

Item 4

KEY DECISION

REPORT TO CABINET

13 July 2006

REPORT OF DIRECTOR OF NEIGHBOURHOOD SERVICES

Portfolios: Community Health & Planning and Development

Determination of land at Bessemer Park as “Contaminated Land”

1 SUMMARY

- 1.1 Analysis of extensive research undertaken by consultants on behalf of the Borough and Durham County Councils’ indicates that an area of open space at Bessemer Park, Spennymoor, falls within the definition of “Contaminated Land” contained within the Environmental Protection Act, 1990.
- 1.2 Sedgefield Borough Council and Durham County Council each own part of the affected area. They must be determined as two separate sites. The site ownership boundaries are shown on Appendix 1.
- 1.3 Sedgefield Borough Council is required by legislation to determine the whole site as “Contaminated Land” in accordance with Part IIA of the Environmental Protection Act, 1990. This determination will also allow the Council to apply for funding from the Department of Environment, Food and Rural Affairs (DEFRA) for the remediation of the area of land in its ownership.

2 RECOMMENDATION

- 2.1 That Cabinet determines the two separate sites as “Contaminated Land”. The sites will then be placed on the Public Register as “Contaminated Land” and remediation solutions will be sought to break the identified pollution linkages.

3 DETERMINATION OF LAND

- 3.1 Under Part IIA of the Environmental Protection Act 1990, Sedgefield Borough Council is required to determine land as “Contaminated Land” if the Council is in possession of information that indicates that the land meets one or more of the statutory definitions of Contaminated Land.
- 3.2 As part of the refurbishment at Bessemer Park in 1992, extensive investigation into site conditions was carried out and subsequent remediation to gardens and open space areas was undertaken. This work was overseen and partially funded by the then Department of Environment and was in accordance with the standards and procedures in place at that time.
- 3.3 Following a site investigation monitoring and reporting regime that has been employed by both Councils’ since the early 1990s, it is now apparent that some pollutants are migrating through the soil structure. The consequence of this migration is that an area of open space at Bessemer Park, Spennymoor falls within the definition of “Contaminated Land”¹. The reports produced by external consultants have been independently assessed by DEFRA / The Environment Agency and are considered valid, technically robust and appropriate. The risk is theoretical and is based on conservative modelling of exposure to these compounds. There is no evidence of actual harm having arisen from this site.
- 3.4 The risk of contamination to groundwater posed by the site has also been assessed and no pollution linkage has been found.
- 3.5 The information relating to Sedgefield Borough Council’s land was obtained in a study carried out on its behalf in 2005. It has shown that similar contaminants are present to the Durham County study and that the site presents the same theoretical risk.
- 3.6 The substances that present a theoretical risk are:-
- Lead
 - Benzo(a)pyrene
 - Dibenzo(ah)anthracene
- 3.7 Government guidance indicates that two separate determination documents should be prepared for the site because:
- Each area of land is under separate ownership; and,
 - Each area of land has been subject to a separate site investigation.
- 3.8 Sedgefield Borough Council is now required to determine the two areas of land, as all outstanding matters raised by the external consultants reports have now been resolved.

¹ Environmental Protection Act (1990), as amended

Consequences of Determination

- 3.9 By determining the land as “Contaminated Land”, the Council invokes a series of statutory responsibilities on itself, the landowner and the polluter. The Local Authority is responsible for ensuring the progression of the statutory process that sets out who is informed of the decision and how the local authority ensures that the site is remediated.
- 3.10 The Council has a statutory duty to record all land that is determined as Contaminated on a public register, kept by the authority for that purpose. The register records details relating to the type of contamination in or on the land, remediation measures, landowners, and those responsible for site clean up. Areas of land determined as being contaminated remain on the register after remediation.
- 3.11 The pollution linkages that have led to the site being determined must be broken (a pollution linkage is an identified pathway by which exposure to a pollutant is or is likely to take place). Studies carried out for Durham County Council and approved by DEFRA suggest that the introduction of a geo-textile membrane on the land and covering it with imported, clean topsoil will break the pollution linkage. The Sirius report recommends 250mm of subsoil and 150mm of topsoil to cover the membrane.
- 3.12 Determination of the site and subsequent remediation works will raise both the profile of the previous known use of the site and public perception concerning the risks that the site may present. A working group comprising of relevant persons from Sedgefield Borough Council, Durham County Council, Sedgefield Primary Care Trust and The Health Protection Agency has been established. The working group will plan a comprehensive communications / public relations strategy relating to the site. The strategy will ensure that the concerns of the public and requests from the media are directed to the most appropriate personnel to ensure correct and consistent information is provided.
- 3.13 Previous research into the site’s history indicates that the polluting person (or business) who would normally be responsible for site clean up no longer exists. In such cases liability passes to the landowner. The liability for this ‘split’ site therefore rests with Sedgefield Borough Council and Durham County Council for their respective land ownership.
- 3.14 It is therefore proposed that the Council:
- Formally determines the sites as “Contaminated Land” and enters them in the public register;
 - Manage the sites within the provisions of the statutory framework outlined within the Environmental Protection Act, 1990;
 - Liaise with the Health Protection Agency and Sedgefield Primary Care Trust to ensure specialist health advice is in place to answer the concerns of local residents and site users;
 - Collate all existing information relating to the previous use of the site, together with information relating to previous investigations and

remediation schemes. This information will be produced together by both the Borough Council and the Health Protection Agency and will feed into an information pack designed to answer any queries that residents and users may have;

- Agree a shared methodology for the remediation of the site with Durham County Council; and,
- Apply to DEFRA for Supported Borrowing Approval in respect of the costs of remediation on the site. Durham County Council have already gained theoretical approval under this scheme.

