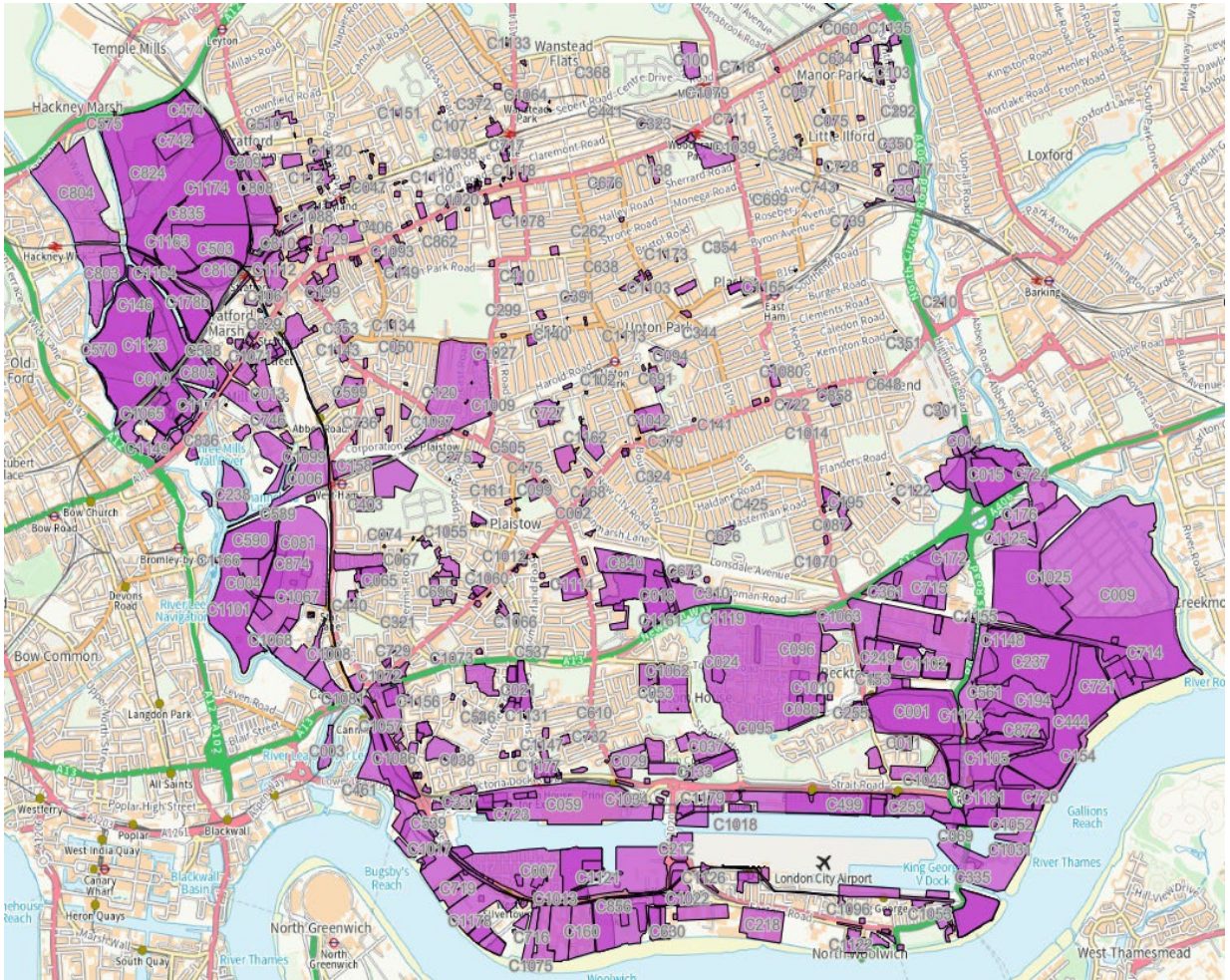


**A STRATEGY FOR THE IDENTIFICATION,
INSPECTION AND ASSESSMENT OF
CONTAMINATED LAND**
ENVIRONMENTAL PROTECTION ACT 1990, PART IIa
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Introduction

This strategy sets out the London Borough of Newham's (the Council) aims, objectives and priorities for dealing with contaminated land in the borough.

