



Committee and Date
Council
26th September 2013
10.00 am

Item
18
Public

ADOPTION OF CONTAMINATED LAND STRATEGY 2013

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1. Summary

1.1 Part 2A of the Environmental Protection Act 1990 outlines the statutory framework for the management of potentially contaminated land and requires that local authorities adopt a Contaminated Land Strategy. A copy of the Contaminated Land Strategy has been placed in the Members' Library and can be viewed online via the agenda papers for this meeting. Shropshire Council adopted its current Contaminated Land Strategy at the Implementation Executive meeting on 19 March 2009. A report was submitted to Cabinet on 12 December 2012 with an updated version of the strategy following detailed review and it was agreed to subject the draft revised strategy to formal 90 day consultation. Following evaluation of the consultation responses the strategy has been further updated and a final version has been submitted for adoption.

2. Recommendations

A The matter was considered at Cabinet on 18 September 2013 and subject to detailed comments from Cabinet, Council is recommended to formally adopt the revised Contaminated Land Strategy 2013 and seek a review of the Strategy no later than 2017.

REPORT

3. Risk Assessment and Opportunities Appraisal

3.1 Risk Management – The primary purpose of Part 2A of the Environmental Protection Act 1990 is to provide a framework for a risk-based assessment of potentially contaminated land where the level of contamination is assessed on the basis of the current use and circumstances of the land, and a wide range of environmental factors. The overarching objectives of the policy are

- (a) To identify and remove unacceptable risks to human health and the environment
- (b) To seek to ensure that contaminated land is made suitable for its current use

(c) To ensure that the burdens faced by individuals, companies and society as a whole are proportionate, manageable and compatible with the principles of sustainable development

- 3.2 The Contaminated Land Strategy is the mechanism by which the local authority details its approach to the inspection and prioritisation of contaminated land to ensure a balanced risk-based assessment taking account of health, environmental, social, financial and sustainability issues.
- 3.3 Human Rights and Equalities – there are no specific human rights or equality issues associated with this report as one of the aims of the contaminated land regime is to protection of risk to health.
- 3.4 Consultation – the draft strategy was subject to formal consultation for a 90 day period to key stakeholders including the Environment Agency and other appropriate public authorities including Natural England, English Heritage and the Food Standards Agency as well as parish and town councils and the wider public.

4. Financial Implications

- 4.1 Implementation of the Strategy creates a cost to this authority, through the time resource of relevant officers required to support the work and the possible costs for remediation of contaminated land where there is no owner or the land is in ownership of the authority. At present these works are supported by DEFRA funding but by enshrining sustainability in the strategy and focusing our approach to securing remediation of land through the planning regime the risk is minimised. This is balanced against possible liability of the council if contaminated land were to be developed or sold

5. Background

- 5.1 Sections 78A to 78YC of Part 2A of the Environmental Protection Act 1990 outline the statutory framework for the management of potentially contaminated land. It is complemented by the Contaminated Land (England) Regulations 2006 and the revised statutory guidance issued in April 2012 by DEFRA – “Environmental Protection Act 1990: Part IIA Contaminated Land Statutory Guidance”.
- 5.2 The legislation provides a regulatory regime for the identification and remediation of contaminated land where contamination is causing unacceptable risk to human health or the environment. This is achieved by the Council carrying out periodic inspections of their area to identify sites that could be determined as ‘contaminated land’ and ensuring appropriate action is taken to make the land suitable for use.
- 5.3 In fulfilling its duties as the regulator under the Part 2A the Council must:
 - Produce and regularly review a Contaminated Land Strategy to ensure a rational, ordered, timely and efficient approach to dealing with potentially contaminated sites in the area:
 - Determine which sites meet the statutory definition of contaminated land and whether these sites need to be designated as special sites;
 - Ensure effective remediation of contaminated land occurs through voluntary action but resorting to enforcement powers where all else fails;

- Apportioning liability and ensuring that the “polluter pays” principle is followed;
 - Inform the public of the action taken in relation to land contamination by maintaining a public register;
 - Ensure that potential land contamination issues are considered in all strategic planning and development control decisions.
- 5.4 The implementation of the existing strategy has been used to gather and evaluate data on past activities that may have led to land contamination and 4,391 sites of potential concern have been identified throughout Shropshire and 16 sites have formally been determined as contaminated land under Part 2A.
- 5.5 The Strategy sets out the Council’s approach to inspecting its area to identify contaminated land sites and ensure timely, well-planned and effective action is taken to make them suitable for use. The core Objective of the strategy is:-
To protect human health and the environment by identification of potentially contaminated sites that require detailed individual inspection in a rational, ordered and efficient manner and to ensure a proportionate response to contamination and remediation using a risk-based approach.
- 5.6 Three priority action areas have been adopted to secure delivery of the objective as follows:-
- Ensure that the council carries out its statutory duties in relation to inspecting and securing sustainable remediation of contaminated land in Shropshire through the development and implementation of effective and adequate procedures.
- Identify and secure sustainable remediation of sites, including land in the ownership of the Council, where an unacceptable level of risk is being caused to human health and the environment.
- Deploy the use of other statutory powers available to the local authority to secure the remediation of contaminated land (for example through the planning system) in line with the “Polluter Pays Principle” and take enforcement or other appropriate action to secure remediation where a risk
- 5.7 Further the strategy makes it clear that when considering the appropriate action the council will strike a reasonable balance between dealing with risks raised by contaminants in land and the benefits of remediating land to remove or reduce those risks and the potential impacts of regulatory intervention including financial costs to whoever will pay for remediation (including the taxpayer where relevant), health and environmental impacts of taking action, property blight, and burdens on affected people. The council will take a precautionary approach to the risks raised by contamination, whilst avoiding a disproportionate approach given the circumstances of each case. The aim should be to consider the various benefits and costs of taking action, with a view to ensuring that the regime produces net benefits, taking account of local circumstances.
- 5.8 The revised strategy has been amended to reflect the new statutory guidance from DEFRA including the new risk assessment categories. There were a number of comments received as part of the consultation exercise and the draft document has been revised to take account of these comments. Whilst many of the comments were minor typographical issues the key comments were:-

- (a) a number of town and parish councils sought specific information on potentially contaminated land in their areas and these have been individually addressed
- (b) Public Health England were generally content with the document but sought further clarification on the prioritisation ranking and this has been addressed in the final document
- (c) Natural England were satisfied with the strategy
- (d) English Heritage had some minor corrections which have been amended
- (e) The Environment Agency commented that the strategy was very well written and made a number of minor corrections which have been incorporated into the final document.

<p>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)</p> <p>Shropshire Council Contaminated Land Strategy 2009 – 2012.</p> <p>DEFRA Circular.</p>
<p>Cabinet Member (Portfolio Holder) Cllr Steve Charmely.</p>
<p>Local Member Relevant to all Members.</p>