancient monuments. Furthermore, where the Council determines an archaeological site to be contaminated it will consult with Berkshire Archaeology.

## **5.7 Funding for Contaminated Land Remediation**

DEFRA ran a Contaminated Land Capital Projects Programme to help local authorities in England cover the cost of implementing contaminated land legislation, the programme ceased in 2017.

Land Remediation Relief may be available to businesses. This allows, in certain circumstances, companies to claim corporation tax relief relating to the cost of cleaning up contaminated land or buildings.

## **6 GENERAL LIAISON AND COMMUNICATION STRATEGIES**

### **6.1 External Consultation in Respect of Land Determined to be Contaminated Land**

The Council recognises that decisions made about contaminated land involve not just regulatory issues for the protection of human health and the environment, but involve considerations that are of a commercial, financial, legal and societal nature. As such, it is the Council's full intention to deal with all issues relating to contaminated land in an appropriately open and consistent manner. To achieve this, it will operate an open communication strategy, whereby it will consult with and keep informed those stakeholders and interested parties who may be affected by a contaminated site. Such stakeholders and interested parties may include:

- Owners and occupiers of the land designated as being contaminated
- Appropriate person(s)
- The Environment Agency
- Thames Water (where potential pollution linkage includes a public water supply source as a receptor)
- Other statutory bodies such as appropriate, any one or more of these may be consulted where, for example, the site in question may be contaminated by an 'ecological system effect', 'animal or crop effect', etc (see Appendix 2, Table A). Contact details of these organisations can be found at section 11 of this document.
  - Department of Environment, Food and Rural Affairs
  - The Food Standards Agency
  - Natural England
  - Historic England
- The local community and pressure groups where appropriate
- Town and Parish Councils
- Ward Members

The approach the Council will use is to be based upon that outlined within the Environment Agency's guidance "Communicating Understanding of Contaminated Land Risks", 2010, document reference UKLQ13.

## **7 REVIEW MECHANISMS**

On occasions, it may be necessary to review and update any assumptions made and any information previously used to assess potential problems in different areas and managing new information.

### **7.1 Triggers for Reviewing Inspections and Inspection Decisions**

It may be necessary to carry out inspections in respect of potentially contaminated land outside the general strategic framework. Additionally, in certain circumstances it may be necessary to review routine inspection findings in respect of sites as appropriate. The following circumstances may act as triggers for both of these inspection reviews:

- Proposed changes in the use of surrounding land.
- Unplanned changes in the use of land (e.g.: persistent, unauthorised use of land by children).
- Unplanned events (e.g., localised flooding/landslides and accidents/fires/chemical spillage where consequences cannot be addressed through other relevant environmental protection legislation).
- Reports of localised health effects that appear to relate to a particular area of land.
- Verifiable reports of unusual or abnormal site conditions received from business, members of the public, or voluntary organisations.
- Responding to information from other statutory bodies.
- Responding to information from owners or occupiers of land, and other relevant interested parties.

### **7.2 Review of the Inspection Strategy**

The strategy should be reviewed regularly to ensure that it is effectively meeting all of the objectives. A review may be triggered by, for example, the introduction or amendment to legislation or the development of new knowledge. The Assistant Director, Contract Services is responsible for overseeing the review.

## **8 INFORMATION MANAGEMENT AND ADMINISTRATION**

### **8.1 Public Registers**

Most information held in respect of contaminated land may be subject to the controls under the Environmental Information Regulations, 2004. In such instances the Council will provide such information when requested to do so. Currently all information requests are dealt with through the Freedom of Information Regulations. The Council may make a reasonable charge in respect of the costs involved in providing such information.

There are no sites in Bracknell Forest Borough designated as contaminated land under the Contaminated Land Regulations, 2006. To provide a permanent record, and to make information readily available to the public and to those with an interest in land, the Council will maintain a register of all regulatory action in respect of the remediation of any land should it become 'designated' contaminated land under the regulations. Any such register will include specified details about the condition of the land, and the remediation actions carried out. These details will include:

- Appeals against remediation notices
- Remediation declarations
- Remediation statements
- Appeals against charging notices
- Designation of special sites
- Notification of claimed remediation
- Convictions for offences under section 78M of the Act
- Guidance issued under section 78V(1) of the Act
- Other matters prescribed by Regulations

Should a public register be required it will be available for viewing Monday to Friday during normal office hours at:

Delivery Directorate  
BFC  
Time Square

The public register will not include details of historical land use and other records used in the investigation of potentially contaminated land. These are research documents and as such will not be made available to the public.

