

Land Forum Meeting

25th November 2014



Meeting Notes

Location: ERM Offices, 2nd Floor, Exchequer Court, 33 St Mary Axe, London EC3A 8AA

11.00am – 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
Maggie Charnley	Defra
Matthew Whitehead	Environment Agency
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) (part of meeting only)
Chris Taylor	Brent Council
Julia Thrift	Town and Country Planning Association (TCPA)
Phil Crowcroft	Specialist in Land Condition Register (SiLC)
Euan Hall	Land Trust (LT)
Lisa Hathway	National House Building Council (NHBC)
Nick Marks	Environmental Protection UK (EPUK)
Paul Sheehan	Environmental Industries Commission (EIC)
Peter Witherington	Home Builders Federation (HBF)
Max Rathmell	Leeds City Council

By telephone:

Matthew Llewellyn	Natural Resources Wales
Richard Clark	Welsh Government
Theresa Kearney	Environment Agency, Northern Ireland (part of meeting only)
Caroline Thornton	Scottish Environment Protection Agency (SEPA)

Apologies:

Richard Boyle	Homes and Communities Agency (HCA) and Voluntary Contaminated Land For a
Andrew Wiseman	UKELA & EP UK
Tim Elliott	Royal Institute of Chartered Surveyors (RICS)
Peter Johnson	UK Contractors Group/UK Strategic Forum for Construction
Nicky Linihan/John Silvester	Planning Officers Society
Peter Ellis	Communities and Local Government (CLG)
Rob Ivens	Mole Valley Council
Mark Edwards	Lancaster Council
Trystan James	Natural Resources Wales
Rachael Davies	Flintshire Council

Agenda

1. Welcome and Apologies
2. Introductions of represented organisations
3. Review of Previous minutes & actions
4. Update from Government Departments and Environment Agencies
 - Defra Soil and Contaminated Land Team
 - CLG
 - Environment Agency
 - Welsh Government & Natural Resources Wales (by phone)
 - Scottish Government & Scottish Environment Protection Agency (by phone)
 - Department of Environment Northern Ireland & Environment Agency (by phone)
5. Discussion Topic
 - Raising Standards: National Quality Mark Scheme for Land Affected by Contamination
 - Future Direction of Land Forum
6. Standards update – what's new
7. AoB
8. Date of Next Meeting

Meeting Notes

1) Welcome & Apologies

Seamus Lefroy Brooks (SL-B) welcomed everyone and apologies were given. He thanked ERM for hosting the meeting.

2) Introductions of represented organisations

Introductions were performed around the table.

3) Review of Previous Actions

All actions were completed or would be addressed by agenda items for discussion.

4) Update from Government Departments and Environment Agencies

Defra Soil and Contaminated Land Team

David Middleton (DM) updated the forum in relation to contaminated land issues in Defra. He confirmed that after CL:AIRE's Members' meeting with Lord de Mauley which highlighted the "Raising Standards" initiative that the Land Forum had been working on, Lord de Mauley spoke to Brandon Lewis (CLG Minister responsible for planning) and both were very supportive of an industry led initiative and asked to be kept in touch with progress. DM also confirmed that he had just returned from China where Lancaster and Cranfield Universities and URS gave presentations. The event was supported by the Ministry of Environment in China who are keen to visit the UK in return.

Maggie Charnley (MC) confirmed that next week Mike Quint of Environmental Health Sciences Ltd is convening a roundtable meeting on "Human Biomonitoring". The meeting will explore the ethical issues around human biomonitoring in relation to CLEA outputs. MC also confirmed that she met up with Professor Paul Bardos to discuss the EU funded

HOMBRE project that will soon be reporting its final project outputs. When she receives the details she will forward to the Land Forum.

MC also confirmed that the £0.5M capital grant allocation has all been allocated to one project due to an acute risk in relation to public health. MC confirmed that Defra will be seeking to secure a similar level of funding for the Contaminated Land Capital Grants Scheme next financial year.

