

Mid Devon District Council

Public Health and Regulatory Services

CONTAMINATED LAND COST RECOVERY POLICY

Policy Number: PH/EP/CL/01/09

Target audience:

Investigating Officers and Decision-Makers, Leadership Team, Legal Services and any person, organisation, company or business affected by regulatory action regarding land legally determined as Contaminated Land under the Provisions of Part 2A of the Environmental Protection Act 1990.

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Owner: **Group Manager for Public Health and Regulatory Services**
snewcombe@middevon.gov.uk

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Group Managers
Leadership Team
Legal Services

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Introduction

The costs of cleaning up contaminated land are not automatically covered by the public purse. The Government's policy is that the polluter (all persons who put the contamination there in the first place) should pay for any contamination they have caused by bearing the financial costs of cleaning it up.

Once a site has been legally determined as Contaminated Land, the Council has a duty to compile a list of **ALL** potential liable parties; this is to include anyone who has owned, occupied or operated on the site and may result in quite a long list. A series of tests is applied to each party (known as exclusion tests) to determine who, if anyone, is the liable party.

The enforcing authority (usually the local authority, therefore Mid Devon District Council in our area) will serve a remediation notice on the polluter to ensure the works are carried out. The remediation notice is a legal document so therefore open to appeal in the courts. Appealing a remediation notice will undoubtedly slow the remediation works.

The legislation (Environmental Protection Act 1990 section 78F) states, however that there are three parties that may become the potential recipients of a remediation notice, only one of which is the polluter. A conflict with the 'polluter pays' principle therefore exists. Potential liable parties are:

- The person(s) who **caused** or **knowingly permitted** the contaminating substances to be in, on or under the land in question (known collectively as the 'polluter' and referred to in the legislation as the Class A appropriate person)
- The **owner** for the time being of the contaminated land (Class B appropriate person)
- The **occupier** for the time being of the contaminated land (Class B appropriate person)

The most obvious person who should be the recipient of the remediation notice is the original polluter of the site (Class A person). If there is more than one polluter of a site, where for example the site has had a long history of different contaminative uses then the enforcing Council has to decide how much each (Class A) person should pay towards remediation works.

Although the primary responsibility for the cost of the remediation rests with the person who caused or knowingly permitted the contamination if they cannot be found after reasonable inquiry by the regulator, responsibility falls upon the current owners and occupiers of the land (Class B persons). The Council will in all cases do its best to ensure a fair and equitable solution can be found should liability fall upon the current owner/occupier.

Class B parties are only liable for remediation of contamination within the boundaries of their property and cannot be held liable for any pollution of controlled waters (underlying groundwater or surface water features including rivers, lakes and streams).

Responsibility for cleaning up Contaminated Land will only fall on the Council when no liable parties can be found for the site in question; so termed Orphan sites (this is only the case when the Council is not regarded as a potential Class A or B party). Should this be the case, the Council could previously apply to Central Government for financial assistance in covering its reasonable costs. However, the previous assistance scheme (Defra Contaminated Land Capital Projects programme) was closed in 2017 and at time of policy writing this had not been reinstated or replaced which may place a financial burden on the Council where it has been required to take action under the Part 2A legislation.

If a remediation notice is served and not complied with or the Council chooses not to serve a remediation notice, the Council will bear the costs of the clean-up themselves (where external funding cannot be found) and seek to recover those costs from the appropriate persons.

Financial circumstances have no bearing on the identification of the appropriate person, the application of the exclusion tests, apportionment or attribution of liability between liable groups involved in shared actions, although it may entitle the appropriate person to a reduction or release of liability under the hardship provisions when the Council are making cost recovery decisions.

Before attempting to recover any costs from an appropriate person, the Council will take into account any hardship that full recovery of costs will cause and adhere to all applicable statutory guidance. Hardship is given no specific meaning under the Contaminated Land regulations, and so carries its *normal* meaning: 'hardness of fate or circumstance, severe suffering or privation'.

