

# The future options for investigation of previously used land in the Lichfield District



Report of: Cllr Ian Pritchard, Housing, Health and Environmental Protection Portfolio Holder

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Agenda Item: 7

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Key Decision? YES

**CABINET**

## 1. Executive Summary

1. A reduction in the availability of external grant funding has resulted in a review of the District Council's Contaminated Land Strategy.
2. Member endorsement is required in relation to the future delivery of the Strategy.

## 2. Recommendations

1. That the District Council investigates one site at a time within the existing budget (in accordance with the priority ranking previously identified) and concludes each investigation before commencing any further investigations [Investigation option 2].
2. That should remediation be required, the remediation options are considered on a site specific basis and presented to Members for endorsement.

## 3. Statement of Reasons

### Background

1. The District Council has a statutory duty to:
  - a) identify previously used land which poses an unacceptable risk to human health or pollution of the environment and
  - b) ensure that remediation of such land takes place.The duty requires the Council to publish a strategy which sets out how this duty will be implemented; LDC published its Strategy in 2001.
2. Land that has been previously used for industrial, mining or waste disposal activities could contain contaminants with the potential to adversely affect health and well being. Consequently, local authorities are required to:
  - undertake inspection to identify previously used land which could contain contaminants
  - determine whether any particular site is contaminated
  - act as the enforcing authority where steps need to be take to remediate land (with the exception of 'special sites' – which are sites that affect controlled water as opposed to human health and are enforced by the Environment Agency)
3. There are 1632 previously used sites in Lichfield District. Based on historical data, it was concluded that 55 of these required an intrusive investigation to check whether they could be harmful to health. Any conveyance search in relation to properties on these 55 sites, and properties within a further 100 metres of these sites, will be flagged as potentially contaminated. In these circumstances, the District

Council is requested to provide a copy of the site investigation report [if completed] to assist the householder.

- 4 Sites are investigated on a tiered risk basis. Initial intrusive investigations include excavating sample pits and drilling boreholes. A range of samples are taken on the day of excavation. Gas monitoring of boreholes requires ongoing repeat visits. Analytical results are entered into an Exposure Assessment Model to determine if there is a significant risk to human health. Officers conduct a number of these tasks, however, due to the nature of the work, in certain circumstances professional drilling contractors, consultants & private laboratories are used.
- 5 The presence of contamination does not necessarily mean there is a problem. In many cases, land that is affected may be suitable for its current use. Soils may contain levels of substances which do not pose a risk because it is inaccessible, not mobile, or the exposure is insufficient to cause harm or pollution.
- 6 Where evidence of contamination is found, government grants have been applied for to assist with more detailed investigations.
- 7 Lichfield District Council's environmental health team have been proactive in undertaking intrusive investigations at the highest risk sites; a summary of these is set out at **APPENDIX A**. These investigations have been facilitated by our existing budget plus grants received from the Department for the Environment, Food and Rural Affairs (DEFRA) totalling £99,845 between 2009 and 2011
- 8 If a detailed investigation concludes a site is contaminated, the Council must serve legal notices on all interested parties designating the land 'contaminated land', and then ensure the site is remediated.

#### Current Position

- 1 The District Council has achieved significant benefit from previous grant schemes operated by DEFRA and the Environment Agency. Given the limited in house budget available to deliver the Contaminated Land Strategy (£6k per year), grant funding has been critical in enabling the Council to progress with assessing the risk on identified sites.
- 2 Unfortunately, the availability of external grant to support local authorities with the investigation of previously used land has been significantly reduced (as set out in Table 1). Consequently, our most recent application was rejected, whereas previously it would have been successful.

**Table 1: Grant available from government 2009 – 2012**

Year	Grant Available
2009/2010	£17m
2010/2011	£9.5m
2011/2012	£4.55m

- 3 The cost of undertaking intrusive investigations far outweighs the funding available through the in house revenue budget. Reserves have occasionally been used for this purpose but have now been exhausted. Given the financial position and the significant reduction in grant availability, officers have been considering the options for future delivery of the Strategy.

#### Community Benefits

The statutory process of enforcement and regulation contributes to the well-being and safety of our residents and towards protecting and providing a high quality and sustainable environment for this and future generations.

### Investigation Options

- 4.1 To date, we have investigated 18 sites out of the 55 identified as requiring further work; these have been dealt with in accordance with assessed risk. This accounts for 32% of the total sites and covers approximately 564 properties, or 57% of properties which are located across the 55 sites. So far, none of the sites subject to intrusive investigation have required remediation.