Background

In the UK, the legacy of contaminated land from industrial, mining and waste disposal activities is a significant challenge for future development. However, only a small proportion of that land poses an immediate threat and unacceptable risk to human health and the environment and the true nature of this legacy can only be determined through detailed site investigation and risk assessment. This in turn, is dependent on how contaminated land is defined and on the methods and procedures that are employed to prioritise and categorise such land for the appropriate investigation and remediation.

The government has expressed the opinion that contaminated land should be brought back into beneficial use and thus provide sites for redevelopment and the associated regeneration of inner-city areas. For local authorities to successfully control and manage their contaminated land resources the efficient management of contaminated land data is required.

Note: the terms 'contaminated land' and 'special site' are used throughout the report. These words shall be construed as having the meaning ascribed to them in the Environmental Protection Act 1990, Contaminated Land (England) Regulations 2006 and statutory guidance.

Regulatory & Policy Context

The Environment Act 1995, Section 57 amends the Environmental Protection Act 1990¹, by inserting a new Part IIa, enacted on 01 April 2000. The Environmental Protection Act 1990, Part IIa has now become the new statutory framework for dealing with contaminated land in England. Part IIa comprises 26 sections (Sections 78A-78YC), which for the first time introduces a definition of contaminated land, contained within Section 78A(2) 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;

- a) significant harm is being caused or there is significant possibility of such harm being caused, or
- b) pollution of controlled waters is being or is likely to be caused".

This means that the identification and subsequent remediation of land on which contamination is causing unacceptable risks to human health or the wider environment should take place. It does not intend that all land where contamination is present should be addressed. Land where contamination poses a risk to a new development should remain a 'material planning consideration'

Part IIa allocates new statutory powers to local authorities, in terms of identifying land that meets the above definition and confers powers to the

¹ [Environmental Protection Act 1990 \(legislation.gov.uk\)](http://legislation.gov.uk)

Secretary of State to make regulations, orders, give directions and issue guidance.

Role of Newham Council

The duties of the Council are set out in Part IIa of the Environmental Protection Act, The Contaminated Land (England) Regulations 2006² and statutory guidance³ issued in April 2013 by the Department for the Environment, Food and Rural Affairs (DEFRA).

Inspection Strategy

Local authorities have a duty to inspect their area from time to time to identify statutorily 'contaminated land'. The local authority is required to take a strategic approach to the inspection of its area and to concentrate resources where the most serious problems are likely. This strategic approach needs to be ordered, rational and efficient and be proportional to the seriousness of any actual or potential risks.

The Council is required to prepare a strategy for the inspection of land in its area, ensuring that actual threats to human health and the environment are identified and dealt with. This document is the written strategy the guidance requires.

Identification of Contaminated Land

Part IIa introduces a 'contaminant- pathway -receptor' risk assessment approach to identifying and assessing contaminated land. This is also known as a 'contaminant linkage'.

Contaminant

A contaminant is a chemical which could cause harm to one of the receptors outlined below. The amount of chemical must be sufficient to cause 'harm', as per Environmental Protection Act 1990 S78A(4). The level of contamination on the site should be compared with the 'normal' levels of that contamination in the area. Land will not have a contamination linkage unless contamination levels of the contaminant are above what is usual in the area.

Receptor

Risks should only be considered against the 'current use of land'. This is the use assigned to it by planning consent or what the land may informally be used for. Any contamination on this land must be considered against the following categories:

- human health;
- ecology, specifically Sites of Special Scientific Interest, national nature reserve; marine nature reserve; area of special protection for birds; a 'European Site'; a site with protection under PPS9 or a nature reserve. There are no sites with these designations in Newham; or

² [The Contaminated Land \(England\) Regulations 2006 \(legislation.gov.uk\)](http://legislation.gov.uk)

³ [Environmental Protection Act 1990: Part 2A - Contaminated Land Statutory Guidance \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

- property in the form of crops, livestock, or buildings.

