

Report to the Cabinet

Report reference: C/025/2005-06.

Date of meeting: 10 July 2006.



**Epping Forest
District Council**

Portfolio: Environmental Protection.

Subject: Contaminated Land.

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Recommendations:

(1) That, as initially agreed in 2001, the Council's contaminated land strategy be given continued support; and

(2) That, in the interests of residents, the list of potentially contaminated sites be kept confidential.

Report:

1. In order to comply with the Environmental Protection Act 1990 all Local Authorities were required to produce a formal contaminated land strategy document which clearly sets out how potentially contaminated land which merits detailed individual inspection will be identified in an ordered, rational and efficient manner. The Council adopted its strategy in 2001.
2. In order to satisfy the objectives of the legislation it was necessary to investigate land throughout the whole of the district and collate significant volumes of information. This will ultimately enable the Council to make the complex decisions relating to its condition, the risks it presents and who may be liable for it at law.
3. The Council's contaminated land strategy states:

"The identification of contaminated land will be carried out in an ordered, efficient manner based firmly on the principles of risk assessment. Significant imminent risks to human health will always be given the highest priority."
4. The presence of a particular material in land does not of itself mean that the land is in law 'contaminated'. For land to be declared as legally contaminated, it requires a 'contaminant' (i.e. something potentially harmful), a 'receptor' (e.g. a human being, a watercourse) and a means by which the contaminant can reach the receptor, known as a 'pathway'. If either of the last two are not there, then the fact that the land actually contains a potentially harmful substance, results in the land not being declared as contaminated in its current use and the land does not appear on the contaminated land register. If, however upon investigation all three are present, and meet the statutory definition of contaminated land, then the land is entered into the register together with a description of any regulatory action taken. Similarly a later change of use of land could result in its categorisation being changed.
5. Work on the strategy aims has been progressing well and we are just coming to the end of the process of identifying sites of potential contamination. This has been achieved by searching historical records, maps, landfill records, trade directories etc. The next stage of the process is to prioritise the list of sites. This will be done by examining them to establish the presence of receptors and pathways and the risk

associated with the potential contaminant. This will result in a prioritised list of sites, with those at the top being those where acutely harmful contaminants have a direct pathway to human receptors.

6. When the priority list has been established work will begin on investigating the sites. With hundreds of sites to investigate and even a small investigation potentially costing many thousands of pounds this will prove to be a long and expensive operation. The consequence of this is that many residents who are living on, or near a site of potential concern, will not have the site investigated for many years to come.
7. Some residents who are attempting to sell their properties have been finding that their prospective purchasers have undertaken an environmental survey with an independent company. In some cases the survey has revealed that their property has been built on or near a site that is potentially contaminated. Subsequently the sale has fallen through. This has resulted in officers receiving an increasing number of enquires from potential purchasers and residents who are concerned that their properties are now blighted. They are asking for details of potentially contaminated land sites and that the site of interest be given priority for investigation, seeking assurance that the Council will take immediate steps to investigate and resolve the problem. Given the number of sites and the need to prioritise as set out in the strategy, this will not be possible.
8. The companies undertaking environmental searches probably access the same data sets as the Council. They are no more able than we are to draw any conclusions as to the risk until a thorough investigation has been undertaken. However, the Council has to consider whether it will provide information to enquirers on the basis of what it knows at this time. Until such time as the land is investigated and declared as contaminated or not the Council cannot realistically provide information to the public. To do so exacerbates the problem of blight and it is concluded that caveat emptor remains the most appropriate safeguard for prospective purchasers. When investigations are completed and a site is found to be contaminated we are legally obliged to publish this in our contaminated land register but until then we are not.
9. Officers have considered the application of the Freedom of Information Act 2000 and have concluded that the release of the information concerned is exempt because the information is held by a public authority and it will be published by the authority at some future date (Freedom of Information Act 2000 section 22 (1)(a)).
10. Similarly it is considered that the information is exempt from publication under the Environmental Information Regulations 2004 because the information is contained in a document or other record, which is still in the course of completion (Environmental Information Regulations 2004, Regulation 4 (2)(d)).

Statement in Support of Recommended Action:

11. The process of identifying contaminated land for inclusion on the contaminated land register is a long one. During the period of identification there will be times when some parcels of land are listed as potentially contaminated and which, following more detailed investigation, will be removed from the final register. During this time the land may be blighted for no good reason.

Other Options for Action:

12. To release information on potentially contaminated sites to enquirers. This is not considered practical for the reasons set out in the report.
13. To change the prioritisation regime for contaminated land. Given the acceptance by Government of the Council's Contaminated Land Strategy, which is risk based, it is not practical to move away from that process and undertake contaminated land

surveys on a non-risk based 'as requested' basis.

Consultation undertaken:

14. Chester City Council: CCC has adopted the policy outlined above and their experience has shown it to be a successful approach.

Resource implications:

Budget provision: Contaminated land budget.

Personnel: None.

Land: Site of potential contamination.

Community Plan/BVPP reference: Policy theme one, Key Aim (a) (8).

Relevant statutory powers: Environmental Protection Act 1990; Freedom of Information Act 2000; Environmental Information Regulations 2004.

Background papers: EFDC contaminated land strategy (available in the Members room and on the Council website).

Environmental/Human Rights Act/Crime and Disorder Act Implications: contaminated land regime.

Key Decision Reference (if required): N/A.