### **8.2 Disclosure of Environmental Information**

From time to time, the Council may be asked to provide information it has gathered about areas of land to interested parties (for example, in connection with property purchases). Such requests for information are subject to the controls of the Environmental Information Regulations, 2004.

The Environmental Information Regulations, 2004 place a duty on all public authorities with responsibilities for the environment to make available to anyone on request the environmental information (as defined by the Environmental Information Regulations) that body holds. Where a request for information in respect of contaminated land is made to the Council, the appropriate regulatory guidance will be followed in providing

the information. Such requests are currently dealt with through the Freedom of Information Request Regulations.

In providing such information, the Council may make a reasonable charge in respect of the costs involved.

### **8.3 Provision of Information to Other Council Departments**

Information held within the contaminated land database will be made available to Directorates throughout the Council on request. The information will then be released subject to the reason for the request, and the intended use of the information.

### **8.4 Provision of information to the Environment Agency**

The Environment Agency is charged with, from time to time, the responsibility of preparing and publishing a report on the state of contaminated land in England and Wales; that is on the nature, extent, and distribution of contaminated land, the level of remediation, and regulatory activity taken under Part IIA. To facilitate the Environment Agency in this activity, all local authorities within England and Wales provide the Environment Agency with the information necessary to produce the report.

The Council will provide the following requested information, in the agreed suggested formats, to the Environment Agency:

- A copy of BFC's Contaminated Land Inspection Strategy.
- Information on each site determined as contaminated land.
- Information on remediation activity for each site determined as being contaminated land. Information is to include details of remediation notices, and details of the remediation statement or declaration.

## **9 CONTACT POINTS**

### **9.1 Contact Point within BFC**

Delivery Directorate  
BFC  
Time Square  
Market Street  
Bracknell  
Berkshire  
RG12 1JD  
e-mail: [customer.services@bracknell-forest.gov.uk](mailto:customer.services@bracknell-forest.gov.uk)

Tel: 01344 352000

### **9.2 Other Relevant Contacts**

The Environment Agency  
Red Kite House  
Howbery Park  
Crowmarsh Gifford  
Wallingford  
OX10 8BD

Tel: 01491 828696

Historic England  
The Engine House  
Fire Fly Avenue  
Swindon SN2 2EH  
email: [customers@HistoricEngland.org.uk](mailto:customers@HistoricEngland.org.uk)

Tel: 01793 445050

Natural England  
6<sup>th</sup> Floor  
Northgate House  
21-23 Valpy Street  
Reading  
RG1 1AR

Tel: 0300 060 3900

DEFRA  
Seacole Building  
2 Marsham Street  
London  
SW1P 4DF

Tel: 03459 33 55 77

Thames Water  
Developer Services  
Clearwater Court  
Vastern Road  
Reading  
RG1 8DB

Tel: 0800 009 3921



The Planning Inspectorate  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

Tel: 0303 444 500

<https://contact-us.planninginspectorate.gov.uk/hc/en-gb/requests/new>

The Food Standards Agency  
Floors 6 and 7, Clive House  
70 Petty France  
London SW1H 9EX  
email: [helpline@food.gov.uk](mailto:helpline@food.gov.uk)

Tel: 0330 332 7149

## **APPENDIX 1**

### **Sources of Procedural and Technical Guidance**

DEFRA, 2009, Protecting our Water, Soil and Air. A code of good agricultural practice for farmers, growers and land managers

DEFRA, 2012, Environmental Protection Act 1990: Part 2A, Contaminated Land Statutory Guidance

DEFRA, 2021, Land Contamination Risk Assessment (LCRM), 'Before you start'

DEFRA, 2021, Land Contamination Risk Assessment (LCRM), 'Stage 1 risk assessment'

DEFRA, 2021, Land Contamination Risk Assessment (LCRM), 'Stage 2 options appraisal'

DEFRA, 2021, Land Contamination Risk Assessment (LCRM), 'Stage 3 remediation and verification'

Environment Agency, 2005, Indicators for Land Contamination

Environment Agency, 2009, Using Soil Guideline Values

Environment Agency, 2009, Updated technical background to the CLEA model

Environment Agency, 2014, Remedial Targets Methodology: Hydrogeological Risk Assessment for Land Contamination – main report

Environment Agency, 2014, Hydrogeological Risk Assessment for Land Contamination. Remedial Targets Worksheet v3.2

