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# Contaminated Land Strategy

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In part fulfilment of Part 2A of the Environment Act 1990  
The Contaminated Land (England) Regulations

2024 – 2029

Produced by:

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**Elmbridge**  
Borough Council

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# Local Responsibilities and Commitment

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This Contaminated Land Inspection Strategy was prepared by the Planning and Environmental Health Department of Elmbridge Borough Council (EBC) with the support and agreement of officers within that team, together with those of associated EBC teams and other Surrey Contaminated Land Officers. The Strategy has also been peer reviewed by Hugh Mallett, Technical Director at BuroHappold Engineering a leading authority in brownfield redevelopment and land contamination.

Approved by:

- Suzanne Parkes, Head Planning and Environmental Health, EBC.
- Cllr Robin Stevens, Portfolio Holder for Planning, Enterprise and Local Economy. Cllr Stevens approved the Contaminated Land strategy for public consultation at Individual Cabinet Member Decision Making (ICMDM) Meeting on 6 March 2024.
- Following the public consultation, the Contaminated Land Strategy was agreed at Cabinet on 3 July 2024 and approved for adoption by Council on 17 July 2024.

## Document revision history

Date	Version
November 2001	1.0
February 2010	1.1
June 2015	1.2
July 2024	1.3

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## Foreword

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The purpose of this Strategy document is to lay out clearly, concisely, and transparently how land within the borough of Elmbridge, which may be impacted by contamination, is monitored and managed by Elmbridge Borough Council (EBC). To ensure the Strategy encompasses best practice and uses the most appropriate methodology available to deal with land affected by contamination, the Strategy has been widely consulted with colleagues at Elmbridge Borough Council (EBC) and contaminated land officers within Surrey Districts and Borough Councils, in addition to an external private sector Environmental Consultant.

There are two main routes to deal with land affected by contamination. The regime under Part 2A of the Environmental Protection Act 1990 is intended for use where land in its current use poses a significant risk to people's health or to the environment and there is no alternative solution. Part 2A works alongside the planning regime, which is the main route for the regeneration of land affected by contamination. The aim of the planning regime is to ensure the land is suitable for its new use following redevelopment. The relationship between the two regimes is referred to in the national planning guidance where it is stated that following redevelopment under planning, the land could not fall within the Part 2A regime.

EBC strives to promote sustainable methods of remediation and seeks routes least burdensome to our residents, while improving the health and wellbeing of our Elmbridge community.

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# 1 Introduction

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1.1 Elmbridge Borough Council (Council) has produced this Contaminated Land Inspection Strategy (Strategy) in part fulfilment of its duties under Part 2A of the Environmental Protection Act 1990 (Part 2A)<sup>1</sup> which provides the legislative framework for England, Wales and Scotland. It places duties upon local authorities to inspect their district and determine if land therein is contaminated.

## Purpose of Strategy

1.2 Across the UK, there is a legacy of contamination due to previous industrial development and the management of wastes from industrial and urban environments. In some cases, the resulting contamination is sufficient to be hazardous to the environment and the health of those who live in it.

1.3 Statutory Guidance released in April 2012<sup>2</sup> required the local authority to set out its approach to identify and deal with land contamination as a written strategy, which it should formally adopt. This Strategy outlines how Elmbridge Borough Council intends to fulfil this duty in line with the Statutory Guidance.

1.4 Under Part 2A of the Environmental Protection Act 1990, the Council is required to:

- Inspect our area to identify land affected by contamination,
- Determine whether a specific site meets the legal definition of Contaminated Land under Part 2A, on the basis of a risk assessment,
- Decide what remediation should take place on that land either through voluntary agreement or by formal notice,
- Establish who should bear responsibility for remediation of a given piece of land (the 'appropriate person'),

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<sup>1</sup> Environmental Protection Act 1990 (c. 43), Part IIA – Contaminated Land, s. 78A-Y

<sup>2</sup> Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance, April 2012, DEFRA

- Maintain a Public Register of regulatory action taken to deal with land meeting the legal definition of Contaminated Land,
- Apply the “Polluter Pays” principle wherever possible where it related to remedial works, thereby placing responsibility for remediation on those responsible for its cause.

1.5 In carrying out its inspection duties, the Council’s approach will:

- Be rational, ordered and efficient, and be proportionate to the seriousness of any actual or potential risk,
- Ensure that available resources prioritise the investigation of areas that the Council considers most likely to pose the greatest risk to human health or the environment to ensure the most urgent problems are addressed first, and
- Ensure that the Council efficiently identifies requirements for the detailed inspection of particular areas of land.

1.6 Our approach to the assessment of land affected by contamination is precautionary but also proportionate. We weigh up the risks from land affected by contamination and the benefits of remediating it, against the potential impact of those actions and consider if there is a net benefit, having regard to local circumstances.

1.7 This Strategy describes the broader approach to preventing, managing and remediating land affected by contamination. These include the Councils Asset Management Property Services (AMPS), planning services and building control. It follows that the actions arising from it will be informed by other areas of the Council and that they will influence the strategy.