Phil Crowcroft (PC) confirmed that at the recent NICOLE meeting there was a presentation given on biomonitoring which he will forward.

ACTION: PC to forward presentation on biomonitoring to MC.
ACTION: MC to forward details on HOMBRE when available.

CLG

No update provided.

Welsh Government

Richard Clark (RC) confirmed that within the Welsh Government there is a new minister (Minister for Natural Resources) who is now responsible for both contaminated land and planning. A new advisory group has recently been established and this will look at a wide range of land contamination issues including Part 2A, the planning regime and brownfield regeneration. Membership of the group includes representatives from various Welsh Government departments, local authorities, NRW, public health experts and soil quality professionals.

Data is currently being collected from local authorities to help gather information on how sites across Wales are assessed and prioritised. Discussions are also ongoing with several universities, including Cardiff University, on whether MSc and PhD projects can be developed to assist with the management of land contamination issues in Wales.

Natural Resources Wales

Matthew Llewellyn (ML) confirmed that Natural Resources Wales (NRW) has been preparing the State of Contaminated Land in Wales report and this required following up with local authorities that did not respond to the initial survey. They are hoping to have the draft completed in December 2014 with publication early next year. In addition the Welsh Contaminated Land Working Group have been organising training for Welsh contaminated land regulators and the next of these is in January 2015. ML confirmed that NRW has also fed comments into the Land Forum on the proposed Quality Mark scheme, the general comments were positive.

Department of Environment Northern Ireland & Environment Agency

Theresa Kearney (TK) gave an update on the activities of Department of Environment (DoE). She explained that there is no change on bringing Part 3 (NI equivalent to Part 2A) into force. The provisions for Part 3 are on the statute books but due to the local government reform programme coming into effect in April 2015 there is no firm timetable to bring the contaminated land regime into effect. In the meantime, contaminated sites are being mostly remediated through the planning regime.

TK confirmed that on 1 April 2015 there will be a transfer of planning function and planning staff from the Department of Environment to local councils.

In addition, the Northern Ireland draft second cycle update to its River Basin Management Plans are expected to be published in December 2014. Final updates to be published in December 2015. Also the Groundwater Hazardous Substance project has outlined its

approach for applying and setting groundwater default standards for hazardous substances. NIEA is supportive of the proposed approach which will be applicable across the UK and Ireland. Public consultation is expected later in 2015.

Scottish Government & Scottish Environment Protection Agency

Caroline Thornton (CT) explained the interaction between Scottish Government (SG) and SEPA. The Scottish Government policy contact for contaminated land used to be Francis Brewis, however sadly he passed away earlier in the year and his post has not been replaced. Neil Ritchie (Environmental Quality Division, Environment and Forestry Directorate) has therefore taken on the responsibility of contaminated land, however his remit and responsibilities are much wider. So in order to provide the Scottish Government with some specialist contaminated land input and to aid them in progressing some related workstreams', Caroline Thornton has been unofficially seconded (part time) into the Environmental Quality policy section there for the next 12 months. So she splits her time between Scottish Government and SEPA.

SG are continuing with their human health risk assessment project where they propose to provide additional guidance tools for local authorities to determine Significant Possibility of Significant Harm (SPOSH). The draft report has been circulated to the contaminated land advisory group which is made up of public and private organisations and academia. Once they have fed back, the report will then be peer reviewed. On completion a workshop will be held to help disseminate the results of the research in 2015.

CT explained that following the Regulatory Reform (Scotland) Act 2014 section 45 contaminated land and special sites, SG are preparing a short piece of guidance to support this change. It is hoped that this will help clarify what is legally contaminated land and what is a special site. SG are hoping that this guidance will be ready in 6 months.

SEPA are currently working on their draft second River Basin Management Plan which will consider land contamination.

Environment Agency

Trevor Howard (TH) explained that the Environment Agency (EA) continue to go through their national reorganisation, it is anticipated that all staff will be in their posts by December. The new structure will consist of national and area teams only, with 25% reduction in numbers of staff. Nationally – Trevor Howard and Matt Whitehead will be in post in a new "Land Management Team". Once the new structure is published, TH will share with the Land Forum.

