

Guidance in relation to Conveyancing and Contaminated Land

This guide is for homeowners, conveyancing solicitors and people looking at buying or selling a property, where land contamination has been identified as a potential issue. It aims to provide answers to a number of 'frequently asked questions' about contamination and why it is important for homeowners. It also explains what information the Council may be able to provide in relation to it.

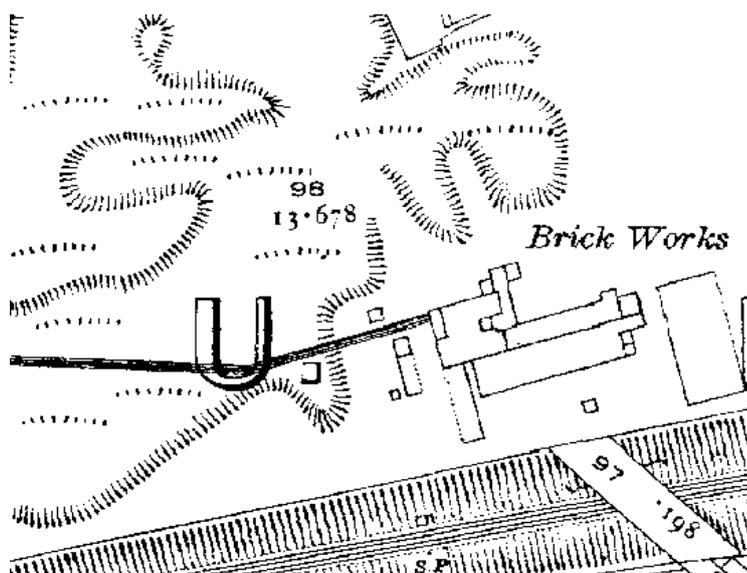
What is contaminated land?

Land contamination is a broad term used to describe land that contains substances such as heavy metals (arsenic, lead etc), oils and tars, chemical substances (solvents etc), gases, asbestos etc. These substances may cause harm to people, the natural environment and buildings. However, the presence of contamination does not necessarily mean that there is a problem. In many cases land that is affected by contamination may still be suitable for its current use.

In some instances, land may be affected by contamination to such an extent that it is statutory 'Contaminated Land' as defined by Part IIA of the Environmental Protection Act 1990. This is land that presents an unacceptable risk to human health or the wider environment.

How does land become contaminated?

Land contamination may occur naturally or can be associated with the previous use(s) of the site. Tameside has a long industrial history. This means that many areas of the borough have previously been used for industrial activities including mining, textile and dye works, chemical manufacturing, heavy engineering and gas production etc. These industries often used and produced (as by-products or waste) substances which are contaminants. In the past, industry was less well regulated and as a result, these substances may have found their way into the ground as a result of leaks and spillages etc. Because these substances can remain in the ground for many years, they may still be present long after the industries have gone.



Tameside also has a number of old landfills, reservoirs, ponds, quarries and brickfields that have previously been infilled. In some cases, this was to level the ground for development. Historically, the landfilling of waste was also less well regulated and as a result, land contamination may have occurred because of these activities.

Why are houses built on industrial sites?

As industrial manufacturing has declined and the demand for housing has increased, so much of the old industrial land has been redeveloped for residential use.

Nowadays, the Council requires developers to appropriately investigate and where necessary, deal with any contamination through the planning process during the development of sites. However, previously there was not the same awareness of contamination issues as there is today. This means that there are some instances, particularly where housing was built before 2000 (when Part IIA was introduced), where the presence of contamination may not have been considered or appropriately managed. In these circumstances, there is the potential for contamination to remain.

What are the risks associated with land contamination?

In most cases, the risks associated with living on, or near to land that has a former industrial use will be low. Indeed, many of these sites have been successfully and safely developed for residential housing.