Purpose of this policy

The purpose of this policy is to ensure a consistent and transparent approach when seeking to recover costs for remediation of Contaminated Land determined under Part 2A of the Environmental Protection Act 1990. The following documentation should be read in conjunction with the policy:

1. Environmental Protection Act 1990 – Part 2A, sections 78A-78YC
2. The Contaminated Land (England) Regulations 2006 (SI 2006/1380) with some technical amendments to be made by The Environment (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/458)
3. Defra Circular 01/2006*
4. Defra Environmental Protection Act 1990: Part 2A Contaminated Land Statutory Guidance (2012)
5. Environment Agency Contaminated Land Report CLR 11 – Model Procedures for the Management of Land Contamination and Land contamination: risk management (LCRM – due to replace CLR11 in 2020)
6. Environment Agency Managing and reducing land contamination: guiding principles (GPLC 2016)
7. Mid Devon District Council Housing Assistance Policy (current version)

*replaced by 4. but as non-statutory guidance it has not been replaced and sets out useful background and commentary

POLICY

1. Application

1.1 This policy will apply in the following instance:

- Where the remediation work has been agreed voluntarily or otherwise as a result of direct implementation of section 78 of the Part 2A of the Environmental Protection Act 1990 ('Part 2A') and all sub-sections therein but excluding all remediation provisions regarding designated 'Special Sites' where the Council is not the regulator (this is the Environment Agency in England). The GPLC guidance (see Purpose of Policy) contains more information on Special Sites.

1.2 The flexible nature of this policy is deemed necessary in order for it to be in keeping with the Government's stated objectives for the Contaminated Land Regime (Part 2A), i.e. the encouragement of voluntary remediation and to seeking that the cost burdens faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable whilst recognising the present lack of specific Government capital grant funding for remediation works. Ultimately, the Part 2A regime provides a duty (to inspect land where required) and powers to remediate land subsequently determined as being harmful (or highly likely be harmful) to human-health and/or polluting to the environment.

2. General Considerations

2.1 This document sets out Mid Devon District Council's ('the Council') policy considerations in relation to the recovery of costs incurred during the remediation of contaminated land.

2.2 In general terms, the Council will;

- Seek to recover in full its reasonable costs incurred when performing its statutory duties in relation to the remediation of contaminated land. In doing so, only apportion remediation costs where they are legally due. For example Class B appropriate persons are only liable for remediation linked to dealing with contamination that is (or potentially is) harmful to human health within their property boundary and are not liable for remediation of controlled waters.
- Wherever possible, apply the 'polluter pays' principle, whereby the remediation costs are borne by the original polluter.
- Where this is not possible, seek all external sources of finance for remediation.
- Have due regard to avoiding hardship that the recovery of costs may cause.
- Aim for an overall result, which is fair and equitable as possible to all parties (including the Council) who may have to meet the costs of remediation

- 1.3 Accordingly, the Council will consider the degree and nature of responsibility of the appropriate person for the creation, or continued existence, of the circumstances that led to the land in question being identified as contaminated land.
- 1.4 The Council will also consider whether it could recover more of its costs by deferring recovery and securing them by a charge on the land in question under section 78P of the Environmental Protection Act 1990. Such deferral may lead to payment from the appropriate person either in instalments (section 78P(12)) or when the land (premises for the purposes of the act) is next sold within a specified period of no more than 30-years from the date of the Charging Notice. Interest may be payable at the rate determined by the Council under section 78P(4).