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## 2 Objectives


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2.1 The national policy on land affected by contamination is set out in the Statutory Guidance. The overarching objectives of the Government's policy and the Part 2A regime are:

- To identify and remove unacceptable risks to human health and the environment,
- To seek to ensure that contaminated land is made suitable for its current use, and
- 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.<sup>3</sup>

2.2 The central objective of the Council's Vision 2030 is to achieve a thriving and sustainable Elmbridge working in partnership with our community. Our goals in addressing land affected by ground contamination directly support this Vision by ensuring 1) the health of our environment and the people who live in it is safeguarded, and 2) that previously developed land is efficiently reused to the benefit of our residents.

2.3 This Strategy sets out to deliver a number of key objectives, as follows:

- 
- Ensure there are efficient systems and processes in place to understand, prioritise and manage land quality;
  - Identify sites where unacceptable risks to human health and/or the environment exist and ensure they are dealt with appropriately;
  - Promote the regeneration and safe redevelopment of brownfield land, including land affected by contamination;
  - Ensure that land quality assessments and remediation are undertaken by competent persons and adhere to required quality standards;
  - Ensure that all actions taken with respect to land contamination risk management are proportionate and to the benefit of our residents;
  - Support a sustainable approach to land contamination risk management; and
  - Minimise financial and reputational risks to the Council.

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<sup>3</sup> Para 1.4 Contaminated Land Statutory Guidance, DEFRA 2012

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## 3 Characteristics of Elmbridge

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3.1 The Council considers its responsibilities under Part 2A in the context of the specific characteristics of Elmbridge.



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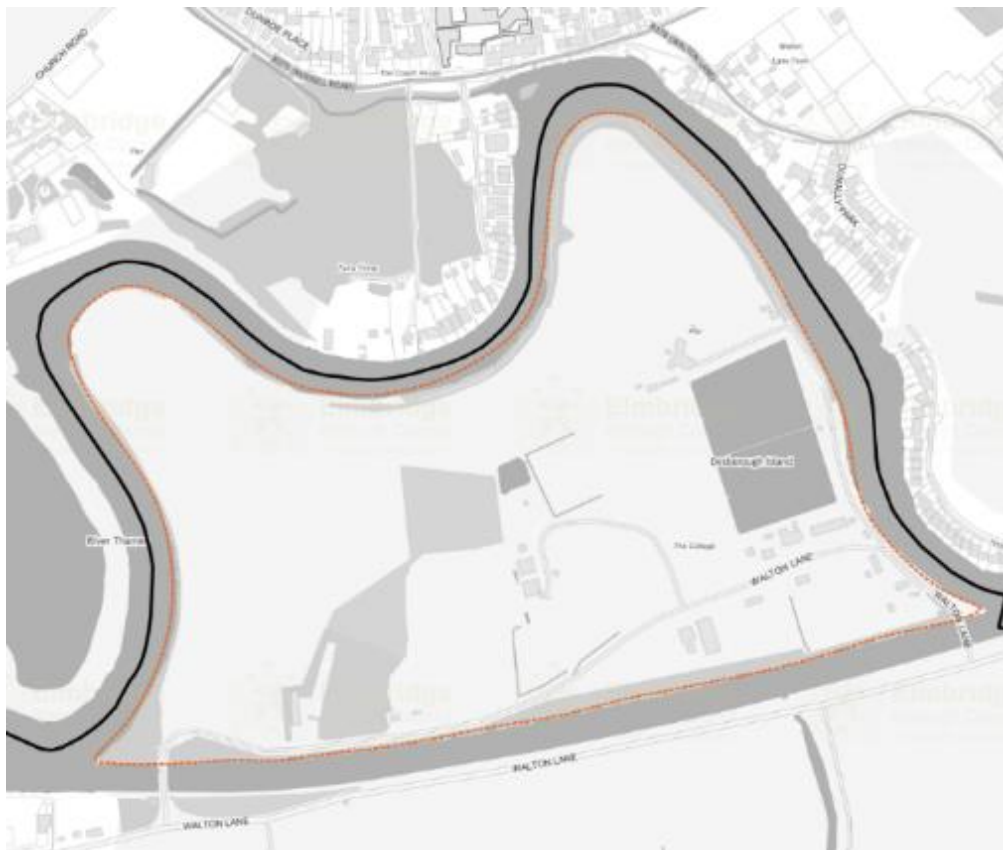
3.2 The Borough comprises the communities of Claygate, Cobham, Long and Thames Ditton, Esher, Hershams, Hinchley Wood, East and West Molesey, Oatlands, Oxshott, Stoke D'Abernon, Walton-on-Thames and Weybridge together with extensive areas of riverside, commons and countryside between them. It is bordered by the River Thames to the north, the M25 to the south, the River Wey to the west



and Kingston Upon Thames to the east. It has an area of 9,633 hectares and an estimated resident population of 138,800.<sup>4</sup> It has 526 hectares of commons and 23 conservation areas.

