

CONTAMINATED LAND STRATEGY

2021 -2026

**Inspection Strategy as required under Part 2A
of the Environmental Protection Act 1990**

SWALE BOROUGH COUNCIL

Working within

Mid Kent Environmental Health Service



EXECUTIVE SUMMARY

Part IIA of the Environmental Protection Act 1990 provides local authorities with a system for identifying land posing unacceptable risk to human health or other named receptors, and where risks cannot be managed by other means, provides powers to ensure land is remediated by a person or party deemed responsible under the Act. The Contaminated Land Strategy is a statutory requirement under this Act, but also links in Bearing Fruits 2031: The Swale Borough Local Plan.

The Strategy was re-written in 2010 following its first publication in 2001 and was further reviewed in 2016. The latest review was undertaken in 2023, originally due in 2020/21 and will cover the period 2021 – 2026.

Duties under the Strategy fall with the Environmental Protection Team, of the Environmental Services Department.

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1 INTRODUCTION AND STRATEGY OUTLINE

1. Aims

This strategy outlines how Swale Borough Council (the council), will meet its statutory duties to investigate potentially contaminated land in the borough, as laid out in the Contaminated Land Statutory Guidance April 2012 (DEFRA), referred to as the statutory guidance. This strategy should be read in conjunction with the statutory guidance, as it contains the legal and scientific detail behind the strategy. Reference is also made to supplementary planning guidance which details this council's expectations of how contaminated land issues will be addressed by developers submitting new planning applications. This strategy reflects the financial constraints that the council is now facing and will continue to face over the coming years.

2. Objectives

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

3. What work has been carried out to date?

The council's Prioritisation List of Potentially Contaminated Sites was developed in 2006 and initial risk ratings were produced. There are currently approximately 600 sites on the council's database, reduced from an original figure of approximately 1200. Most of the sites removed from the list were done so following a satisfactory in-house desk study and risk assessment or were found to be duplicate records. A significant proportion of sites remaining on the list are most likely low risk sites where small to medium areas of ground have been in-filled with inert or unknown material over time. These sites will not be investigated further unless developed or new information is found. The information on the database is regularly updated as new information becomes available or sites are redeveloped and remediated e.g. through the planning system. The statutory guidance encourages private land owners to carry

out their own assessment. If the council is satisfied with the work undertaken, it will accept the conclusions and enter them onto the database.

Several of the high priority sites have been subject to enhanced desk study investigation. Two of these have been fully investigated.

4. What is yet to be done?

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

5. How will work continue?

5.1 Identification of potential sites and prioritisation

The work already undertaken means that the council has built a database of potentially contaminated sites across the borough. The software package used can rank the sites according to priority for inspection based on presence of receptors (e.g. land use, geology, water supplies, rivers, property) and sources (potential or confirmed contaminants present). This database is regularly updated as new information becomes available. The software enables the council to produce a list of sites for detailed inspection according to highest potential risk (priority). This list is in a constant state of change as more information is found about different sites, and the risk rating changes or new sites are added. The list of potential sites is therefore not a public document. Any land that is formally determined as contaminated will be put on the Contaminated Land Register, which is a public document.

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

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

The detailed inspection of a site will not go beyond a site walkover and desktop study unless a reasonable possibility that a significant pollutant linkage may exist at the site is identified. The council will follow the detailed statutory guidance at all points of the process and will work with the Environment Agency and external experts where appropriate. Where the potential for a significant pollutant linkage is identified, preliminary soil and groundwater tests may be carried out. Where appropriate this will be on verges, public areas and in areas likely to cause least disruption, but may include garden areas. This is likely to be carried out by an outside consultant

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

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

It is anticipated however that the majority of the investigation and remediation of the sites identified will occur during the **development** or **redevelopment** of those sites. Where a “brownfield” site is developed, particularly to a more sensitive ‘end use’, the planning system is designed to ensure that it is suitable for its use after the development.

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

5.2 Special Sites

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

5.3 Enabling Residents

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

6. The potential outcomes of a detailed inspection

The statutory guidance describes in detail the possible outcomes of detailed inspection for all receptors. Sites will be assigned categories (1-4). Generally, sites in category 1 will require immediate action (designation as contaminated land); sites in category 2 may require immediate action. Sites in category 3 may not meet the stringent definition of contaminated land but may require observation or monitoring and sites in category 4 are unlikely to meet the definition of contaminated land. For controlled water receptors, the council will consult the Environment Agency.

Detailed inspection and risk assessment may show that an unacceptable risk is being caused. If it is, the council will have to determine the site and place the records on a public register. The council will then decide, based upon all of the available information and the statutory guidance, if remediation of the site should be carried out. If remediation is carried out this will only be done where necessary and the council will work with residents inform them and minimise disruption as much as possible.

7. Risk Ratings and Outcomes

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

Table 1: Risk Ratings Categories.