3. Estimating Remediation Costs

- 3.1 The following procedure will be followed by the Council to estimate the remediation costs on a site specific basis. The procedure must be completed before any decisions are made on waiver or reduction in liability on any appropriate person (Class A or B).
- 3.2 A basic remediation options appraisal will be undertaken by the Council based upon the principles set out in the Environment Agency guidance documents *CLR11: Model Procedures for the Management of Land Contamination and Land contamination: risk management (LCRM 2020)*. The following principles will apply for this policy:
 - Identification of a minimum of 3 feasible remediation options for each pollutant linkage.
 - Carrying out an evaluation of a minimum of 2 feasible remediation options for each pollutant linkage sufficient to obtain a budget estimate of the cost of remediation.
 - Selection of 1 remediation option for each pollutant linkage proposed for implementation on the site and the production of a remediation method statement to refine costs and finalise a budget estimate.
 - The involvement of an independent environmental consultant to propose and estimate remediation costs.
 - In the event of disagreements between the Council and the Class A or B appropriate person (on the proviso that the policy has been followed appropriately) the Council is not obliged to expend any more resources on the estimation of remediation costs.

4. Information for Making Decisions

- 4.1 The Council will expect that anyone who is seeking a waiver or reduction in the recovery of remediation costs will need to present any financial or related information required to support their request within a reasonable time period.
- 4.2 The Council will also seek to obtain such information as is reasonable, having regard to

- How the information may be obtained
- The cost, for all the parties involved, of obtaining the information; and
- The potential significance of the information for any decision

4.3 The appropriate person will be informed of any cost recovery decisions taken, explaining the reasons for those decisions. There shall be no appeal mechanism against the decision unless it can be demonstrated that:

- Information supplied for an assessment was erroneous; or
- The circumstances of the appropriate person have substantially changed between the time of the selection of the remediation methodology/costs and the completion of works in a way that require an assessment to be repeated

5. Threat of Business Closure or Insolvency

5.1 In the case of a small or medium-sized enterprise¹ which is the appropriate person, the Council will consider:

- Whether recovery of the full cost attributable to that person would mean that the enterprise is likely to become insolvent and thus cease to exist; and if so, the cost to the local community of such a closure
- Where the cost of remediation would force an enterprise to become bankrupt, the Council will consider waiving or reducing its costs recovery to the extent needed to avoid making the enterprise insolvent.

5.2 The Council will not normally waive or reduce its costs recovery where:

- It is clear that an enterprise has deliberately arranged matters so as to avoid responsibility for the costs of remediation
- It appears that the enterprise would be likely to become insolvent whether or not recovery of the full cost takes place; or
- It appears that the enterprise could be kept in, or returned to, business even if it does become insolvent under its current ownership.

¹A small or medium sized enterprise is considered to be an independent enterprise with fewer than 250 employees, and either a balance sheet total not exceeding £18m or an average business income not exceeding £36 million (based on The Companies, Partnership and Groups (Accounts and Reports) Regulations 2015 implementing the EU Accounting Directive).

6. Trusts

6.1 Where the appropriate persons include persons acting as trustees, the Council will assume that such trustees will exercise all powers which they have, or may reasonably obtain, to make funds available from the trust, or from borrowing that can be made on behalf of the trust, for the purpose of paying for the remediation. The Council will, nevertheless, consider waiving or reducing its costs recovery to the extent that the costs of remediation to be recovered from the trustees would otherwise exceed the amount that can be made available from the trust to cover these costs.

6.2 The Council will not waive or reduce its costs recovery:

- Where it is clear that the trust was formed for the purpose of avoiding paying the costs of remediation; or
- To the extent that trustees have personally benefited, or will personally benefit from the trust.

7. Charities

7.1 The Council will consider the extent to which any recovery of costs from a charity would jeopardise that charity's ability to continue to provide a benefit or amenity, which is in the public interest. Where this is the case, the Council will consider waiving or reducing its costs recovery to the extent needed to avoid such a consequence. This approach applies equally to charitable trusts and to charitable companies.

8. Registered Social Landlords (RSLs)

8.1 The Council will consider waiving or reducing its costs for recovery if:

- The appropriate person is body eligible for registration as a social housing landlord under section 80 of the Housing and Regeneration Act 2008
- Its liability relates to land used for social housing, and full recovery would lead to financial difficulties for the appropriate person, such that the provision or upkeep of the social housing would be jeopardised.