ACTION: TH share new EA structure when available

EA continue to work on the State of Contaminated Land in England report based on the data captured by Cranfield University. It is hoped that this report will be made available by Christmas 2014.

TH explained that the government "Smarter Guidance" initiative to reduce regulatory burden on industry is continuing and all guidance relating to the theme "Development" is currently being reviewed and being decided whether it should be kept, rewritten/simplified or archived. There is a consultation out at the moment that finishes on December 12th 2014 about this and TH encourages everyone to visit the website and have their say. EA have to prioritise what to keep so it would be helpful to hear from industry what documents people find useful. TH agreed to send details of the consultation.

ACTION: TH to share consultation link

POST MEETING NOTE:

The link to the development theme proposals for the Smarter Guidance review is as follows:

<http://guidanceanddata.defra.gov.uk/development/plans-for-future-content/>

That website also provides more general information about the Smarter Guidance and Data initiative.

There was then a short discussion about what will happen to archived documents, will they still be retrievable? What status will these documents have or will they be formally withdrawn? TH was unsure at this point.

TH confirmed that documents are being reviewed on a theme basis, therefore there will be groundwater related documents that fall out of the development theme so it is important to identify all useful documents.

TH also flagged that they are currently reviewing the proposed amendments to the Water Framework Directive in relation to groundwater hazardous substances. The EA are in discussion with the UK Technical Advisory Group (UKTAG) and it is anticipated that a consultation will be prepared after the election in May 2015. Matt Whitehead (MW) explained that the consultation will be two fold. What is a hazardous substance and how to control the discharge? There will be exemptions for low level discharges but what would qualify as low level? All these points will be covered by the consultation.

TH confirmed that the full capitals grants programme money of £0.5M will be spent on one project due to an urgent acute risk situation that the EA has become aware of (as per Defra's comments).

5) Discussion Topic – Raising Standards: Industry protocol for Land Affected by Contamination – proposed scheme.

Following Land Forum members receiving two papers (draft outline of the National Quality Mark scheme and draft declaration to be signed by the Suitably Qualified Person (SQP)) a discussion was opened.

It was felt that the papers detailed how the scheme could work but more information was needed to define exactly what the scheme would look like. The sub-committee need to set out how to get the scheme off the ground and what actions now need to be taken.

There was lengthy discussion to the effect that its adoption by planners is key to the success of the scheme.

Nicola Harries (NH) confirmed that the Land Forum was working to get a better dialogue with planners and was hoping to meet a representative of the Planning Officers Society shortly.

There was general agreement that the Quality Mark scheme would be seen as a positive step for those local authorities that are struggling to cope with the land contamination issues due to lack of resources. The scheme would allow people to target their limited resources.

It was noted that some authorities were reported to deal with land contamination directly through planning as they have dedicated staff within the planning department and environmental protection/environmental health are not involved in reviewing planning applications.

It was agreed that the scheme must have penalties attached to it, so if a SQP signs off a report, and has not complied with the Code of Practice/Ethics there must be a mechanism that individuals will be reported and action taken. A robust audit and complaints procedure will be required.

Verification reporting was also felt a key area that needs to be addressed by the scheme, as at present this is an important area that often fails within the planning process because developers don't provide verification reports and then the planning department can't sign off the development.

Members were reminded that the scheme would be voluntary, and therefore local authority personnel could still scrutinise any reports. This point was agreed. For those local authorities still reasonably resourced, the scheme may not be required but for those with no or little staff reviewing land contamination issues this scheme would be of benefit.

Industry has been criticised by some parties in relation to the quality of land contamination reports being submitted to local authorities, this proposal reflects a response by industry to develop a scheme that addresses the criticisms, is practical and pragmatic and overall helpful to all.