Option 1 - Complete investigations on sites currently underway as per **APPENDIX A**; no further action to be taken on sites 19 - 55 with a review of the strategy in three years time (2014).

Option 2 – Continue investigating sites within the existing budget, on a one site at a time basis and conclude each investigation, including remediation, before starting a new site investigation.

The advantages and disadvantages of investigation options 1 and 2 are highlighted in **Appendix B**

### Remediation Options

- 4.2 When considering the investigation options, Members should be aware of what options are available to fund remediation, should an investigation conclude it is required. A summary of the remediation payment options are:

- |                               |   |
|-------------------------------|---|
| Remediation Payment Option 1. | The polluter pays principle is enforced   |
| Remediation Payment Option 2. | The authorisation of the use of Environmental Health budgetary under spends.        |
| Remediation Payment Option 3. | That we look at each site as a growth item.   |
| Remediation Payment Option 4. | We apply for a Defra grant and wait until the money is awarded to us.               |
| Remediation Payment Option 5. | Contaminated Land is considered as a general budget growth item.                    |
| Remediation Payment Option 6. | That the householder is charged for any remediation that is required to take place. |

It may be appropriate to consider, on a site specific basis, a combination of these remediation options. However, **we always apply the 'polluter pays principle' before considering alternative options.**

The advantages and disadvantages of remediation payment options 1 to 6 are highlighted in **Appendix C.**

Views of Overview and Scrutiny	<ol style="list-style-type: none"> <li>1. Submission to Community. Housing and Health (Overview and Scrutiny) Committee on 27 September 2011.</li> <li>2. The Committee recommended Investigation Option 2.</li> <li>3. The Committee additionally requested that letters are sent to our MP's advising that the Committee acknowledges why Government has reduced the grant monies available. However, due to the scale and priority of this area of work, it is requested that the grant scheme is reinstated once the economic climate improves.</li> </ol>
Financial Implications	<ol style="list-style-type: none"> <li>1. The current budget to investigate previously used land is £6k per year (reduced from £10k in the Expenditure Review 2008); approximately £2k of this is spent on the assessment of planning applications each year.</li> <li>2. In the event that intrusive investigations or remediation works are required resulting in a potential budget pressure, further reports would be brought for Members consideration.</li> </ol>
Strategic Plan Implications	<ol style="list-style-type: none"> <li>1. <i>The identification and sustainable reuse of formerly used land, forms part of the nine priorities within our aim "to protect and enhance our environment for future generations".</i></li> </ol>
Sustainability Issues	<ol style="list-style-type: none"> <li>1. Land quality and its effects on human health are key aspects of the quality of life, and confidence in the environment in which we live.</li> </ol>
Human Rights Issues	<ol style="list-style-type: none"> <li>1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing (Article 25.)</li> </ol>

	Risk Description	Likelihood / Impact	Status	Countermeasure
A	Challenge from householder that Council are not fulfilling their statutory duty.	Low/ Medium	Reputational	Management- demonstrate proactive risk based work to date within existing budget more than meets our statutory duty.
B	House sales fall through	Medium/ high	Citizen	Monitor and review- advice and officer assistance for affected residents
C	Adverse publicity	Low/ medium	Reputational/ Citizen	Management- officer communication plus assistance from partner Government bodies e.g. Health Protection Agency.

Background documents	Previous Cabinet Contaminated Land reports, 4 May 2010 and 27 December 2011
Relevant web links	The Council's Contaminated Land Strategy is available at <a href="http://www.lichfielddc.gov.uk/contaminatedlandstrategy">www.lichfielddc.gov.uk/contaminatedlandstrategy</a>

## Appendix A

### SUMMARY OF INTRUSIVE INVESTIGATIONS

Date	Location (No. of properties affected)	Former Use	Grant awarded	LDC Expenditure	Outcome
2009/2010	Burntwood (53)	Former landfill	£50,406	£3000	Suitable for current use
2009/2010	Chasetown (51)	Former landfill		£3000	
2010/2011	Chasetown (5)	Former landfill	£25,162	£2500	Final reports awaited
2010/2011	Lichfield (20)	Former landfill		£3000	
2010/2011	Burntwood (63)	Former landfill		£3000	
2010/2011	Chase Terrace (50)	Former landfill	£24,277	£3000	Final report awaited
2009 to date	12 further initial investigation not requiring full investigation (322)	Various	None applied for	£21,000	Final reports awaited