Pathway

Whilst both a significant source of contamination may be on the site and the current land use has one of the specified receptors on it, the land cannot be contaminated under Part IIa unless there is a pathway which links the contaminant and the receptor. In effect there needs to be a route to allow the contaminant to get to the receptor in sufficient quantity to cause harm. For instance, a house with a garden where the soil is contaminated is likely to have a pathway, i.e. children playing in the garden or the consumption of home-grown vegetables. Conversely the same site, but with a flat without a garden built on it, is unlikely to have a significant contamination linkage (SCL).

Categories of Harm

Once a contaminant linkage has been established, the Council needs to decide whether the linkage is 'significant'. Statutory guidance has identified four categories of possible contamination:

- Category 1 - a high probability that harm would occur if no action was taken
- Category 2 - there is a strong case that there is a significant possibility of significant harm and that the benefits of remediating the site outweigh the potential risks of remediation
- Category 3 - there is not a strong case that a significant possibility of significant harm exists
- Category 4 - a low probability of risk

To be able to carry out the risk-based assessment of contaminant-receptor-pathway, information is required from:

- historical records,
- existing site investigation information,
- historical and current Ordnance Survey maps,
- the properties of underlying geology and hydrogeology,
- the proximity of receptors.

Role of the Environment Agency

If the Council believes the site may be 'contaminated land', the Council must determine whether the land constitutes a 'special site' as defined in Regulation 2 of the Contaminated Land (England) Regulations 2006. If the site meets the definition of a 'special site', arrangements must be made with the Environment Agency to carry out the inspection of the land on behalf of the local authority. The Environment Agency will undertake the inspection of the land and provide a report to the Council. The Council shall use the report to decide whether to declare the site as 'contaminated land'.

Determination of 'Contaminated Land'

Where a site meets the definition of 'contaminated land' the Council is required to make a formal determination that the land is contaminated.

If a site has been identified as a special site the Environment Agency becomes the

enforcing authority.