8.2 The extent of the waiver or reduction will normally be sufficient to avoid any financial difficulties.

9. Specific Considerations Applying to Class A Persons

9.1 The Council will not normally waive or reduce its cost recovery where it was in the course of carrying on a business that the Class A person caused or knowingly permitted the presence of the significant pollutants. This is because the appropriate person is likely to have earned profits or assets from the activity, which created or permitted the presence of those pollutants.

10. Where Other Potentially Appropriate Persons Have Not Been Found.

- 10.1 In some cases where a Class A person has been found, it may be possible to identify another person who caused or knowingly permitted the presence of the significant pollutant linkage in question, but who cannot now be found for the purposes of treating them as an appropriate person. For example, this may apply where a company has been dissolved.
- 10.2 The Council will consider waiving or reducing its costs recovery from a Class A person if that person demonstrates to the satisfaction of the Council that:
- (a) Another identified person, who cannot now be found, also caused or knowingly permitted the significant pollutant to be in, on or under the land: and
 - (b) If that other person could be found, the Class A person seeking the waiver or reduction of the Council's costs recovery would either:
 - (i) Be excluded from liability by virtue of one or more of the exclusion tests set out in Defra Circular 01/2006, or
 - (ii) The proportion of the cost of remediation of which the appropriate person has to bear would have been significantly less, by virtue of the guidance on apportionment set out in Defra Circular 01/2006.
- 10.3 Where an appropriate person is making a case for the Council's costs recovery to be waived or reduced by virtue of paragraph 10.2 above, the Council will expect that person to provide evidence that a particular person, who cannot now be found, caused or knowingly permitted the significant pollutant to be in, on or under the land. The Council will not normally regard it as sufficient for the appropriate person concerned merely to state that such a person must have existed.

11. Specific Considerations Applying to Class B Persons

- 11.1 In some cases the cost of remediation may exceed the value of the land in its current use after the required remediation has been carried out. In such circumstances, the Council will consider waiving or reducing its costs recovery from a Class B person if that person demonstrates to the Council that the cost of remediation is likely to exceed the value of the land including any property. In this context, the 'value' should be taken to be the value that the remediated land would have on the open market, at the time the cost recovery decision is made, disregarding any possible blight arising from contamination.
- 11.2 In general, the extent of the waiver or reduction in costs recovery will be sufficient to ensure that the costs of remediation borne by the Class B person do not exceed the value of the land. However, the Council will seek to recover more of its costs to the extent that the remediation would result in an increase in the value of any other land from which the Class B person would benefit.

- 11.3 In determining the value of the land the Council will formally request that the Class B person provides an independent property valuation completed by an appropriately accredited professional. If there is any doubt or disagreement regarding a valuation that has been provided then the Council retains the right, at its own expense, to obtain a separate independent valuation of the property concerned from the District Valuer or other organisation.
- 11.4 For Class B person owners and occupiers, the Council will consider waiving or reducing its costs recovery where that person satisfies the Council that, at the time the person purchased the dwelling, they did not know, and could not reasonably have been expected to have known, that the land was adversely affected by presence of a pollutant (refer to section 12).
- 11.5 Any such waiver or reduction will be to the extent needed to ensure that the Class B person in question bears no more of the cost of remediation than it appears reasonable to impose, having regard to their income, capital and outgoings.
- 11.6 Inherited property will be treated as though the property was purchased.
- 11.7 In accordance with the contaminated land legislation (Part 2A) a Class B person will not be liable for any remediation costs in respect of pollution of controlled waters.
- 11.8 Where the contaminated land in question extends beyond the dwelling and its curtilage, and is owned or occupied by the same appropriate person, the approach described in paragraph 11.4 and 11.5 above will only be applied to each dwelling and its curtilage independently.
- 11.9 In judging the extent of a waiver or reduction in costs recovery from an owner/occupier of a dwelling, the Council will apply a form of means test ('the Means Test') similar to that used for applications for adult Disabled Facilities Grants (DFGs). These grants are assessed on a means-tested basis, as presently set out in the Housing Renewal Grants Regulations 1996 (SI 1996/2890). The DFG test determines how much a person will contribute towards the cost of necessary renovation work for which they are responsible, taking into account income, capital and outgoings, including allowances for those with particular special needs. For this purpose, any upper limits for grants payable under DFGs will be ignored.
- 11.10 In the event that the Means Test indicates that the Class B person is not eligible for any cost reduction the Class B person will be liable for all of the costs of the remediation work unless section 11.12 of this policy applies. Section 15 of this Policy addresses the scenarios that may arise in this event.
- 11.11 In the event that the Means Test indicates that the Class B person is eligible for a reduction of the costs of remediation, the Council will only be able to recover the proportion, as indicated by the Means Test, of the costs incurred in carrying out the remediation work allowing for any waiver or reduction in the event that section 11.12 of this policy applies. Section 14 of this Policy addresses the scenarios that may arise in this event.