## Appendix B

### Advantages and disadvantages of investigation options 1 and 2

	Advantages	Disadvantages
<b>Option 1</b>	<ul style="list-style-type: none"> <li>Reduces potential budgetary pressure which could arise if initial officer investigations conclude a need for full intrusive investigations</li> <li>Enables reserve to be built up arising from annual revenue budget allocation</li> <li>Officers would provide advice to any householder that did decide to commission a private investigation.</li> </ul>	<ul style="list-style-type: none"> <li>A house sale search will reveal if a property is located on previously used land; it may be difficult to sell properties located on sites 19 - 55.</li> <li>Affected property owners may take the Council to judicial review for not completing their statutory duty which could be costly and time consuming.</li> <li>The potentially contaminated sites which are actually safe will be on the list for longer</li> <li>The burden will be on individual householders to pay for private investigations should they wish to facilitate their sale; the cost of a site investigation for an individual property within a larger site is disproportionately high as more samples need to be taken and analysed for statistical analysis reasons.</li> </ul>
<b>Option 2</b>	<ul style="list-style-type: none"> <li>The Council is able to demonstrate compliance with its statutory duty as will be continuing to inspect land from time to time; it is anticipated that up to three sites per year could be investigated using the current budget</li> <li>Many properties could be identified as suitable for use at the initial investigation stage – therefore preventing house sales from falling through and causing unnecessary blight.</li> <li>We would be continuing to investigate sites in accordance with prioritised risk</li> </ul>	<ul style="list-style-type: none"> <li>If a site is identified as being 'contaminated land' the designation is a statutory obligation on the District Council to take action</li> <li>Once designated it becomes compulsory to serve a remediation notice in respect of the land; the law gives powers for the Council to attribute blame on the basis that 'the polluter pays'</li> <li>Each site investigation may take a few years to complete if a detailed investigation is necessary.</li> </ul>

## Appendix C

### Advantages and disadvantages of remediation payment options 1 to 6

	Advantages	Disadvantages
<b>Remediation Option 1.</b> The Polluter pays principle is enforced.	<ul style="list-style-type: none"> <li>Where possible it should be the responsibility of the polluter, or those that may otherwise have been negligent in some way, to bear the cost.</li> </ul>	<ul style="list-style-type: none"> <li>Identifying who is responsible for the cost of cleaning up the land is a complex process.</li> <li>Identifying who is responsible is not always possible.</li> </ul>
<b>Remediation Option 2.</b> The authorisation of the use of Environmental Health budgetary under spends.	<ul style="list-style-type: none"> <li>Sites can be remediated without adding any extra burden to the budget.</li> <li>Remediation will be able to take place at a quicker rate than saving up the yearly budget.</li> </ul>	<ul style="list-style-type: none"> <li>Dependant upon under spend / reserves being available</li> </ul>
<b>Remediation Option 3.</b> That we look at each site as a growth item.	<ul style="list-style-type: none"> <li>Ensures committee deems the remediation appropriate.</li> <li>Each site will be evaluated on its own merits.</li> </ul>	<ul style="list-style-type: none"> <li>Money may not be available.</li> <li>Extra pressure on council budget.</li> </ul>
<b>Remediation Option 4.</b> We apply for a EA grant and wait until the money is awarded to us.	<ul style="list-style-type: none"> <li>Sites where a detailed investigation has been conducted and are determined to be contaminated land will normally be given priority over investigating new sites.</li> </ul>	<ul style="list-style-type: none"> <li>A prioritisation tool is used to award money. A site may be on the waiting list to obtain a grant for sometime.</li> </ul>
<b>Remediation Option 5.</b> Contaminated Land is considered as a general budget growth item.	<ul style="list-style-type: none"> <li>Money will be available to undertake remediation.</li> </ul>	<ul style="list-style-type: none"> <li>It would add an extra pressure to the council budget</li> </ul>
<b>Remediation Option 6.</b> That the householder is charged for any remediation that is required to take place.	<ul style="list-style-type: none"> <li>Where, after reasonable inquiry, the original polluter cannot be 'found', the owner or the occupier can become the appropriate person.</li> </ul>	<ul style="list-style-type: none"> <li>Government policy is that the polluter should pay.</li> <li>Cost to householders.</li> </ul>