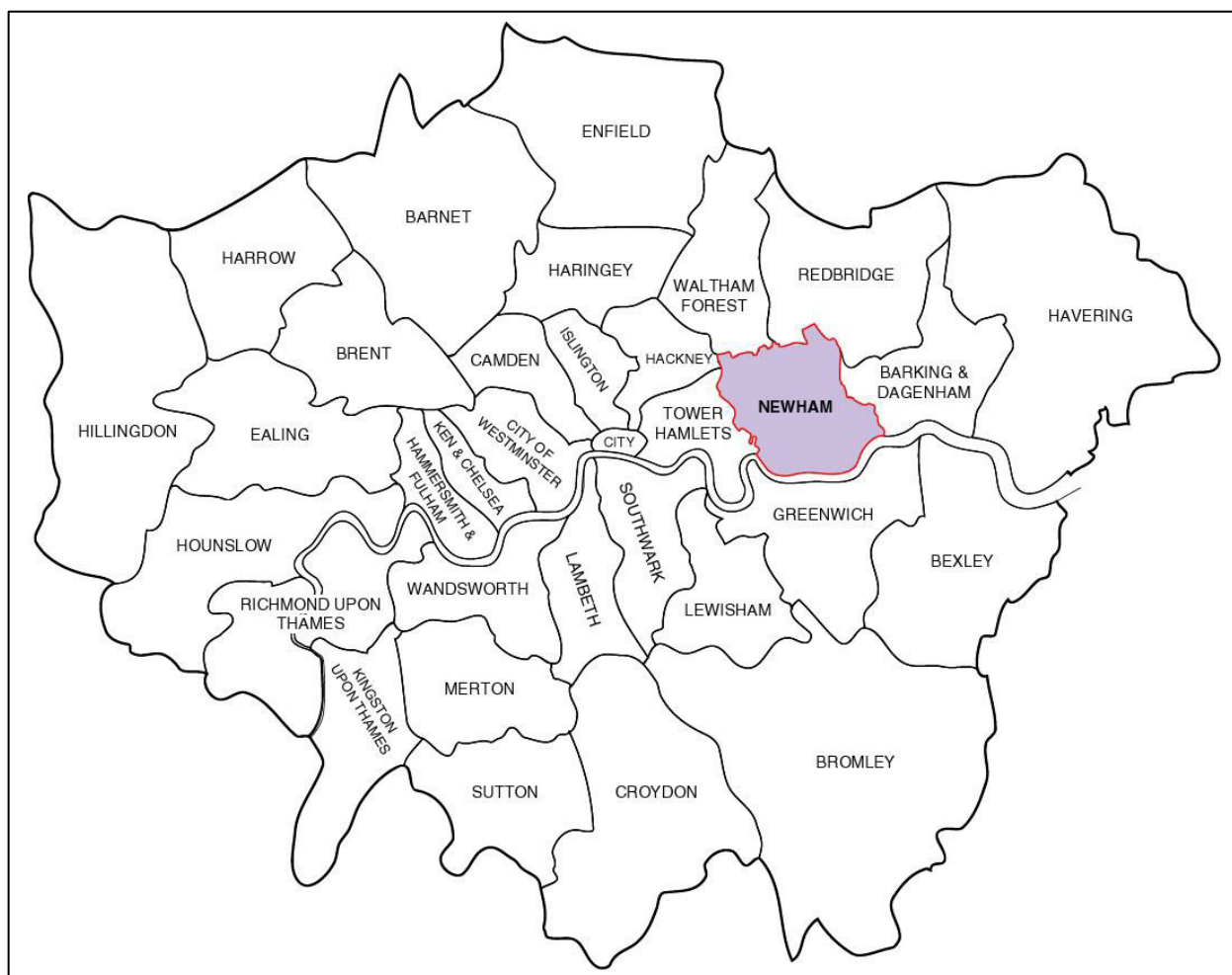
Where this land is not determined to be a special site the Council retains control. The Council must then notify the owners, occupiers, the Environment Agency and the 'appropriate persons'. See Contaminated Land Statutory Guidance for a definition of 'appropriate persons'.

Where land is deemed 'contaminated land' under Part IIa of the Environmental Protection Act, a 'remediation notice' shall be served on the relevant 'appropriate persons' under Section 78F of the Act.

London Borough of Newham – Description of the Borough

London Borough of Newham is located at the heart of East London, where the Lea Valley, the M11 motorway and the East Thames Corridor converge. The Borough is bordered by the A406 in the east and north, the River Thames in the south, the River Lea to the west and the River Roding to the east (Figure 1).

Figure 1: Location of London Borough of Newham



Newham covers an area of 3,637 hectares and has a population size of over 364,000 which is expected to grow to 462,000 by 2050⁴.

Heavy industry in the form of gasworks, chemical works, tanneries, dye works,

⁴ [Newham Info – Welcome to Newham Info](#)

paint works, colour works, distilleries, railways and docks, combined with domestic refuse tipping, has left Newham with a legacy of land and water contamination. The majority of this affected land and associated groundwater, is located adjacent to the River Lea Valley and south of the A13. A legacy of developments by gas, water and electricity utilities, combined with heavy industry and heavy port and railway functions, World War II bombing and the post-war demise of the industrial base has created a complex pattern of land contamination with areas of vacant, derelict and under-utilised land.

Strategic and Detailed Inspection

Newham's contaminated land strategy is based on the principles below:

1. Provision of contaminated land information to developers on request.
2. A review of all planning applications where the application involves works to the ground on the site. See below for further details.
3. Identification of sites where there is a potential source-pathway-receptor relationship.
4. Inspection of the highest risk sites.
5. Investigation of public complaints.
6. Local Land Charges.