3.3 Underlying geology is an important consideration as different strata can contribute to the mobility and transport of some forms of contaminants. In addition, some substances, which might be considered as contaminants, can be naturally occurring and different types of geology will have different background levels. The Borough is predominantly underlain by clay with alluvium and gravel deposits to the north.

3.4 Groundwater within underlying permeable strata (aquifer) can provide a drinking water resource that requires protection. The Environment Agency have designated only one source protection zone for the protection of abstracted water. This is located at Desborough Island close to Walton Bridge. Groundwater not used for public supply is also often an important resource.



Environment Agency Source Protection Zone 2 (dashed orange)

<sup>4</sup> Census 2021, Office for National Statistics

3.5 The area benefits from a number of protected ecosystems including Sites of Special Scientific Interest, Sites of Nature Conservation Importance, Local Nature Reserves, Special Protection Areas and Ancient Woodland.

3.6 There are numerous buildings and features having architectural or historic interest which are afforded protection by virtue of being in a conservation area, having been identified as being of archaeological importance or being designated a park or garden of historic interest.

3.7 There have been various industrial uses across parts of Elmbridge over the last 150 years or so, with a potential legacy of land contamination. This has included sand and gravel extraction, landfilling of wastes, gasworks, aviation works, motor sports and some defence related activity. There are also a number of longstanding industrial estates including those at Brooklands, West Molesey and Hersham.

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## 4 What is Contaminated Land?

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4.1 The term “Contaminated Land” is used to mean land which meets the Part 2A definition. Other terms, such as “land affected by contamination” are used to describe the much broader categories of land where contaminants are present but usually not at a sufficient level of risk to meet the Part 2A definition of “Contaminated Land”.

4.2 Section 78A (2) defines Contaminated Land for the purposes of Part 2A as:

“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:

- Significant harm is being caused or there is significant possibility of such harm being caused; or
- Significant pollution of controlled waters is being, or is likely to be, caused.”

4.3 What constitutes significant harm or a significant possibility of such harm or pollution to controlled waters being caused is set out in the Statutory Guidance 2012.<sup>5</sup> The Part 2A regime seeks to identify contamination which for its current land use is causing unacceptable risks to human health or the environment.

4.4 Identifying Contaminated Land is based on the concept of a “contaminant linkage”. This constitutes an unbroken chain of three components, namely:

**Contaminant** a substance which is in, on or under land and which has the potential to cause significant harm to a relevant receptor or to cause significant pollution of controlled waters.

**Pathway** is a route by which a receptor is or might be affected by a contaminant.

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<sup>5</sup> Section 4 Contaminated Land Statutory Guidance, DEFRA 2012

**Receptor** is something that could be adversely affected by a contaminant, for example: a person; an organism; an ecosystem; property; agriculture; or controlled waters.

### **Contaminant Linkage**

**Contaminant → Pathway → Receptor**

4.5 A significant contaminate linkage, is one where significant harm or a significant possibility of such harm or pollution to controlled waters being caused and must exist for an area of land to be considered as Contaminated Land. It is possible that elevated levels of contaminant are present on a particular site, however, if this source is not linked to a receptor by a valid pathway then the definition of Contaminated Land will not be met.

### **The Conceptual Site Model**

4.6 A comprehensive conceptual site model (CSM) is the key tool to understanding the risks posed by land affected by contamination to people and the wider environment. It identifies each receptor, potential exposure pathways and contaminants associated with former uses of the site or thought likely to be present. It then sets out each reasonable combination of these components as a set of potential contaminant linkages. The conceptual site model is updated throughout the investigation and risk assessment process as a greater understanding is achieved.

### **Radioactivity**

4.7 The Part 2A regime was extended in 2006 to include contamination of land by radioactivity but only where harm is caused to human health receptors. The radioactive contaminated land regime is also subject to statutory guidance<sup>6</sup> and applies to radioactive contamination resulting from a past practice or past work activity, or the after-effects of a radiological emergency. It does not apply to current practices or to natural background radiation such as radon.

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<sup>6</sup> EPA 1990: Part IIA, Radioactive Contaminated Land Statutory Guidance, June 2018, Department for Business, Energy & Industrial Strategy

4.8 As for non-radiological contaminants, for land to fall within the statutory definition of Contaminated Land by virtue of the presence of radiological substances, there must be a significant contaminant linkage.

## **The role of the Environment Agency**

4.9 There are two regulators under Part 2A of the Environmental Protection Act 1990, the Council and the Environment Agency. The Council has the lead role for the inspection and determination, however, has a duty to consult with or refer matters of significant pollution of controlled waters or radioactive contamination to the Environment Agency.

4.10 The Environment Agency are responsible for enforcing the Part 2A regime where:

- There is significant pollution of controlled waters,
- contamination by radioactivity is causing a risk to human health, or
- the site is designated as a special site<sup>7</sup>.

4.11 Although in such circumstances the Environment Agency becomes the enforcing authority, the Council retains the sole responsibility for determining a site to be Contaminated Land.

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<sup>7</sup>Any contaminated land:

(a) which has been designated as such a site by virtue of Section 78C(7) or 78D(6)..., and  
(b) whose designation as such has not been terminated by the appropriate Agency under Section 78Q(4).