4 RESOURCE IMPLICATIONS

- 4.1 The Council has received a supported borrowing approval from DEFRA under the contaminated land scheme in the sum of £16922 to cover the initial site investigation works.
- 4.2 It is likely that the cost of remediation of the Council's owned land (geo-textile layer, importation of clean soil, re-instatement of footpaths, etc.) will exceed the £100,000 expenditure key decision threshold.
- 4.3 Subject to a successful application to DEFRA to remediate the contaminated land, it would be anticipated that a further supported borrowing approval would be granted to cover the Capital costs.
- 4.4 The revenue implications associated with the cost of supported borrowing projects, are taken into account in the Formula Grant awarded to individual authorities and consequently the Council's Revenue Support Grant should be increased accordingly.
- 4.5 It is recommended that DEFRA be formally approached to support this scheme.

5 CONSULTATIONS

- 5.1 The Borough and County Councils' have worked closely with regard to the site investigation of the area of open space to ascertain whether there is a need to determine the site as "Contaminated Land".

6 OTHER MATERIAL CONSIDERATIONS

Links to Corporate Objectives / Values

The determination and subsequent remediation of this area of land will ensure that Sedgefield Borough Council fulfils its responsibility under the Environmental Protection Act (1990). In doing so, the council will also realise a commitment to its Corporate Ambitions set out in the 2005 to 2008 Corporate Plan. The Corporate Ambitions realised will be namely; a Healthy Borough, through safeguarding public health, and an Attractive Borough, through ensuring a cleaner and greener environment.

6.1 Legal Implications

The determination and subsequent remediation of this area of land will ensure that Sedgefield Borough Council fulfils its responsibility under the Environmental Protection Act (1990).

6.2 Risk Management

Due to the complex nature of the site, the contractors appointed to remediate the land would complete a detailed Risk Management Plan. An appropriate officer would approve this plan before works commence.

6.3 Health and Safety Implications

A specialist company will carry out the remediation of the site. Due to the nature of contaminants on the site, the appointed company would produce a detailed Health and Safety assessment. An appropriate officer would approve this assessment before works commence.

Site works will not be carried out by employees of Sedgefield Borough Council due to the complex nature of the works and as such will not represent a Health and Safety Risk to employees.

Determination of the sites as Contaminated Land is likely to give rise to queries concerning health from members of the public. As previously stated a public relations strategy will help to alleviate any health concerns regarding this site.

6.4 Sustainability

The remediation strategy will break the pollution linkage that is posed by the three substances.

6.5 Equality and Diversity

The proposed determination and remediation of land has limited implications for equality and diversity, however, any information released to the general

public shall be made available in alternative languages, Braille or in audio format where requested.

6.6 Social Inclusion

Part of the site is occupied by a children's play area that is owned and maintained by Sedgefield Borough Council. This will have to be removed in order for the remediation work to take place. A Cabinet report dated the 15th September 2005 relating to upgrading and replacing play equipment indicated that a decision relating to the Bessemer facility would be taken following a decision on the future of the open space.

The existing equipment cannot simply be reinstated after completion of remediation works, as it does not comply with current safety standards. Any replacement equipment would therefore have to meet the new safety standards and recent comparable schemes to create new facilities have cost in the region of £70,000.

6.7 Procurement

We will explore the opportunity to work in partnership with Durham County Council to attempt to provide a comprehensive remediation solution. It is however vitally important that the remediation of the site is subject to an open tender process to ensure value for money.

7 **OVERVIEW AND SCRUTINY IMPLICATIONS**

7.1 None

8 **LIST OF APPENDICES**

1. Site Location Plan

Contact Officers: Chris Myers and Simon Wilson
Telephone No: (01388) 816166 ext 4328 & 4276
Email Address: cmyers@sedgefield.gov.uk, swilson@sedgefield.gov.uk

Ward(s): Low Spennymoor and Tudhoe Grange Ward

Key Decision Validation: This is a Key Decision as it may result in the Council incurring expenditure in excess of £100,000. It is anticipated that DEFRA support will be received for remedial works.

Background Papers

1. WA Fairhurst Report; Land at Bessemer Park, Spennymoor – Quantitative Risk Assessment Report: Document Reference D/I/D/51323/01C
2. FWS Consultants Limited Report; Hydrogeological Site Investigation and Evaluation of Groundwater Contamination, Bessemer Park Open Space, Spennymoor: Document Reference 936/November 2004

3. Desk Study, Site Investigation and Assessment of Potential Contamination of the Bessemer Park Open Space Site, Spennymoor: Document Reference 979/June 2005
4. Environmental Protection Act, 1990 (as amended)
5. DETR Circular 02/2000; Statutory Guidance on the implementation of the Part IIA regime
6. Local Authority Guide to the Application of Part IIA of the Environmental Protection Act 1990. Chartered Institute of Environmental Health/Department for the Environment, Food and Rural Affairs/Environment Agency/Local Government Association
7. Fixed Play Equipment Safety Audit – Report to Cabinet, 15th September 2005, Director of Leisure Services
8. Sedgefield Borough Council Corporate Plan 2005 - 2008.
9. Sirius Report; Detailed Quantitative Risk Assessment March 2006, Reference C1426
10. Sirius Report; Specification for the placement of clean capping materials, Reference C1426/A

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Councils Head of the Paid Service or his representative	<input type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Councils S.151 Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input type="checkbox"/>	<input type="checkbox"/>

Appendix 1