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

	2 the council will re-evaluate its position.
4	Low risk- Likelihood of contamination is considered low and if present the impact is such that clean up could not be reasonably justified. It is highly unlikely that further work will be required on these sites. Should residents wish to do so the same approach to category 3 sites will be followed.

8. Who pays for all this?

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

9. Investigating report of possible land contamination

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

10. What are the wider benefits of this strategy?

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

11. How will we measure our progress in implementing this strategy?

The strategic inspection process is by nature an iterative process. It is standard procedure that sites will be added and removed from the database as information becomes available. The council aims to add more detailed knowledge about sites each year using existing resources. This increased knowledge will enable the council to refine the prioritisation further, reduce the number of sites that need more detailed investigation and identify those that need detailed investigation most urgently.

12. How does this strategy interact with the planning system?

The statutory guidance and the National Planning Policy framework (NPPF) both operate on the concept that potentially contaminated land must be shown to be suitable for its proposed use. As an absolute minimum this means that the site must be incapable of being designated as contaminated land as defined under Part 2A of the Environmental Protection Act 1990. The council will, as a general rule, expect that a standard higher than this minimum level will be achieved. It is considered that someone purchasing a new build home is entitled to a degree of confidence that if remediation was needed, it has been completed to a better standard than the minimum under this legislation.

As a general rule the council will expect any planning application for land which may be affected by contamination to be accompanied by the report of a desktop study and site walkover as defined in British Standard BS10175: 2011 "Investigation of Potentially Contaminated Sites – Code of Practice" and follow recommendations contained in the government's Land Contamination Risk Management (LCRM) guidance. This report should identify that the site has been assessed as suitable for use or in the event that further works are needed, to detail them and discuss how the site can reasonably be made suitable for the proposed use. All reports should be completed by a suitably qualified "competent" person as defined in the NPPF.

2 BOROUGH CHARACTERISTICS

1. Introduction

Swale is situated on the north Kent coast, and covers an area of 364 square kilometres, a total of 37,387 hectares, including some 71 kilometres of coast. Centred around the Swale estuary, it encompasses land on both sides of this water channel, with the Isle of Sheppey to the north and Faversham, Sittingbourne and their hinterlands to the south.

The Borough occupies an important position on the north Kent coast, being close to London and the channel ports, providing access to mainland Europe. This location has been and remains a significant factor in the way the area has and continues to be developed.

2. Geology

The borough divides between four broad landscape character areas, which reflect the underlying geology. From north to south they comprise:

- the north Sheppey Hills (London Clay subject to erosion along the undeveloped sections of the Islands cliff line)
- the Swale and Medway Marshes (low-lying salt and grazing marsh, of national and international importance for their nature conservation interest)
- a broad band of fertile farmland is a nationally important resource
- and the dip and scarp slopes of the North Downs, with their dry valleys.

In terms of setting priorities for later site investigation, the natural geology of the area is identified as one of the main means by which a pollutant linkage may be caused. It can also identify receptors in terms of 'controlled waters', and is a significant factor in relation to both agriculture and nature conservation interests. In relation to the geology of Swale, the key factors which the Strategy has taken into account in establishing its priorities for action are as follows:

- Chalk aquifer - aquifer protection zones
- Other groundwater vulnerability and surface water designations including bathing waters and shellfish beds
- Sheppey coast - erosion can cause new cracks and pathways to form:
 - Low lying land around the estuary - subject to flooding - tidal and fluvial;

- Possible natural dissolution cavities in the chalk;
- Areas subject to mineral extraction including brickearth and chalk; and
- Best and most versatile agricultural land.

3. Groundwater

Here the chalk fulfils an important role as an aquifer and source of drinking water.

Large parts of the Borough, including the whole of Sittingbourne, the eastern part of Faversham town and large areas predominantly south of the A2 trunk road are designated Aquifer Protection Zones by the Environment Agency. These include Source Protection Zones that have been delineated to protect potable sources as well as certain industrial and private supplies. Sources of drinking water are required to be offered the highest priority for protection from contamination.

4. Ecology

Approximately one third of the Swale Borough area is designated as being of national or international importance for nature conservation i.e. Sites of Special Scientific Interest, Ramsar Sites, Special Protection Areas or National Nature Reserves. The Borough also contains a number of sites designated as being of county wide importance, such as Sites of Nature Conservation Interest.

Part 2A of the Environmental Protection Act 1990 identifies these areas as a specific type of 'receptor' (organisms and ecosystems), which could be harmed as a result of historical contamination, also protected by the Environment Damage Regulations 2009 for incidents occurring after March 2009. It is important therefore that these sites are identified at an early stage. By their very nature, such sites have tended to remain free from development and are therefore thought, for the most part not to have contained contaminating uses. This view is supported by Natural England who is responsible for designating these areas. It is considered more likely that these areas will be vulnerable to harm as a result of a pollutant linkage. The marshland areas in particular have hydrological requirements necessary to maintain their nature conservation interest.