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## 5 The Inspection Process

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5.1 Part 2A of the Environmental Protection Act 1990 requires that a Local Authority inspects its area for the purpose of identifying Contaminated Land. It is at the Authorities discretion to set the schedule for such inspection for the methodology applied.

5.2 Elmbridge has employed the recognised two stage inspection process to fulfil its statutory duty, comprising an initial **strategic inspection**, followed by a **detailed inspection** where the strategic inspection has identified priority land for more detailed consideration.

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## 6 Strategic Inspection

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6.1 The local authority should take a strategic approach to carrying out its inspection duty under section 78B(1) (of Part2A). This approach should be rational, ordered and efficient, and it should reflect local circumstances.

6.2 The process of strategic inspection is essentially the collection of information to make a broad assessment of land within an authority's area in a rational, ordered and efficient manner. This enables the identification of priority land for more detailed consideration.

6.3 The Council maintains a land quality database which holds information on over 560 areas of land within Elmbridge, each with a unique identification number, where it is considered there is potential for land contamination to exist.<sup>8</sup> This was achieved through the ongoing strategic inspection process.

6.4 The land area of Elmbridge was initially screened, and the database of sites potentially affected by ground contamination created, with the aid of data management software specifically designed for Part 2A provided by the Councils selected information management system. This generated a scoring system based principally on historical land use, current land use, geological and hydrogeological conditions. This initial score formed the basis of the prioritisation process. Further information obtained from a variety of sources including historical records and contemporary information, for example site investigation reports, has subsequently been compiled enabling refinement of the score and designation of a category as set out in the Statutory Guidance<sup>9</sup>.

6.5 As new information is acquired for areas across the borough, so the database records are updated and the prioritisation revised as necessary. In this way the process of strategic inspection is an ongoing, dynamic one.

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<sup>8</sup> Although the land is considered to have the potential to be affected by contamination, a significant contaminant linkage (or significant possibility of) would need to exist on that land for it to be considered "contaminated land".

<sup>9</sup> Paragraph 4.16 – 4.29 & 4.46 Contaminated Land Statutory Guidance, DEFRA 2012

6.6 Many of the pre-existing historical records required converting into electronic format and this has now been accomplished. The information is stored for each site under its unique identification number on the corporate information management and storage system. All subsequent information for each identified site will be similarly stored.

6.7 A dynamic, Geographic Information System (G.I.S.) mapping layer has been created from the information in the database, which includes the area extent (polygon), current status and a brief synopsis. This supports the Part 2A regime and facilitates provision of key information to other parts of the Council and Stakeholders in respect to the status of land, for example the Environment Agency, Planning and Asset Management & Property Services, enabling informed decisions to be made. The GIS layer and database are currently not electronically linked and require manual cross reference and input.

## **Prioritisation – Categorisation**

6.8 The Council “should seek to give priority to particular areas of land that it considers most likely to pose the greatest risk to human health or the environment”.<sup>10</sup> To fulfil this duty, the Council follows the system of categorisation set out in the Statutory Guidance when considering whether a significant possibility of significant harm exists.<sup>11</sup> For each type of receptor, the guidance details four categories of site:

- Category 1 and Category 2 sites being capable of being determined as Contaminated Land and recommended for more detailed investigation, and
- Category 3 and Category 4 sites potentially having some risk but highly unlikely of being capable of being determined as Contaminated Land on such grounds.

6.9 Following the initial score generated as part of the strategic inspection process, the identified areas were further analysed and divided into one of the four categories. This categorisation is subject to on-going review, for example following receipt of further information or changes to the legislation.

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<sup>10</sup> Para 2.7 Contaminated Land Statutory Guidance, DEFRA 2012

<sup>11</sup> Paragraphs 4.19 – 4.30 Contaminated Land Statutory Guidance, DEFRA 2012



6.10 Further Information on the prioritisation process can be found in the Contaminated Land Statutory Guidance, DEFRA 2012.

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## 7 Detailed Inspection

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7.1 “If the local authority identifies land where it considers there is a reasonable possibility that a significant contaminant linkage exists, it should inspect the land to obtain sufficient information to decide whether it is contaminated land.”

7.2 The statutory guidance states that “Under Part 2A the starting point should be that land is not contaminated land unless there is reason to consider otherwise”. There must be a reasonable possibility of the existence of a contaminant linkage for which there is unacceptably high probability of significant harm for statutorily contaminated land to exist. Taking this into consideration there are relatively few sites that have need for further detailed inspection under Part 2A. The Council’s approach to managing land affected by contamination is risk based and only sites where significant contaminant linkages potentially resulting in unacceptable risk are considered highly likely, will be recommended for detailed inspection.

7.3 At present, the prioritisation process has identified **no areas of land that require detailed inspection**. Should new information become available, supporting the reasonable possibility that a significant contaminant linkage is likely to exist, or changes to the legislation be introduced, then the Council may need to re-evaluate its prioritisation and may decide that a site requires further inspection. Due to withdrawal of Government funding, detailed Part 2A inspections will be initiated only if new evidence is forthcoming leading to re-categorising of a site as Category 1 or 2.