Environment Agency, 2014, Remedial Targets Worksheet V3.1:User Manual

Environment Agency, 2015, CLEA Software (Version 1.05) Handbook

Environment Agency, 2016, GPLC2 – FAQs, technical information, detailed advice and references

Environment Agency, 2017, Land contamination groundwater compliance points: quantitative risks to groundwater from land contamination

Environment Agency, 2017, Protect groundwater and prevent groundwater pollution

## **APPENDIX 2**

### **THE ENVIRONMENT AGENCY'S STRATEGY FOR CONTAMINATED LAND**

Groundwater and Contaminated Land Issues

#### **Land Quality Part IIA Documents**

The Part IIA process documentation sets out, within the Agency's Integrated Management System (IMS), how the Agency intends to carry out its responsibilities under Part IIA of the Environmental Protection Act 1990, which came into force in England on 1 April 2000.

Users of the Part IIA process documentation should first refer to the Part IIA Process Handbook to obtain a clear understanding of the activities involved in the Part IIA regime, and with which Agency officer responsibility for particular tasks lies. The Procedures support the individual activities and provide detailed step-by-step guidance on the necessary tasks. Many of these tasks are similar to tasks carried out by Agency staff under other regulatory regimes; however, some are unique to the Part IIA regime and require detailed advice to ensure that they are completed appropriately. This detailed advice is provided in the Agency's Part IIA Standards. Other relevant advice is provided in Agency guidance documents and technical publications, and in authoritative technical material published by others including Defra. Users are required to ensure that they refer to the current version of the process documentation at all times. When carrying out regulatory activities under the Part IIA regime, users will need to make reference to the primary legislation which is set out in section 57 of the Environment Act 1990, the Contaminated Land (England) Regulations 2000 (as amended in 2006 and 2012), and the Statutory Guidance.

#### **INTRODUCTION TO PART IIA PROCESS DOCUMENTATION**

Part IIA of the Environmental Protection Act (1990) [EPA], which is introduced by section 57 of the Environment Act 1995, requires an overall risk-based approach to dealing with contaminated sites, which is consistent with the general good practice approach to managing land contamination. The regulatory regime set out in Part IIA is based on the following activities:

- identify the problem - assess the risks
- determine the appropriate remediation requirements
- consider the costs
- establish who should pay
- implementation and remediation

Part IIA provides a statutory definition of contaminated land that is applicable for sites in respect of their current condition and usage. Where a change in use of a site is proposed, as for example where redevelopment is planned, any necessary remedial action would be carried out under planning and development control rather than under the Part IIA regime.

Enforcement action under Part IIA may also not be applicable where authorisations are in place under other legislation, such as Integrated Pollution Control (Part I EPA), the Waste Management Licensing regime (Part II EPA), or where other legislation such as that to prevent pollution of controlled waters is relevant. In addition to the primary legislation, the Part IIA regime is implemented through Regulations, and through Statutory Guidance that covers:

- local authority inspection strategies
- identification and designation of contaminated land
- remediation requirements
- exclusion from, and apportionment of liability
- cost recovery

## **APPENDIX 3**

### **PRIORITY ACTIONS AND TIMESCALES**

#### **Action taken to deal with land contamination**

Land contamination issues are most often tackled under the planning regime. Whenever development of a site is applied for, consideration of the implications of contamination either from the site in question or from neighbouring sites is undertaken. Remediation is carried out to satisfy imposed planning conditions intended to render the site 'suitable for its intended use'. To date no action to remediate contamination has been taken under 'statutory nuisance' legislation.

#### **Prioritisation for the Inspection of Potentially Contaminated Land**

To ensure that the requirements as detailed in section 3.8 of this document are met, the Council continues to adopt a risk-based approach to the prioritisation of potentially contaminated land that requires further detailed inspection in order to determine if it is to be designated as contaminated land. To aid this prioritisation process, and to ensure that a consistent approach was and continues to be taken to the assignment of risk rating, the computer program CAPS is used. CAPS assesses the source-pathway-receptor approach, with risk-based site prioritisation.

Overall, all potentially contaminated sites are ranked in order of risk of harm to any of the sensitive receptors, such that the most pressing and serious problems are located first. The Council's priorities are:

- The protection of human health
- The protection of controlled waters
- The protection of designated ecosystems and
- The prevention of damage to property

The Uniform system is used also as part of the process.