1. Provision of information

Newham maintains a geographical information system (GIS), on which environmental information is recorded. The data sets relating to contaminated land are:

- Summary of contaminated land reports received by the Council, with full electronic copies of the reports where available
- Historical Ordnance Survey maps based on the 'County Series' (pre-WW2) and the National Grid Series (post-WW2)
- Land use data identifying potentially contaminative land
- Ground gas susceptibility
- Unexploded bombs
- UXB high risk areas
- Waste sites
- Landfill sites
- Sites with Environmental Permits
- Sites declared 'contaminated land'
- Environment Agency source protection zones

This information is made available to developers and consultants, either as copies of the contaminated land reports or as an environmental report based on a development site. A fee based on Newham's 'fees and charges' scheme is payable.

An opinion as to whether a particular site is on the Council's prioritisation list under Part IIa is provided without charge.

2. Review of planning applications

The vast majority of contaminated land in the borough is dealt with through the development control process. The National Planning Policy Framework places

a duty on a developer to secure the safe development of the site. Newham's Local Plan Policy SC1 and emerging Local Plan Policy CE1 require the remediation of contaminated land.

Development Control consult the Pollution Control Team on most planning applications that involve contact with the soil. Any contaminated land information submitted with an application is reviewed. Where there is no contaminated land information provided the development is assessed using the Council's GIS system, to see whether land contamination is an issue. If it is thought appropriate a recommendation is made to place a contamination condition on any permitted development. The condition is based on the requirements set out in Government guidance: Land contamination: risk management⁵

3. Identification of potential source-pathway-receptor relationship

A. Ecological Receptors

'Ecological receptors' as set out in the statutory guidance, therefore there is no source-pathway-receptor relationship for this category.

B. Controlled Water

Surface Water. Whilst the borough is bounded on three sides by rivers: the Lea, the Thames and the Roding, all have hard, embanked sides. It is therefore deemed unlikely that even if a significant contamination source was next to a river, the likelihood of significant pollution to the watercourse would be low.

Groundwater. Whilst the entire borough is underlaid by a significant aquifer (the Upper Chalk), save for the extreme southeast corner, the Chalk is overlain by London Clay which is an aquiclude. There are a number of boreholes for the public water supply in the borough, each with its own source protection zone. When planning applications are proposed for developments in areas of the borough not covered by the London Clay and in the source protection zones, the Pollution Control Team recommend that the Environment Agency is consulted and any recommendations from the Agency are included in any planning consent.

C. Human Health

The GIS system contains comprehensive information on previous land use that could potentially lead to contamination. This information can be compared with the current land use of a site. Where the current land use is a potential receptor i.e. residential with exposed soil, then a further assessment can be made as to whether there is a potential pathway. Should the GIS show that contamination has been addressed at the planning stage, then it is assumed that the development has met the test in the National Planning Policy Framework and that a significant risk of significant harm does not exist.

A list of sites where a residential development was placed on a potentially contaminated site was drawn up. No further investigation has been made owing to insufficient staff resources.

D. Property

This includes crops (including home grown crops), animals (domestic or farm) or game animals. All allotment sites in Newham have already been

⁵ [Land contamination risk management \(LCRM\) - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

investigated and have not found to contain significant pollutant linkages. Potential risks from home grown produce are assessed under the 'human health' receptor above.

4. Investigation of the highest risk sites

Given that ingestion of contaminated soil via the consumption of home-grown produce was the highest risk, a survey was carried out on all the allotments in the borough. None of the samples taken showed significant levels of contamination.

5. Public complaint

There has been one complaint from the public that led to an investigation. This revealed there was a significant risk of significant harm. The developer subsequently remediated the site.

6. Local Land Charges

Procedures are in place to ensure that enquiries from prospective purchasers of land in Newham are accurately informed of any legal notices served regarding contaminated land or whether the site features on the contaminated land register.