### Carrying out detailed inspection

7.4 The purpose of a detailed inspection is to obtain sufficient, site-specific information to carry out an appropriate risk assessment to establish whether there is:

- significant harm,
- a significant possibility of significant harm, or
- significant pollution of controlled water or a significant possibility of such.

7.5 The data generated by the detailed inspection must be scientific, authoritative, relevant and appropriate to enable a robust decision to be reached on whether a site

meets the statutory definition of Contaminated Land, and if so whether it is also a special site, and to support decisions made under Part 2A relevant to that land.

7.6 Detailed inspection will take a phased, risk-based approach, in line with the principles laid out in the 'Land contamination risk management'<sup>12</sup> (LCRM) guidance.

A detailed inspection may include some or all of the following stages:

- **Preliminary Risk Assessment:** This is principally a desk-based, information gathering exercise, with site reconnaissance, to develop an initial conceptual site model of the subject site and assess whether there are potentially unacceptable risks. It will include liaison with appropriate statutory consultees, regulatory and planning authorities and relevant stakeholders, and may include limited preliminary sampling. In line with LCRM guidance, it will always be necessary to carry out a preliminary risk assessment, the outcome of which will determine the necessity for further investigation and assessment.
- **Generic Risk Assessment:** Only where the preliminary risk assessment has identified potential contaminant linkages with the potential to cause harm or significant harm will a site investigation involving the sampling and analysis of site soils, ground gas and/or groundwater (where appropriate) be undertaken. The Council will take all reasonable measures to consult with relevant stakeholders and interested parties, for example the landowner, prior to commencing a site investigation. The investigation results provide information to ascertain the significance of potential contaminant linkages and are compared to generic published assessment criteria to refine the conceptual site model and inform the risk assessment.
- **Detailed Quantitative Risk Assessment:** Site specific assessment criteria, generated using site specific data, are compared with the investigation results to refine the conceptual site model, classify the site and provide recommendations for next steps.

7.7 Where possible the inspection process will be undertaken using internal expertise; however, external expertise may be sought in order to conduct a robust risk assessment in more complex cases. Any specialist consultant will be

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<sup>12</sup> Land contamination risk management (LCRM), Environment Agency, 19 April 2021

appropriately qualified and competent to undertake the work. Regulatory decisions taken under the Part 2A regime will remain the sole responsibility of the local authority.

## Case Study (Part 2A) Former Gas Works site



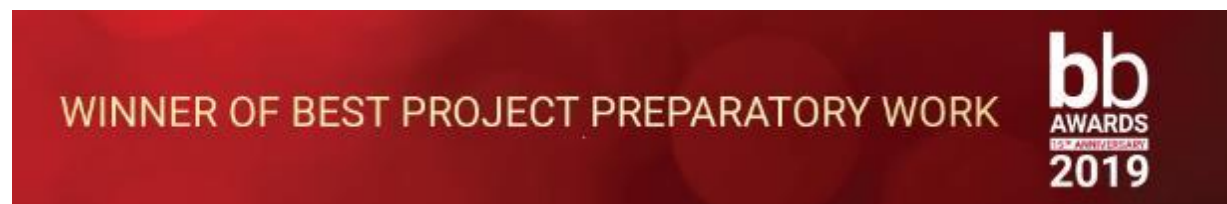
Photograph of 1973 Demolition, Elmbridge Museum Archive

7.8 In 2016, following strategic inspection, the Council carried out a Preliminary Risk Assessment of a former gasworks site within Elmbridge, now redeveloped for residential use. The desk study report identified a number of uncertainties regarding the ground conditions, including potential residual contamination and the adequacy of remediation measures undertaken during redevelopment.

7.9 As a result of the findings of their desk study, the Council commissioned a site investigation. The aim of the investigation was to address the uncertainties identified in the desk study and to provide evidence of the ground conditions. That information would then enable the Authority to discharge its duties under the Environmental Protection Act 1990. BuroHappold Engineering was appointed in the summer of 2017 to undertake the investigation.

7.10 On the basis of the investigation findings and conceptual site model, a generic quantitative risk assessment was carried out to consider potential risks to residents and the local environment. The risk assessment was carried out using the standard source – pathway – receptor approach, but with particular reference to the Part 2A Statutory Guidance and its four categories. The investigation and subsequent risk assessment employed current best practice throughout, in line with the statutory guidance which refers to robust science-based evidence, consideration of uncertainty and appropriate assessment of the significant possibility of significant harm (SPOSH).

7.11 In 2018, based on all the available information and the associated assessments, it was concluded that there was not a strong case that the land poses a significant risk of significant harm (SPOSH) with respect to any of the relevant contaminant linkages investigated. The investigation was completed and provided the level of certainty and confidence necessary that the area is suitable for its current use.



