



Land Forum Meeting

30th January 2014 Meeting Notes
Location: Defra, Noble House, 17 Smith Square, London SW1P 3JR
11am – 4.00pm

FINAL

Present:

Seamus Lefroy Brooks (<i>Chair</i>)	
Nicola Harries (<i>Secretariat</i>)	Contaminated Land: Applications In Real Environments (CL:AIRE)
David Middleton	Defra
Morwenna Carrington	Defra (part of meeting only)
Trevor Howard	Environment Agency
Simon Firth	Society of Brownfield Risk Assessment (SoBRA)
Frank Evans	The Soil and Groundwater Technology Association (SAGTA)
Howard Price	Chartered Institute of Environmental Health (CIEH)
Stella Keenan	Leeds Council
Chris Taylor	Brent Council
Richard Boyle	Homes and Communities Agency (HCA) and Voluntary Contaminated Land Fora
Euan Hall	Land Trust (LT)
Peter Witherington	Home Builders Federation (HBF)
Lisa Hathway	National House Building Council (NHBC)

By telephone:

Matthew Llewellyn	Natural Resources Wales
Paul Sheehan	Environmental Industries Commission (EIC)

Apologies:

Julia Thrift	Town and Country Planning Association (TCPA)
Tim Elliott	Royal Institute of Chartered Surveyors (RICS)
Phil Crowcroft,	Specialist in Land Condition Register (SiLC)
Stephen Moreby	Gloucester City Council
Theresa Kearney	Environment Agency, Northern Ireland
Caroline Thornton	Scottish Environment Protection Agency (SEPA)
Peter Johnson	UK Contractors Group
Nicky Linihan	Planning Officers Society
Andrew Wiseman	UK Environmental Law Association (UKELA) and Environmental Protection UK (EPUK)
Helen Keen	Communities and Local Government (CLG)
Richard Clark	Welsh Government
Rob Ivens	Mole Valley Council
Mark Edwards	Lancaster Council
Trystan James	Natural Resources Wales

Agenda

1. Welcome and Apologies
2. Introductions of represented organisations
3. Review of Terms of Reference (annually)
4. Review of Previous Actions
5. Future Direction of Land Forum
6. Update from Defra Soil and Contaminated Land Team
7. Update from Environment Agency
8. Discussion Topic - Permitted Development Rights
9. Discussion Topic - Raising the profile of Land Contamination in development planning
10. Discussion Topic – Industry Code or Protocol for Land Contamination Work?
11. Date of Next Meeting

Meeting Notes

1) Welcome & Apologies

Seamus Lefroy Brooks welcomed everyone and apologies were given.

2) Introductions of represented organisations

Introductions were performed around the table.

3) Review of Terms of Reference

An annual review of the terms of reference was performed. It was agreed that it was still fit for purpose however the new members details need to be updated. NH to contact the new organisations for their details.

Action : NH

NH informed the attendees that EIC had put forward Paul Sheehan as a possible candidate for Deputy Chair of the Land Forum. No other candidates were nominated therefore it was agreed that Paul was nominated the Deputy Chair.

4) Review of Previous Actions

Euan Hall (EH) has requested from Durham University whether he was able to circulate information on measuring social costs relating to brownfield.

Action : EH

5) Future Direction of Land Forum

SLB outlined his thoughts on the future direction of the Land Forum. He highlighted that the forum now has a very wide reaching group including UK wide regulators, government departments and industry groups that covers not just contaminated land under Part 2A but also land development. The forum will collect issues put forward by the members and look to prioritise them for discussion and working through how these issues can be addressed as a group. It is important that the group is seen to be active and deliver on issues that industry has flagged as problems. NH and SLB will collate the issues put forward so far and circulate.

Action : NH & SLB

6) Update from Defra Soil and Contaminated Land Team

Morwenna Carrington (MC) updated the forum on the topics that were currently of interest to the soil and contaminated land team at Defra. This included:

Proposed EU Soil Framework Directive (SFD) – As far as Defra was aware there has been no movement forward with the possible implementation of the SFD. It is understood that, following their elections, Germany is still not in favour of its implementation so the blocking minority is still in place and it is not on the formal agenda during the current Greek Presidency. The European Parliament elections in May and elections for senior posts within the commission this summer will cause further delays. MC confirmed that even though it is unlikely that the SFD will be implemented in the near future, Defra is continuing to update its analysis of the potential costs and benefits of the Common Forum's alternative text proposal for the UK. She understands that the commission are still keen to revisit.