5. Historical Context

The Borough enjoys a rich history due particularly to its location on the route between the channel ports, Canterbury and London; its sheltered coastline, and to its soils, both for their fertility and their brick earth. A very rural agricultural based economy was retained until the industrial revolution.

The sheltered coast and creeks, coupled with the natural deep water at Sheerness have meant that marine trade has flourished since early times. Boat and barge building was undertaken along the creeksides. A number of smaller boatyards still exist. In years gone by the area was also important for its oyster fisheries.

Sittingbourne, Faversham and many of the Borough's larger villages are located along the A2 Watling Street, the main Roman road between Dover, Canterbury and London and benefited from passing trade including pilgrims in former times. More recently this proximity to London has made the area, and the Isle of Sheppey in particular, a popular tourist destination.

Sheerness, although now the main town on the Isle of Sheppey, is of relatively recent construction having grown up in association with the construction and operation of the naval dockyard during the early 19th century. Prior to this, Queenborough was the main settlement on the Island. The area around Queenborough Creek and harbour has a long history of industrial uses, including glue manufacture and glass making. The village of Eastchurch has important historic links with early British aviation. The Short Brothers had a factory here at the turn of the 20th century. This area is now part of a large prison complex.

Following the industrial revolution, Sittingbourne became a major centre for brick and paper manufacture, industries which continue to this day. At its height, Sittingbourne was estimated to produce one quarter of all the bricks used in London. This manufacturing process made use of London's Victorian waste, which was sorted on the quaysides having been transported by local barges.

Large areas of land north of the A2 show a history associated with brick manufacture or brickearth extraction. To the south of the A2 chalk was quarried in association with the brick and cement manufacture, and numerous pits of varying size and age remain, but blended for the most part into the surrounding countryside. The brick companies continue to be an important land holder within the Borough.

Faversham also has a history of brick manufacture, but on a smaller scale to that at Sittingbourne. Here food processing and brewing were also significant. Faversham is still home to the oldest independent brewery in England. From the early 18th century to 1936, land to the west of Faversham at Bysing Wood was renowned as an important centre for the production of gunpowder.

The Borough's history is reflected in a legacy of over 1800 buildings and features listed as being of architectural or historic interest, 15 Scheduled Ancient Monuments and 50 conservation areas. Faversham is a noted example of a medieval town.

Given the area's history, it is assumed through the Strategy that the main areas of contamination are most likely to be concentrated within the three main towns/urban areas, particularly the creekside areas and known former industrial sites. The issues of contamination associated with the former brick fields and brickworks are already familiar to the Borough Council.

6. Land Use Characteristics

The Borough has not lost its historic land use character. Traditional employment sites are still concentrated at the main settlements of Sheerness, Queenborough, Sittingbourne and Faversham. These settlements together with Minster on the Isle of Sheppey contain the main residential areas. The main administrative and social facilities are concentrated in the three main towns of Faversham, Sheerness and Sittingbourne. The primary residential areas tend to be concentrated on the outskirts of the towns.

Manufacturing remains the cornerstone of Swale's economy. The manufacturing base is now much more diverse than previously. Certain manufacturing industries traditionally associated with the area continue to provide substantial employment. The most important of the complementary range of manufacturing activities include the manufacture of chemicals and related products, mechanical and electrical machinery and rubber and plastic goods.

Employment within the service sector remains limited, despite continued growth. The largest service sector employers are retail, tourism and leisure, transport and related activities, public administration, education and health.

Sheerness, a natural deep-water port, is a successful commercial port, specialising in the import of fruit, vehicles and forest products. Other dock facilities are to be found at Ridham on the mainland. This dock is licensed for the transportation of explosives and importation of gypsum.

On Sheppey, tourism is an important land use containing just under 7,000 caravans and chalets located on around 50 sites. Many of these sites were established between 1930 and 1950, being a seaside location close to London. The vast majority of sites are subject to a seasonal occupancy condition (1st March - 31st October each year). Whilst not a sole or main residence, they are nonetheless significant as a type of receptor, where harm could occur to human beings. For the purposes of the Strategy, it is initially assumed that they will generally be of lower priority than permanent residential accommodation when being assessed for risk. It is recognised however that where holiday sites are located close to rivers and to areas of undeveloped coast, erosion along the cliff edge may open up new pollutant linkages. It will be important to keep these areas under review.

In 2007, the Sittingbourne Paper Mill (M-Real) closed. The abstraction licence held by the Mill was used to abstract a large volume of groundwater. The ceasing of abstraction is likely to contribute to the raising of the water table. Any rise in the water table may give rise to the mobilisation and transportation of contaminants known to exist in the unsaturated zone, particularly around the area of Cryalls Lane. Despite the surrender of the licence, the area of Sittingbourne is still classed as a Source Protection Zone 1 to protect other paper mill abstractions in the area and one which is used for human consumption.

Contact us

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