11.12 The Council may also consider a waiver or reduction in costs that a Class B person may be liable for in the following circumstances:

- It can be demonstrated that the Council has acted unreasonably in any grant of planning permission, tenancy agreement or building control approval in that it failed to take into account direct evidence provided to the Council of actual or potential significant contamination and/or failed to take all reasonable steps to establish a potential contamination constraint in accordance with its statutory duties (as they applied at the time the permission, agreement or approval was granted).
- In *exceptional* circumstances a Class B person may be eligible for a Healthy Homes Grants or Wessex Home Improvement Loan (or equivalent as set out under the current, adopted Council Housing Assistance Policy) if the contamination present is sufficient for it to be categorised as a Class 1 hazard in accordance with current national Housing Health and Safety Rating System (HHSRS) or any equivalent replacement risk assessment system. In the case of a grant then the Council will consider reducing the amount of liability to a maximum extent of the upper limit of a grant payable under Housing Assistance Policy.

12. Precautions Taken Before Acquiring a Freehold or Leasehold Interest

12.1 In some cases, the appropriate person may have been reckless as to the possibility that land they have acquired may be contaminated, or they may have decided to take a risk that the land was not contaminated. Conversely, precautions may have been taken to ensure that he did not acquire land which is contaminated.

12.2 The Council will consider reducing its cost recovery where a Class B person who is the owner of the land demonstrates to the satisfaction of the Council that:

- (a) They took such steps prior to acquiring the freehold, or accepting the grant of assignment of a leasehold, as would have been reasonable at that time to establish the presence of any pollutants;
- (b) When they acquired the land, or accepted the grant of assignment of the leasehold, they were unaware of the presence of the significant pollutant now identified and could not reasonably have been expected to have been aware of its presence; and
- (c) It would be fair and reasonable, taking into account the interests of national and local tax payers, that they will not bear the whole cost of remediation.

12.3 The Council will bear in mind that the safeguards which might reasonably be expected to be taken will be different in different types of transaction. For example, acquisition of recreational land as compared with commercial land transactions, and as between buyers of different types e.g. private individuals as compared with major commercial undertakings.

12.4 Any acquisition of land made by a Class B person prior to the coming into force of Part 2A of the Environmental Protection 1990 (1 April 2000) will not be required to be accompanied by evidence of reasonable precautions. This is because prior to the introduction of the legislation it can reasonably be argued that the purchaser could not have been aware of their potential liabilities and also enquires made to the Council would not have been made in the same manner as enquires made after the legislation came into force.

13. Environmental Insurance

13.1 A range of commercial and homeowner environmental insurance policies have been available in the UK for a number of years. These include Environmental Impairment Liability Policies, Property Transfer Policies, First-Party Liability Policies, Homeowner Environmental Insurance Policies and other related insurance products.

13.2 A valid environmental insurance policy if held by a Class A or B appropriate person often provides protection against risk of liability under the contaminated land legislation (Part 2A). Such policies, especially for domestic properties, normally only cover pre-existing contamination unknown at the time the property/land was purchased. In this context this may include Part 2A sites where there was no evidence of significant contamination at the time of the property transfer. Some commercial policies do cover pre-existing contamination known to the insurer and insured when the policy is taken out.