Staff changes – MC confirmed that the new Deputy Director within Defra responsible for Sustainable Land and Soils is Mike Rowe.

Review of Environmental Regulations – As part of the smarter regulation initiative Defra will be migrating the “most important” guidance documents over to the .gov.uk website hub by the end of March 2014. The Defra team is currently reviewing all the guidance by initially identifying user needs, which will identify which guidance needs to be migrated. The different types of user that Defra has identified are very broad and include regulators, developers, consultants, contractors etc. Defra is working closely with the EA and Natural England on this..

State of Contaminated Land Survey (R & D Project) – The project was awarded to Cranfield University with support from CL:AIRE and a number of independent consultants. Questionnaires went out to all local authorities in England and Wales and stakeholder groups on 27th January 2014, recipients have 5 weeks to complete. The survey for the local authorities will provide data for the Environment Agency to use to issue an updated the State of Contaminated Land report later in the year.

Publication of SP1004 ‘International Processes for Identification and Remediation of Contaminated Land’ (R & D Project) – The project report for this piece of research will be published on the Defra website in early February 2014.

POST MEETING NOTE: The link to download the document is:

<http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=16289#RelatedDocuments>

Category 4 Screening Levels (R & D Project) – Defra are continuing to prepare a submission to the Minister. The aim is to publish the final research report with a companion policy document in quarter 1 of 2014.

ISO Standard 11074 for Soil Quality Vocabulary – MC highlighted that she had been made aware by the Common Forum of this standard being developed and asked if any other Land Forum members were aware as the voting deadline was 5th February 2014.

There was then a lengthy discussion that other forum members were aware of other ISO standards and CEN standards being developed that could impact on the Land Forum member organisations such as “CEN Workshop 74 "Glossary of Terms for Holistic

Management of Brownfield Regeneration” which Euan Hall (EH) was recently made aware of. He will keep the Land Forum informed of this.

ACTION:

Euan Hall

It was agreed that there needs to be a better way of tracking the development of the standards to allow the opportunity to influence the direction of travel they take. Would it be appropriate for the Land Forum to have a standards sub group to make it their responsibility to flag ones that may impact the Land Forum member organisations? There was uncertainty on the mechanisms of the development of the different ISO and CEN standards and therefore it was agreed for the next Land Forum meeting to invite Mike Smith to present on the work of the BSI EH4 – Soil Quality Committee, and to make suggestions how the Land Forum can better track the development of these standards in a timely manner. NH to contact Mike Smith to invite to the next Land Forum meeting.

ACTION:

Nicola Harries(NH)

UN 2015 International Year of Soil - MC wished to make the Land Forum aware that a UN resolution has been passed that designates 2015 as the International Year of Soil. This may raise the profile of soil protection and be used by the Commission (and others) to push the EU Soil Framework Directive agenda.

G8: Russia has the presidency of the G8 in 2014 and has indicated that it is keen to raise the profile of soil and the impact it has on food security and land use. Early indications are that this will be linked to the Rio +20 sustainable development goal for a ‘Land Degradation Neutral World’.

Shale Gas and Fracking: MC informed the Land Forum that shale gas and fracking are an important government initiative. It is envisaged that fracking for shale gas will be adequately covered by existing regulations (including Environmental Permitting), the Contaminated Land team responsible for Part 2A is being kept informed of developments.

7) Update from Environment Agency

Trevor Howard (TH) provided an update of the work of the Environment Agency (EA).

State of Contaminated Land Report – The EA will be writing up the results that will have been gathered by the Defra funded work.

EA re-organisation – TH confirmed that there was going to be a reorganisation within the EA and it was thought that 1500 posts were under threat. They are currently in the process of developing the new structure. Once this is finalised TH will be able to explain where contaminated land will sit.

POST MEETING NOTE:

It is understood that due to all the recent flooding and publicity about the loss of a further 1500 posts within the EA, the number of posts under threat are now being reassessed.