#### **Detailed Inspection of Potentially Contaminated Land**

The prioritisation process and risk rating process has taken place. The sites identified in the survey have all been mapped onto the Uniform database and those considered to be high risk have had site visits undertaken by Environmental Health to investigate if any further assessment was required to determine contamination, which has not been the case. No sites that the Council are responsible for have been found to be 'contaminated' within the meaning of the Act such that direct intervention is required.

In the majority of instances where there are potentially contaminated land sites there has been no need to undertake any additional measures as the nature of the land and its occupation do not warrant it. There is only a need to review the situation if the land use changes. As noted above, primarily this comes to the Council's attention through the planning process and as a result, many of what were once considered contaminated sites have now been dealt with through that process. The position locally is that the trigger for change will be when there are proposals for redevelopment of brownfield sites. There are no longer any sites where there is an identified need for direct intervention. Accordingly, the planning regime will continue to be the primary mechanism for dealing with any potentially contaminated land issues. Any remediation deemed necessary will be dealt with via planning conditions and not under Part IIA of the Environmental Protection Act 1990. Environmental Health assesses all planning

applications for sites considered potentially contaminated and seeks appropriate conditions to mitigate risk to health.

### **Urgent Remediation Action**

If at any time the Council determines or is advised by the Environment Agency that there is an imminent danger of serious harm, or serious pollution of controlled waters being caused by an identified pollutant, urgent remedial action will be required. This situation may arise at any stage in the procedure for dealing with contaminated land as new information becomes known. Such urgent action will be reasonable and will therefore likely be only a part of the total remediation scheme eventually undertaken.

Where urgent action is required, the Council may secure remediation by serving a Remediation Notice immediately, bypassing the 3-month consultation period normally required. Moreover, if the Borough Council considers that serving a Remediation Notice will not resolve the problem soon enough, the Council will carry out the required remediation and recover its costs from the appropriate person(s).

## **APPENDIX 4**

### **UPDATE**

#### **Overall Position**

An update paper on contaminated land was taken to the March 2017 meeting of the Environment, Culture and Communities Overview and Scrutiny Panel.

The Planning process continues to be the primary route that is used to assess and deal with land contamination. During the Planning process, all sites which are located on a potentially contaminated site, or within 250m of such a site, have a planning condition applied for a 'Phase I' desk top study. Depending on the outcome and nature of the development, if it is suitable for use under Part IIA of the Act then the development shall proceed. If the report determines further excavation or remediation is required then this will be conditioned and a verification report sent to the Council.

To date the Council has identified 2605 potentially contaminated historical sites. The Phase 1 desk top study methodology has been undertaken on 2140 of these and all have been deemed suitable for development under Part IIA.

#### **Historic Local Authority Landfills**

The 2017 report to the Overview and Scrutiny Panel noted that:-

Within the Borough there are three former local authority landfill sites. Of these Longhill and Longshot Lane are sites that require active monitoring. The responsibility for such monitoring, and ensuring compliance with regulatory standards, falls to the Council. Annual reports are produced and recommendations to improve the gas management on both of these sites are made as appropriate. These include such items as repairs to boreholes and structures on the sites to ensure current users of the site are not exposed to any landfill gas which may be emitted.

The third landfill site is Strongs Heath. This became a closed site in 1998 and is managed by the Council on behalf of all of the Berkshire Authorities. Strongs Heath is a former Berkshire County Council municipal waste site. It is regulated by the Environment Agency according to terms set out in a permit. That permit requires the ongoing management and monitoring of gas and leachate. The site was constructed in a former sandpit. The site is unlined, and it was designed to operate as a dilute and disperse site. The management of the site has been outsourced to specialists. They have the day-to-day responsibility for the gas management of the site. Leachate is extracted and sent for specialist disposal. Methane is drawn off and burnt by an onsite flare. In the past the site was able to produce electricity and provide the local school with hot water produced as a by-product of the process. Over time the quality of the gas has deteriorated, and it became uneconomical to continue as an energy source, accordingly, the equipment was removed. An annual report details the monitoring results and outlines any recommendations to improve the gas management on the site. In recent years this has included a programme of re-drilling a number of boreholes, replacing manifolds and pipework on site and improving the leachate removal from the site. The site is considered an active site and is likely to remain so for at least a further thirty years under current conditions.

### **Other Landfill sites**

There is one other former landfill site in the Borough, this is the 3M Amen Corner site. Following excavation of clay for use at the Amen Corner brickworks, the site was used for the disposal of local authority waste until 1980. In 1990 it was purchased by 3M for commercial development. Landfill control measures were included as a condition of the planning permission. Regular monitoring of leachate and gas have continued since 1992.