Banner award for Winner of Best Project Preparatory Work

7.12 In recognition of the exemplar best practice exhibited throughout this Part 2A investigation, Elmbridge Borough Council and their consultant BuroHappold Engineering were awarded the winning entry for Category 1 Best Project Preparatory Work and Highly Commended for Category 10 Best Public Sector Not for profit Led in the 2019 Brownfield Briefing Awards.

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## 8 Determination of contaminated land

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8.1 In determining whether an area of land meets the definition of Contaminated Land under Part 2A, the Council will apply the categorisation system, definitions of harm and adhere the practice described in the Statutory Guidance.<sup>13</sup>

8.2 Categories 1 and 2 would encompass land which is capable of being determined as Contaminated Land on grounds of significant possibility of significant harm (SPOSH) to human health and non-human receptors (e.g., particular ecological systems or property). Categories 3 and 4 would encompass land which is not capable of being determined on such grounds.

8.3 Once the Council is satisfied that land meets the statutory definition, and statutory consultation has occurred, then it shall make a determination to that effect. Notice of the determination shall be lodged in the Public Register kept by the Council.

8.4 A written record shall be produced and will explain why the determination has been made; this will include a copy of the risk summary<sup>14</sup> and any other relevant information. The written record will be clear, easy to understand and contain a summary of why the Council considers that the requirements of relevant sections from the statutory guidance have been satisfied. The Council will also produce a written statement where the subject land has been found not to meet the statutory definition and is not Contaminated Land.

### Special sites

8.5 If the grounds for determining land as Contaminated Land appear to meet the specific criteria for a special site,<sup>15</sup> then the Council will liaise with the Environment Agency prior to designation of the land as a special site. In such a case, any further enforcement falls to the Environment Agency.

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<sup>13</sup> Section 5 Contaminated Land Statutory Guidance, DEFRA 2012

<sup>14</sup> Paragraphs 3.33 – 3.336 Contaminated Land Statutory Guidance, DEFRA 2012

<sup>15</sup> The Contaminated Land (England) Regulations 2006, No. 1380

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## 9 Remediation

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9.1 “Once land has been determined as Contaminated Land, the enforcing authority must consider how it should be remediated and, where appropriate, it must issue a remediation notice to require such remediation.”<sup>16</sup>

9.2 The Council will secure appropriate remediation of identified Contaminated Land, either itself or through contractual arrangements with competent individuals or organisations. When considering what remediation may be required, the Council will adopt a proportionate, reasonable solution. This will take into account; the costs likely to be involved (which should not be burdensome), the seriousness of the harm or the pollution, and the benefit to our residents.

9.3 The appropriate remediation solution shall be practical, effective and durable, removing or permanently disrupting identified significant contaminate linkages, to reduce risks to an acceptable level. Reasonable measures may also be necessary to remedy harm or pollution that has been caused.

9.4 The Council will apply the “Polluter Pays” principle wherever possible thereby placing responsibility for remediation on those responsible for its cause. In cases where satisfactory remediation will not be achieved via other means, the Council will serve each identified appropriate person a remediation notice in line with Part 2A legislation and the Statutory Guidance.

9.5 The Council will specify in the remediation notice the remediation measures required to be carried out and required time periods, bearing in mind that in some instances, remediation may be undertaken by other means without the service of a notice, in line with the services enforcement policy.

9.6 The Council will ensure, as far as reasonably possible, that all remediation is undertaken by qualified and competent individuals or organisations.

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<sup>16</sup> Section 6 Contaminated Land Statutory Guidance, DEFRA 2012

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## 10 The Public Register

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10.1 In accordance with Part 2A and the Contaminated Land (England) Regulations 2006, the Council is required to maintain a Public Register.

10.2 This publicly accessible register serves as a permanent record of all regulatory action undertaken by the Council to ensure the remediation of Contaminated Land. It does not serve as a record of the Council's activities under detailed inspection. At the time of issue of this Strategy document, there is no land within Elmbridge required to be included in a Public Register under Part 2A of the Environment Act. If this status alters, a copy of the Public Register will be available on the Council website [elmbridge.gov.uk/environment/pollution-issues/contaminated-land](http://elmbridge.gov.uk/environment/pollution-issues/contaminated-land). The register can be viewed free of charge.



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## 11 Redevelopment of land affected by contamination

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11.1 It is recognised that land risk management will often be achieved during redevelopment and the vast majority of land contamination issues in Elmbridge are dealt with through the planning regime. Land contamination, or the possibility of it, is a material consideration under the Planning regime.

11.2 The Part 2A regime is intended for use to deal with historic land contamination that poses a significant risk to health or the environment for its existing use and where no appropriate alternative solution exists. Part 2A does not consider future uses of a site, which could need a specific grant of planning permission.

11.3 The established role of planning where land is scheduled for redevelopment is to ensure that land is made suitable for its new use and prevent unacceptable risk from contamination. The link between the Part 2A and planning regimes is addressed in the NPPF which requires that following remediation carried out for redevelopment under planning, as a minimum, the land should not be capable of being determined as Contaminated Land.