Review of Guidance Documents – TH explained that the EA like Defra are currently reviewing the guidance documents for transfer to the .gov.uk website. There is a risk that a number of the older documents that industry still like to access will no longer be hosted by the EA section of the .gov.uk website as they have not been updated recently and the EA is limited on the number of documents that they can take over. For example

documents such as Guiding Principles. The EA are trying to currently find some resources to be able to update these documents.

It would be very helpful for the Land Forum members to highlight which documents that they find of most use that currently reside on the EA website.

ACTION:

ALL

Guidance on Significant Pollution with respect to groundwater in relation to Part 2A sites – TH confirmed it is still the EA intention to produce guidance to support local authorities on what is significant pollution in relation to Part 2A sites. It is hoped that a draft will be issued in April for consultation. This will link directly to the Contaminated Land Statutory Guidance 2012.

Preplanning Advice – TH was aware of industry discussions about the EA now charging for preplanning advice. He confirmed that details are currently not on the EA website due to the transition period to .gov.uk, but it is available at regional offices where it is being led from through the Sustainable Places Team. Charging is going to be rolled out nationally in April 2014. TH agreed to circulate the details to the Land Forum.

ACTION:

TH

Matthew Llewellyn (ML) of Natural Resources Wales confirmed that at present there were no plans to charge for preplanning advice in Wales.

8) Discussion Topic – Permitted Development Rights

Chris Taylor (CT) led the discussion on issues that he sees with permitted development rights from a local authority perspective. Currently most applications from developers are changing properties from class J to B3 dwelling. The difficulty that his local authority is facing is that the developers not necessarily want to clean up a site before they get prior approval as it costs them money. Also it is not possible to put conditions on prior approval developments. Therefore it is difficult to keep track if contamination has been addressed.

Stella Keenan (SK) explained that new permitted development rights in the latest amendments to Part 3 of the GDO (SI 2013 No.1101) allow certain changes of use to take place but apparently require the same consideration of contaminated land risks as though a planning application had been submitted. However there is no capability built into the procedure to allow this to happen. It would appear that the council is obliged to allow prior approval of applications to change the use in these categories with respect to contamination and unless it makes a determination of Contaminated Land it is unable to withhold approval on this ground. However it is in absolutely no position to be able to make a determination, due to the paucity or absence of information. It therefore runs the risk of approving a change of use where there is an enhanced risk to the new occupants. The council also runs the risk of being liable for clean up costs if the property is at any date later determined as Contaminated Land.

POST MEETING NOTE: SK's manager, Max Rathmell, to write to CLG to present the issue more fully.

It was agreed that land that might be contaminated needs extra guidance in the NPPF and that planning authorities need a clearer understanding that potential contamination needs to be considered.

It was acknowledged that Building Regulations also play a part, but contamination again is not always considered.

Permitted development does not take into consideration noise and air which it was felt was wrong, therefore there was a real risk of low quality housing being developed.

It was agreed that further clarification is needed from CLG particularly through the Planning Portal on land contamination issues to be addressed through permitted development.

ACTION:

CLG

9) Discussion Topic - Raising the profile of Land Contamination in Development & Planning

There was concern by the Land Forum members that the development and planning communities do not consider land contamination enough. For example trees, light impact, endangered species, energy assessment, geotechnical conditions etc etc are all regularly considered by planners and developers at the outset of a project but not always a site investigation that addresses land contamination. Why is this the case? It was felt that an awareness raising exercise needs to be undertaken amongst Royal Institute of Chartered Surveyors (RICS), Royal Town Planning Institute (RTPI) and Planning Officers Group would be a good start.

The Planning Portal to support the NPPF refers to Land Remediation however this is seen as the wrong title. Land Remediation refers to mitigation once a problem has been identified. Suggested alternative names were: Land Contamination Assessment and Management, Land Contamination or Land affected by contamination. A desk study is referred to in the NPPF, therefore this should be a minimum requirement for all planning applications associated with developments with this message sent out to RICS, RTPI and POS to their members as a minimum. Further guidance needs to be developed in simplistic terms to identify what is considered minimum good practice ie following EA Guiding Principles or CLR11. Local Authorities planning departments need support in this area to allow them to reject poor quality planning applications early on.

Should there be initial Land Contamination Assessment national validation criteria in place for all planning applications which could be made very simply and clearly available via the Planning Portal ? Such criteria are required by Liverpool City Council and they have seen a marked improvement in the quality of planning submissions with respect to land contamination issues. NH to follow up with CLG, RICS, RTPI & POS with support of Land Forum members.