In some circumstances, the perception of contamination, rather than the actual risk to human health and the environment, can effectively blight property and make it difficult to sell. Therefore, it is worth taking the time to appropriately research potential contamination issues when you buy a property.

In a few circumstances, sites are so contaminated that they present an unacceptable risk to human health, the natural environment or buildings. In these cases, the effects will depend on many factors such as the type and amount of contaminant present, environmental conditions and the length and type of exposure.

What is the Council doing to deal with contaminated land?

In addition to ensuring that any land contamination issues are dealt with through the planning process during the development of sites, the Council also has responsibilities under Part IIA of the Environmental Protection Act 1990. This Act was introduced in England in 2000 and requires all Local Authorities to inspect their areas and identify any contaminated land. The Council has written a strategy on how this is to be achieved in Tameside called the Contaminated Land Inspection Strategy. This is available, free of charge, from the Council's website (www.tameside.gov.uk).

In practice, Part IIA of the EPA 1990 gives the Council powers to determine sites as 'contaminated land'. There is a strict legal definition of contaminated land which is complicated; this explains that land is only considered to be contaminated land if;

- a) *Significant harm is being caused or there is significant possibility of such harm being caused, or*
- b) *Significant pollution of controlled waters is being caused, or there is a significant possibility of such pollution being caused.*

This means that not all land where contamination is present is Contaminated Land. In fact, very little is!

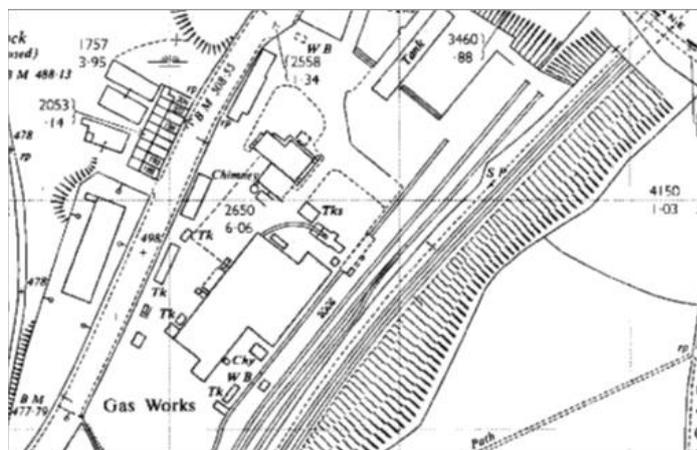
Who is responsible for the cost of cleaning up land contamination?

Where land is being developed through the planning process, the developer is responsible for ensuring that any contamination issues are investigated and appropriately dealt with during the development of the site.

For sites that are being investigated under Part IIA of the Environmental Protection Act 1990, identifying the person(s) responsible for the cost of cleaning up land is a complex process. Generally, it is the responsibility of the polluter, or those that may otherwise have been negligent in some way, to bear the costs. However, if this person(s) cannot be found then the current land owner may be liable.

What is an environmental search?

The introduction of Part IIA has resulted in an increased awareness amongst mortgage lenders of the importance of land contamination and potential financial liabilities associated with it. As a result, it has become much more common for solicitors to undertake environmental searches in order to identify any potential contamination issues that may affect the property being offered for sale. These searches are often supplied by commercial organisations and are usually aimed at identifying whether the property is, or may in the future be, determined as statutory contaminated land by the Council.



The consequences of the Council determining the land or property you own as contaminated land could mean that you are liable for the clean-up costs. The concern from mortgage companies is that if the mortgagee defaults on repayments and the lender repossess the property, they may be left liable for the costs.

In order to determine the likelihood that the property is, or may be, declared contaminated land, the company will usually check their records, including historical mapping, to establish the previous use(s) of the land. Where the property is found to be on, or near to, land with a potentially contaminating past or current use, the company will usually withhold a certificate and recommend that further information is obtained from the Council. Alternatively, where no such use(s) are identified the search company will usually issue a certificate.

