

Contaminated Land Strategy Addendum 2015 (Part 2A: Environmental Protection Act 1990)

With respect to funding of Contaminated Land Investigations and Remediation, Defra stated on 14th January 2014:

“Funding to support local authorities in fulfilling their statutory duty to seek out potentially contaminated land in their area under Part 2A of the 1990 Environmental Protection Act will remain in the form of the Revenue Support Grant.

We anticipate that the changes to the Statutory Guidance, together with the new tools developed by Defra and provision of the Revenue Support Grant, will ensure that potentially contaminated sites will continue to be investigated and remediated where necessary. Contingency funding of £0.5m will be made available, subject to internal budget clearance, for emergency cases and ongoing remediation projects. Details of any qualifying criteria for accessing this fund will be announced shortly.”

Lord de Mauley, DEFRA Minister also announced:

“DEFRA will no longer be supporting the cost of investigating and remediating contaminated land under Part 2A through the Contaminated Land Capital Grants Scheme’.

The Chartered Institute of Environmental Health principal policy officer Howard Price quoted:

“But without financial support from the government, local authorities cannot even identify them, let alone ensure they are cleaned-up. The Government’s move, at a stroke, effectively negates the statutory duty given to councils by Parliament.”

Therefore if available, the grant from DEFRA will help fund emergency cases or enable the continued remediation of contaminated land sites which are the highest priority. These sites will have already experienced significant levels of investment in terms of time and money for site investigation to determine that they are contaminated land under the provisions of Part IIA of the Environmental Protection Act 1990.

The costs involved in undertaking a full contaminated land investigation and remediation are significant. Depending on the size and complexity of the site and the amount of remediation required, such costs will range from approximately £20,000 to £1,000,000. With the changes in funding, such costs would now fall entirely to the Local Authority except perhaps for emergency cases and even then, any financial help from DEFRA is subject to internal budget clearance and the funds may simply not be available. These reductions in funding have also occurred at a time of significant cuts to Local Authority Budgets which are predicted to continue for the next four years. It is predicted that Brighton and Hove City Council will need to undertake savings of approximately £25 million each year for the next four years.

Whilst in theory costs for Contaminated Land Investigations and Remediation may be recovered from the appropriate person at a later stage this is not simple or guaranteed. Any attempts to recover costs would occur: after a site has been determined as contaminated land; where either a Class A person (caused or allowed the contamination) or a Class B person (currently own or use the land) has been identified; after a remediation notice has been served and when the required remediation has been undertaken by the Local Authority. Additionally, recent guidance from DEFRA outlines many instances where recovery costs should be waived or reduced.

Therefore to summarise, there is effectively no central government funding available for new contaminated land site investigations and remediation of contaminated land sites except perhaps in absolute emergency cases.

There are also increasingly limited resources available within Local Authorities, including Brighton and Hove City Council to pay for contaminated land investigations and remediation of such sites in advance of any attempts to recover such costs. Additionally, it is unlikely that any costs involved in such work would be recoverable.

Whilst Brighton and Hove City Council will fulfil their duty to investigate potentially contaminated land under Part IIA of the Environmental Protection Act 1990, such investigations will now be extremely limited. It is likely that for future contaminated land investigations and remediation, the responsibility to fund the majority of such work will fall on the land owner and their insurance companies.