Attendees were reminded that the scheme has not yet identified who might act as SQPs, although the SiLC register has made a case to be considered in this role. The SQP's role will be focussed upon ensuring that the project had been undertaken correctly using the agreed audit process.

It was felt important to focus on what are the drivers for the scheme; fundamentally it is trying to improve standards and quality, and to provide an assurance of quality in a regulatory system that is seeing diminishing regulator resources.

The scheme will detail what is expected of the product for sign off by the SQP but support will be required from all for the scheme to work.

TK explained that such a scheme could not work in Northern Ireland with their current regulatory regime.

There was discussion in relation to the role of the Environment Agency and their role as a statutory consultee in planning applications. The EA reiterated that in areas of greater sensitivity and higher risk, they would carry out a greater number of peer reviews. Such a scheme would allow the regulator to focus their limited resources on these higher risk or sensitive sites. The more main stream would be covered by the SQP with the EA undertaking audits. The EA will always retain power of enforcement.

Who is responsible if the SQP signs something off that proves later on to be a problem and the Local Authority relies on that information and signs things off? The SQP would sign off that the product meets the recognised standard and has followed the correct process, the onus remains with the developer for the development meeting the planning conditions. What if a substandard product is produced and LA rejects? All these issues would need to be addressed by the scheme.

Parallels to this proposed scheme were drawn to the Definition of Waste: Development Industry Code of Practice (DoW:CoP) where a Qualified Person (QP) acts on behalf of the regulator and signs off to say that the correct paperwork was in place. Those QPs at the meeting suggested that by having their individual name signing off with their professional status at risk makes them take their responsibility very seriously.

It was confirmed that the scheme will provide clear guidance of what is expected of an SQP, and the declaration that they sign will make it very clear what they are signing off.

The question was asked about smaller projects, would this scheme work? This scheme may not be appropriate for all schemes but it is hoped that people would see it as a quality mark to have and then promote the scheme even for smaller projects. People are not obliged to use the scheme, however if LA encourage its use, then it may become automatic. Market will dictate its use.

NHBC explained as the UK's leading warranty provider and Standards setting organisation within the new build residential sector, in addition to their role as an approved inspector, NHBC welcomes any initiatives aimed at raising standards. Although they recognise the significant progress made with the development of the National Quality Mark Scheme, they would not rely solely on this to demonstrate compliance.

There was discussion that the developer is paying the consultant to act as the SQP, is there a conflict here? Should this person be totally independent and not involved in the project? It was felt that the SQP would need to have an overarching understanding of the project but perhaps not be directly working on the project.

CIEH did not feel convinced that there is a need for another scheme other than SILC as they feel SILC provide the SQP role. They do not feel that there is a need to add a framework over SILC. CIEH are not however objecting in principle to the scheme.

It was acknowledged that further work is required to show how SILC and others can fit into the overall National Quality Mark Scheme.

SILC in principle supports the scheme and acknowledges that the SQP role is distinct.

It was recognised that SILCs would need to demonstrate their SQP capabilities in order to comply but it was felt that this could be a relatively straight forward process.

SILC suggested that they currently have a robust complaints and auditing process in place and could very easily add a half day training to what is required to become a SQP. Could there be an easy conversion from a SiLC to an SQP? SILC already have an established examination process. If this were possible there would be a ready-made process supported by 8 professional institutions.

SAGTA and HBF confirmed that they supported the process in principle.

The Skills Development Framework adopted by the scheme was acknowledged as an essential component that will allow SoBRA and other bodies to develop accreditation systems within the scheme.

It was recognised that the scheme now has national recognition and support and it was hoped that all members of the Land Forum would promote its use. The EA confirmed that if this system was adopted, then they would put a regulatory position statement on their website. It would explain that they acknowledge the scheme but still retain regulatory powers of enforcement.

SEPA confirmed that there was also interest in the scheme. Initial reaction has been overall support of the concept. They are suffering from limited resources so are looking at most efficient ways of regulating. Verification is always a problem for planners so if the scheme could help focus on this it could be very positive.