Does a certificate mean my property is not on Contaminated Land?

No, a certificate is not a guarantee that the property is not on contaminated land. It is simply a statement from the search company confirming that based on a review of their records no obvious contaminating uses have been identified for the property or land in question.

The Council is responsible for making decisions on what constitutes statutory contaminated land in Tameside, not the search company. The 'certificates' issued by environmental companies therefore have no standing in Tameside and the possession of a certificate from such a company does not exclude any property from the possibility of being inspected by the Council under Part IIA nor does it guarantee that the property will not be determined as statutory contaminated land.

The environmental search company won't issue a certificate. What should I do?

Firstly, it is important to remember that environmental searches are based on paper records such as old maps and registers and do not consider any actual physical site data (e.g. soil test results etc). Therefore, the refusal of the search company to issue a certificate does not necessarily mean that the land is contaminated. It simply means that based on the previous use(s) of the site or surrounding area, the search company considers there is the potential for contamination to be present and more detailed information is required.

Tameside MBC is responsible for making decisions on what constitutes statutory contaminated land in Tameside, not search the company. Therefore, the failure to obtain a certificate does not mean that the property will be determined as statutory contaminated land by the Council.

In situations where a certificate has not been issued, it is advisable to contact the Council's Contaminated Land Team to see whether we can provide any further information about the property and the risks that might be involved. We hold a variety of information which may be more detailed than that provided by a search company. This information may include details of previous land uses and old landfills and in some cases ground investigation (e.g. soil testing) and remediation reports. We can provide written responses to requests for information about contamination issues at a property and factual site-specific data can be made available on request. Please see the Council's Environmental Searches document for further details.

You may also wish to make enquiries with the developer of the site or property. In particular, the original builder may hold information on any contamination found and/or remediation undertaken during the development of the site. If the property was built after April 1999 then the National House Builders Council (NHBC) may also have information on contamination, or may have provided a warranty against contamination.

A number of insurers offer indemnity insurance policies in relation to land contamination and this may also be something that you wish to look into.

Can I undertake my own soil sampling to assist in my house sale / purchase?

In the absence of any site investigation reports etc, one option available to householders is to appoint an environmental consultancy to undertake a ground investigation (e.g. soil testing etc) at the site. This should provide physical site data that may help to determine if any contamination is present and if so, how much. It should be noted however that there may be significant costs involved with taking this course of action and that the decision on any subsequent action(s) will usually rest with the property owner. Furthermore, regardless of the findings of any such investigations, the Council would only make a decision on the contamination status of a site once it had carried out its own investigations as part of the Contaminated Land Inspection Strategy.



It's up to you!

Ultimately, the final decision of whether to proceed with the purchase of the property rests with the potential buyer and mortgage lender. As detailed above however, there are a number of possible contacts and resources which may provide you with the information you need to make a more informed decision.

Only after detailed inspection of a site, by the Council, will we be able to provide comment on the likelihood of a property being determined as statutory contaminated land. The Council can help you to make a more informed decision by providing factual information and explaining the legislative position. However, it should be remembered that additional information may come to light which means the site has to be re-inspected and that legislation, guidance and standards may change in future. As such, the Council cannot guarantee that a site will never be declared Contaminated Land.

Finally, the Council is unable to consider using its powers to investigate potential contamination because of a property transaction. However, if harm or a significant likelihood of harm to people living within or around a property is apparent then the Council would consider investigating a property and the surrounding area.

Further Reading

- Tameside MBC, Contaminated Land; An Inspection Strategy for Tameside. As Required by Part IIA of the Environmental Protection Act 1990.
- Department for Environment, Food and Rural Affairs, April 2012, Environmental Protection Act 1990: Part IIA. Contaminated Land Statutory Guidance.
- Department of Energy and Climate Change. April 2012. Environmental Protection Act 1990: Part IIA. Radioactive Contaminated Land Statutory Guidance.

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