ACTION:

NH, CLG, RICS, RTPI & POS

It was acknowledged that developers need certainty to satisfy their funders. Therefore the work that Defra has funded to help provide more certainty particularly with respect to background levels and C4SL needs to be embraced by CLG. It would help the development industry greatly if a clear statement could be made by CLG that the C4SLs are compatible with the NPPF and therefore could be considered acceptable for planning. This was also suggested in the Defra Remediation Impact Assessment on the 2012 Statutory Guidance that this would be the case and it would then show that the two regimes (Planning and Part 2A) can work together. NH to contact CLG.

ACTION:

NH & CLG

10) Discussion Topic – Industry Code or Protocol for Land Contamination Work?

Should industry look at developing an industry code or protocol for land contamination work? Should there be a voluntary code similar to the Definition of Waste: Development

industry Code of Practice for land contamination work? However, because this could be seen as industry looking for self-regulation this is not something that would be an acceptable agenda for the Land Forum members as a whole.

Simon Firth (SF) explained that SoBRA members had recently completed a questionnaire looking at whether there was an appetite for SoBRA to have an accreditation scheme for their members, which would focus on toxicological risk assessment only. From the feedback that they had received the message was mixed, but 80% of their members were positive for some form of industry accreditation scheme.

However how would this scheme sit alongside other schemes such as SILC?
It is important that any scheme is not set up in isolation so it is great that SiLC and SoBRA are in discussion over the matter. It is possible that there will need to be a number of separate accreditation schemes to collectively encompass the overall range of activities required for land contamination management.

The Land Forum attendees were reminded that a potential accreditation had been discussed at previous Land Forum meetings and a Land Condition Skills Development Framework had already been developed both by HCA and CL:AIRE in the past, and had also been considered by SAGTA. There is a lot of good work that has already gone into the development of the Skills Development Framework so this must not be lost. What gets developed now needs to be good for the whole community, both industry and regulators, and covers all necessary aspects of technical development.

There seemed to be overall support for considering the application of the Land Condition Skills Development Framework in developing an overall protocol for the industry.

The overarching challenge is the driver for such a scheme. What does the brownfield community want? They want confidence that the person that has undertaken the work is competent in his/her work. The only way it would work is if all groups represented at the Land Forum came together.

It was agreed that the Local Authorities are key as they need to be content that the person that has undertaken the work is a competent person. So what would satisfy the Local Authorities?

What is an appropriately qualified competent person that meets the NPPF and Part 2A?

Years of experience cannot be stated due to diversity and equality regulations.

Could the Land Forum come up with a statement that they all agree on that would satisfy the LA minimum criteria?

The way the EA has embraced the concept for low risk sites is that they have provided standing advice. However if regulatory resources continue to be reduced what can be put in place from industry that the regulator also agrees to? If a "competent" person has signed off a report could this assist the regulator?

Can the Land Forum create a framework for accreditation that all are content with?
There was support in the Land Forum revisiting a professional standards sub group to look at developing a robust framework for accreditation that all buy into.

ACTION:

ALL

A scheme needs to look at the process based mechanisms that are already in place and focus on the drivers of such a scheme. It needs to be driven by industry and regulators

together. It must look to improve professional standards, provide greater certainty which will provide time saving which will save costs.

It is important that the ultimate aim is set out but to also identify small tangible deliverables to keep the momentum going.

It was agreed to circulate the Brownfields Skills Framework, Brownfield Skills Strategy, Liverpool City Council Competency requirement to all.

The chairman proposed to follow up the meeting with an invitation to all Land Forum members to participate in a Raising Standards working group.

ACTION:

NH

11) Any other Business

Stella Keenan (SK) asked if at the next meeting if the removal of the capital grants funding could be an agenda item as she is a member of the Yorkshire Contaminated Land Forum and the local authorities in her region are very upset at its removal as there is no other funding options now available. SK asked DEFRA if they were considering any other options available for LAs to finance work and DM confirmed this was being currently looked into.

SK would also like to discuss the development of further guidance to support SPOSH.

3) Date of Next Meeting

Next meeting will be scheduled in June depending on large room availability. NH to provide details.

ACTION:

NH