NRW confirmed that their feedback is broadly supportive. The point of liability had also been raised however with cut backs they felt that there was an opportunity to formalise a system that everyone could support.

Northern Ireland was making significant changes to their planning system, so this would not be a priority area at present.

It was acknowledged that all individual Local Planning Authorities would need to make their own policy statement as to the National Quality Mark. It would therefore be important that engagement with planning authorities is made to ensure that they are aware of the project.

ACTION: Max Rathmell agreed to provide contacts of planning officers in the Yorkshire and Humber Region.

Around the table, there was general support for carrying on with the project of developing the National Quality Mark scheme

ACTION: Professional Standards Sub-Group to scope up the National Quality Mark and role of SQP further. Sub-Group to meet before Christmas for main Land Forum to meet late January 2015.

It is hoped wider consultation would be planned pre April 2015.

Attendees asked if they were permitted to circulate the draft papers that were received for discussion at the meeting. It was requested that the papers were not circulated prior to the notes of this meeting. Once the notes had been finalised all papers and notes should be circulated together to demonstrate the level of discussion that has been had.

ACTION: Once finalised NH to circulate notes and papers from the meeting for wider circulation.

Future Direction of Land Forum

There was an open discussion about future discussion subjects for the Land Forum.

Should the Land Forum have a view in respect of what will replace the Soil Framework Directive?

Euan Hall (EH) remarked that he went to a conference recently on Natural Capital Initiative which he thought was an interesting concept on how to use land as a resource but still protecting resources. The event was very focussed on nature and resources which was quite different from development and human impact.

ACTION: EH to send details

Should the Land Forum discuss fracking issues or widen this to an energy debate?

ACTION: All to discuss with their industry groups/organisations what top three issues that need resolution bearing in mind it does not need to focus on land contamination as the Land Forum has very wide terms of reference.

EH prepared a think piece for the strategic role of the Land Forum suggesting a debate about "land use – away from harmful brownfield v greenfield which could paralyse development".

EH felt that there are so many myths about brownfield land v greenfield that he felt that the Land Forum had a good opportunity to open the debate. He felt that there was a good opportunity to engage further with CPRE, RICS, RTPI and others and pull together the ideas and have an open debate. Unfortunately presently there is no reliable data on actual available land for development.

TCPA confirmed that they would support such a debate.

Brownfield land has many conflicting demands with contamination being just one.

Euan Hall (EH) offered to take the lead on opening up the debate with the support of Julia Thrift (JT) of TCPA. NH to provide contact to RICS.

ACTION: EH and JT to move forward the concept of Land Forum debating brownfield v greenfield. NH to provide RICS contact.

6. Standards

NH confirmed that Mike Smith had sent her details about ISO CD 18400-104 Soil Quality – Sampling – Strategies. Consultation closes on the 27th November 2014.

ACTION: Nicola Harries to send details to Land Forum.

Phil Crowcroft (PC) informed the Land Forum that he is aware of an ISO on Sustainable Remediation. NH explained that she was aware of this through SuRF-UK Steering Group but thought that the consultation was limited as it was at committee draft stage. She confirmed that Jonathan Smith (chair of SuRF-UK) was on the committee and had circulated to the SuRF-UK steering group. It is believed that the general principles are aligned to SuRF-UK framework however a slightly altered definition of sustainable remediation may be defined but this is still to be confirmed.

PC was also aware of a new draft European Regulation on Construction Products, where soil is being considered as a product. Defra to follow this up.

ACTION: MC to make enquiries and circulate details to the Land Forum

7. Any Other Business:

Julia Thrift raised that TCPA has a conference on "The Brownfield Challenge" in London on 9th December 2014.

Simon Firth raised that SoBRA has a conference on "Current Issues in Contaminated Land Risk Assessment", which takes place on 16th December 2014 at RSC, London.

No further items were raised the meeting was brought to a close.

8. Date of next meeting

It is proposed that the next meeting will be held at the end of January 2015, date to be confirmed subject to room availability.

ACTION: NH to circulate date of meeting.