11.4 In 2011 the Council adopted a Core Strategy which set the local spatial strategy for the delivery of development within the Borough. This clearly sets out that development of previously developed land would be prioritised in line with national policy. The Council is currently in the process of producing its Local Plan which will be in place for the following 15 years; the Local Plan will adopt the commitment set out in the Core Strategy to the prioritisation of previously developed land. The emphasis on brownfield redevelopment means that this process will inevitably deal with much of the legacy of land contamination.

11.5 To ensure the necessary consultation occurs where land contamination must be considered, the Council has a comprehensive planning constraints layer to highlight potential sites of concern. Where there is potential for land contamination to be present on a site for which a planning application has been submitted, the Council's contaminated land officer will be consulted to ensure appropriate action is taken to

ensure the site is made safe and suitable for the proposed future use. This is typically done through the use of planning conditions on any grant of planning permission. Approximately 300 consultations per year have been made via this process in the years 2020/2021 and 2021/2022.

11.6 The NPPF<sup>17</sup> requires that adequate information for each stage of the investigation, assessment and remediation processes is prepared by a **competent person** to ultimately demonstrate that the land is suitable for its proposed use. Remediation agreed as a planning condition will be enforced through planning controls. It is the responsibility of the developer and/or landowner to secure a safe development and ensure that a site is made suitable for its proposed future use.

11.7 The Council has prepared a planning guidance document outlining the appropriate level of information and standard that applicants are required to submit with a planning application in Elmbridge where the potential for land contamination exists. This guidance is entitled 'Planning Guidance for the Redevelopment of Land Potentially Contaminated Affected by Contamination' and is available at [elmbridge.gov.uk/environment/pollution-issues/contaminated-land](http://elmbridge.gov.uk/environment/pollution-issues/contaminated-land)

## **Brownfield Land Register**

11.8 Elmbridge Borough Council has established a Register of Brownfield Land in line with the Government requirement. This can be accessed on the Council website [elmbridge.gov.uk/planning/brownfield-land-register](http://elmbridge.gov.uk/planning/brownfield-land-register)

11.9 The Council's Core Strategy and regeneration activities encourages the use of previously developed land. In doing so the Council will ensure that it is brought back into safe use. However, the responsibility for making the land safe remains with the developer.

## **Other Legislative Regimes**

11.10 Building regulations require developers to take measures to protect new buildings and their future residents from the effects of contamination, The majority of land redevelopment affected by contamination will be dealt with via the planning

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<sup>17</sup> National Planning Policy Framework, 2021, Ministry of Housing, Communities & Local Government

process; however, developments that fall outside of the planning regime may need to be addressed via the building regulations.

11.11 Other legislative regimes may also provide a means of dealing with land contamination issues, such as the regimes for waste, water, and environmental permitting and the Environmental Damage (Prevention and Remediation) Regulations 2009. In considering how to deal with an allegation of a pollution incident or contamination then the most appropriate piece of legislation will be used. Separate controls exist to control and secure the remediation of sites that are subject to waste licences, integrated pollution prevention and control, and water pollution incidents. See Appendix B The Relationship Between Part 2A and Other Legislation.

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## 12 Elmbridge Borough Council Owned Land

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12.1 It is the intention of the Council to be an exemplar in relation to the management of areas of potentially contaminated land within its own land portfolio.

12.2 Areas of land within Elmbridge for which the Council has a duty of care where there is a potential for land contamination to be present, will be assessed and managed appropriately in line with current best practice.<sup>18</sup> Land will be acquired and disposed of responsibly so that the Council does not inherit liability or convey it to those who may not understand the full implications of developing a site.

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<sup>18</sup> Land contamination risk management (LCRM), Environment Agency, 19 April 2021

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## 13 Sustainability

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13.1 Sustainability is at the heart of Elmbridge Borough Council's Vision. Having declared a climate emergency in July 2019 and set the target to become a carbon neutral organisation by 2030, the Council is embedding sustainability in all areas. Priority areas for the Council include being carbon neutral by 2030, as well as enhancing our natural environment.

13.2 We support a sustainable approach to land contamination risk management. The industry-led Sustainable Remediation Forum UK (SuRF-UK) has produced a framework for assessing the sustainability of soil and groundwater remediation.<sup>19</sup> The Council will seek to apply the principles of sustainable remediation in its approach to land contamination, both under Part 2A and the Planning regimes.

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<sup>19</sup> Find more information on SuRF UK on the CL:AIRE website.

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## 14 Quality

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14.1 The Council requires that all reports undertaken for the purpose of land contamination risk management either under the Part 2A regime or a complementary regime, for example Planning, are completed by a suitably qualified, “competent” person. A competent person is one with appropriate knowledge, skills, experience and qualifications in the relevant aspect of contamination risk management and the type(s) of contamination being dealt with. This includes:

- a Suitably Qualified Person (SQP) registered under the NQMS
- a risk assessor registered under the Society of Brownfield Risk Assessment (SoBRA) accreditation scheme
- a Specialist in Land Contamination (SiLC)
- a chartered member of a relevant professional organisation
- a specialist registered under the gas protection verification accreditation scheme (GPVS)
- a person with a proven track record of dealing with land contamination, who regularly deals with the technical aspects of land contamination.