13.3 In the event of any liability residing with an appropriate person the Council will enquire if a valid environmental insurance policy is held and the scope of cover it provides. If cover provided by the policy protects the insured against all or part of any liability under Part 2A the Council will take this into account when making any cost-recovery decisions.

14. Policy in the Event of Insufficient Means being Proved (Class B Persons)

14.1 There are two possible scenarios:

(a) The Class B person is proved to have insufficient equity and no means to pay for any proportion of the remediation works. In this situation hardship has been proven and all costs will be waived. The Council will then be liable for the relevant remediation costs as the Class C appropriate person.

(b) The Class B person has sufficient equity but has no other means to pay for all of the remediation works. In this situation hardship has not been fully established but a reduction in liability can be considered. The Council can approve a loan, repayable at the Bank of England base interest rate, to cover all or part of cost of the necessary work that the Class B person cannot afford at the time of the assessment. The Council will require that the grant be registered as a legal charge against the property. This will remain a legal charge on the property until the Class B person decides to repay the loan or the property is sold and the debt is repaid.

15. Policy in the Event of Sufficient Means being Proved (Class B Persons)

15.1 The Class B person will be responsible for all of the costs of the remediation. There are two options available to them:

- (a) The Class B person reaches an agreement, in writing, with the Council to arrange, organise and directly commission the necessary remediation works. In this circumstance the Class B person will be required to repay all of the Council's reasonably incurred costs in completing the necessary remediation work. This is subject to there being sufficient resources available within the Council's capital works or other relevant budget.
- (b) Alternatively, the Class B person may take responsibility for arranging, commissioning and paying for the remediation works directly. In such a situation the role of the Council is to review the work undertaken and ensure it is satisfied that the works have been undertaken to an appropriate standard. This will be done in the same manner as the review of remediation work undertaken by the Council as part of a conditional planning permission.

16. Responsibility for Final Decisions regarding Cost-recovery

16.1 The responsibility for making final decisions in respect of cost recovery on a case by case basis shall be held by Group Manager for Public Health and Regulatory Services in consultation with the Deputy Chief Executive (s151 officer) and the portfolio holder for Community Well-being.

17. Policy Review

17.1 The Council should monitor the application of this policy in order to assess its impact and effectiveness with regard to its duties under contaminated land legislation and in its fulfilment of the Council's objectives.

17.2 Accordingly, this Policy should be reviewed from time to time in order to reflect its performance and take account of any changes to legislation guidance, case law, best-practice and Council objectives etc. In any event, the policy should be formally reviewed every 10 years as a minimum.

APPENDIX 1: Potential Scenarios and Outcomes

The following example scenarios describe how financial liability could potentially be determined and apportioned under this policy. They are fictional, simplified and for illustrative purposes only.

| Scenario 1 |
|---|
| <p>A residential site built in the 1970s has been determined as Contaminated Land due to unacceptable concentrations of arsenic in the garden soils. Prior to the site being residential it was a saw mill and that timber treatment may have been carried out for a short period during this occupation using arsenic based chemicals to prolong the life of wood. No information was provided (or other evidence available) at the time planning permission was granted that indicated timber treatment had been carried out and there was no national planning policy in place at the time requiring contaminated land to be a material consideration in the planning decision. The site was therefore NOT investigated for arsenic contamination prior being redeveloped for housing. The developer no longer exists in any legal capacity but the company operating the timber works does. Investigations have not found the site to have any other previous uses and the concentrations of arsenic are significantly above average arsenic concentrations compared with 'background' local soils.</p> |
| Potential Outcome |
| <p>The timber treatment works (or more specifically its legal entity) should be classed as the Class A appropriate person as they are the original polluter of the site. They would be the recipient of the remediation notice and be required to conduct remediation to the appropriate standard.</p> <p>Note: Should the developer of the houses still be in existence than liability may be divided between them and the operator of the Timber treatment works. The developer increased the sensitivity of the site without undertaking any contamination assessment and so may be seen as a 'knowing permitter' (Class A appropriate person) and therefore potentially liable.</p> <p>If the Class A person can demonstrate that it can be excluded from liability by one or more of exclusion tests available under the legislation then liability may fall to the current residential property owners (Class B persons). The policy on cost-recovery will apply with particular attention on assessing hardship.</p> |

| Scenario 2 |
|---|
| <p>A site is determined Contaminated Land due to presence of oils in the soils. The site is derelict but if left the contamination has the potential to move onto adjoining residential properties. The owner and operator of the site cannot be established.</p> |
| Potential Outcome |
| |

Investigations have not been able to determine a Class A appropriate person (polluter) or a Class B appropriate person (current owner/occupier). The site is regarded as an orphan site and the liability for ensuring contamination is cleaned up to prevent it moving offsite falls to the Council. No remediation notice will be served (the Council cannot serve a notice upon itself - instead a remediation statement will be issued outlining what the necessary works will entail).

Scenario 3

A site has been determined Contaminated Land. No Class A appropriate person (polluter) can be established. The current occupier of the site rents the site from its owner. Neither the owner nor the occupier of the site undertakes any activity that would have caused the contamination of the site.

Potential Outcome

Class B liability would be considered to be the owner of the property and the policy on cost-recovery will apply with particular attention of assessing hardship. The tenant (occupier) would not be considered to have any liability in this case.

Scenario 4

A site has been determined as Contaminated Land. A Class A appropriate person (polluter) has been established. A valuation of the polluting company's assets estimates it to be worth £1.2million. An options appraisal has indicated that remediation works are likely to cost £2million.

Potential Outcome

The company is likely to apply for hardship. The Council must consider whether serving a remediation notice will cause the company hardship. The Council may therefore not serve the remediation notice; it will assess the company's ability to pay and apportion those reasonable costs to the company. The Council will apply for external Central Government funds to cover the remainder of the works (if available).

Scenario 5

A site has been determined as Contaminated Land; the site has 3 privately owned residential properties. The site has been determined on the basis of arsenic and lead in the garden soils. The site was a lead pipe factory from 1960-1975 and a timber treatment works (using arsenic products) from 1975-1990. The operator of the lead pipe factory no longer exists. The company that built the houses no longer exists. The operator of the timber treatment works still exists.

Property 1 has **lead** and **arsenic** present in the soil

Property 2 has **lead** in the soil
Property 3 has **arsenic** in the soil

Potential Outcome

The liable party responsible for remediating property 1 and 3 would be the operator of the timber treatment works as the original polluter of the site (Class A appropriate person). The original polluter for property 2 is no longer in existence and therefore the liability falls upon the current owner/occupier of the property and the policy on cost-recovery will apply with particular attention to assessing hardship.

Scenario 6

A site was determined Contaminated Land in 2018; the site has 3 privately owned residential properties. The contamination is believed to have migrated onto the site from an adjoining industrial site that was in operation between 1975 and 1980; the original polluter of the site (Class A appropriate person) cannot be established. The residential properties are Victorian and were built in 1880. All of the properties are single homes and worth £335-345,000.

Property 1 was bought in 1950 for £35,000, the property is owned outright.
Property 2 was bought in 2019 for £340,000, the property is owned outright.
Property 3 was bought in 2017 for £335,000 with a 95% mortgage.

Potential Outcome

The owner of property 1 would not be considered as a class B appropriate person on the basis that it was not contaminated when they purchased the property. It is likely that the financial costs of remediation will have to be met by the Council (through external Central Government funding if available).

The owner of property 2 purchased it without a mortgage after it was determined Contaminated Land and failed to undertake adequate due diligence; by owning the property outright they also have full equity to the current value of the property (£340,000). They are unlikely to be considered for hardship.

The owner of property 3 has little or no net equity from their property; hardship may be proven and works funded by the Council (again through external Central Government funding if available).