14.2 We support the use of the National Quality Mark Scheme (NQMS) in reports on the investigation, assessment, remediation and verification of land affected by contamination. For further information visit [claire.co.uk/projects-and-initiatives/nqms](http://claire.co.uk/projects-and-initiatives/nqms)

14.3 The Council will not accept inadequate work or work not undertaken by a competent person.

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## 15 Data Retention Criteria

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15.1 In order to make an informed decision with regards to likely land quality at any given time, information on the history and circumstances of that land must be understood, given this all records pertaining to land contamination and decisions taken will be maintained indefinitely. Information will be retained in electronic form.

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## 16 Reviewing the Strategy

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16.1 “The local authority will keep its written strategy under periodic review to ensure it remains up to date”.

16.2 It is at the discretion of the authority when the strategy should be reviewed. In the absence of any other trigger, Elmbridge aims to review this strategy at approximately 5-year intervals.



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## Appendices

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For information only

A The Relationship Between Part 2A & Other Legislation

## **Appendix A The relationship between Part 2A & legislation other than planning**

### **Environmental Permitting**

Certain larger industrial installations and waste activities are subject to permitting under the Environmental Permitting (England and Wales) Regulations 2010. These Regulations have provisions for site remediation to standards generally higher than those applicable under Part 2A. Although there are some activities where enforcement is by the Council, the Environment Agency has a significantly greater role.

### **Pollution of Controlled Waters**

The Environment Agency has powers to take action to remedy or prevent pollution of controlled waters under the Water Resources Act 1991(Section 161). These powers would be used where a pollution incident has occurred and the pollutant is discharged directly into the body of water, or it has left land and is entirely in the body of water. Other legislation available to the Environment Agency to protect water resources are The Water Resources Act 1991, The Water Act 2003, The Water Framework Directive and the Environmental Permitting (England and Wales) Regulations 2010.

However, where pollution of controlled waters arises from substances in, on, or under land, there is an overlap between these powers and the Part 2A regime.

Therefore, in cases of contaminated land affecting controlled waters the Council will:

- consult with the Environment Agency before determining land to be contaminated land.
- take into account any comments from the Environment Agency with respect to the requirements for remediation.

Where the Environment Agency identifies a risk to controlled waters from land affected by contamination it should notify the Council enabling it to formally identify the land as contaminated land for the purposes of the Part 2A regime.

### **The Environmental Damage (Prevention and Remediation) Regulations 2009**

The Regulations require action in response to the most significant cases of damage to the environment, covering specific types of:

- damage to species and habitats,
- damage to water, or
- risks to human health from contamination of land.

They apply to both imminent threats and actual cases of damage. Where these arise, those responsible must take immediate action to prevent damage occurring or remediate damage where it does occur. The scope of the regulations is limited but for contaminated land damage is:

“...contamination of land by substances, preparations, organisms or micro-organisms that results in a significant risk of adverse effects on human health.”

These powers do not apply to historic contamination but are relevant to the broader scope of this document and the general aim of the Council. The Council and the Environment Agency are responsible for enforcing these regulations.

### **Statutory Nuisance Provisions of the Environmental Protection Act 1990**

Issues of land contamination that may have been dealt with under the statutory nuisance provisions Part 3 of the Environmental Protection Act 1990 are now dealt with through the Part 2A regime. However, the statutory nuisance regime continues to apply to the effects of the contamination on land, e.g., odours that are deemed to constitute a nuisance. The exclusion of the statutory nuisance provisions applies only to harm and the pollution of controlled waters.

### **Waste on Land**

The Part 2A regime is not applicable where there is contaminated land arising from illegal tipping of controlled waste (fly tipping). This should be dealt with under Part 2 of the Environmental Protection Act 1990. The Environment Agency and the Council have responsibility for this.

### **Food Safety – Food and Environmental Protection Act 1985**

Part 1 of the Food and Environment Protection Act 1985 gave ministers emergency powers to prevent the growing of food on contaminated land. Following the

establishment of the Food Standards Agency (FSA) this power is now vested in the Secretary of State for Environment. Where the Council suspects that crops may be affected from contaminated land to such an extent that they may be unfit to eat, it will consult the Food Standards Agency and Department of Environment Food and Rural Affairs to establish whether an emergency order may be necessary. Remediation of a site, if necessary, would be secured through the Part 2A regime.

### **Risk of Harm to Employees**

Where there is a risk of harm to persons at work from land contamination, this should be dealt with under the Health and Safety at Work Etc. Act 1974. The enforcing authority will be either the Health and Safety Executive (HSE) or the Council's Health and Safety team, depending on the main work activity at the site. Liaison between the Council (for Part 2A enforcement) and the HSE will be established to avoid duplication of controls and to ensure that the most appropriate regime is used.

### **COMAH Installations**

Where there has been a release, explosion or other major incident which has caused land contamination, the restoration should be carried out as part of the COMAH on site/off site emergency restoration plan (Control of Accident Hazard Regulations 1999).