

Land Forum Meeting

Meeting Notes

12th July 2016, 11.00am – 4.00pm

Location: NHBC Office ,6th Floor, 1 Minster Court, Mincing Lane, London, EC3R 7AA



FINAL

Present:

Paul Sheehan (<i>Chair</i>)	
Nicola Harries (<i>Secretariat</i>)	Contaminated Land: Applications In Real Environments (CL:AIRE)
Frank Evans	Soil and Groundwater Technology Association (SAGTA)
Lucy Thomas	Society of Brownfield Risk Assessors (SoBRA)
Julia Reynolds	Yorkshire and Lincolnshire Pollution Advisory Council
Lisa Hathway	National House Building Council (NHBC)
Steve Manning	Wiltshire Council
Howard Price	Chartered Institute of Environmental Health (CIEH)
Richard Boyle	Homes and Communities Agency (HCA)
Paul Nathanail	Specialist in Land Condition Register (SiLC)
Peter Witherington	Home Builders Federation (HBF)
Andrew Wiseman	UKELA & EP UK
Steve McKenna	Royal Institution of Chartered Surveyors (RICS) (arrived after lunch)

By telephone:

Matthew Llewellyn	Natural Resources Wales
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Apologies:

Andrew Williams & Richard Clark	Welsh Government
Elaine Wort & Trystan James	Natural Resources Wales
Rob Ivens	Mole Valley Council
Euan Hall	Land Trust (LT)
Jane Thrasher	Environmental Industries Commission (EIC)
Trevor Howard & Matt Whitehead	Environment Agency
Seamus Lefroy Brooks	Association of Geotechnical and Geoenvironmental Specialists (AGS)
Mark Edwards	Lancaster Council
Caroline Thornton	Scottish Environment Protection Agency (SEPA)
Anne Wood & Caroline Greary	Department of Communities and Local Government (CLG)
Theresa Kearney	Department of Agriculture, Environment and Rural Affairs and the Northern Ireland Environment Agency (NIEA)
Rachael Davies	Welsh Contaminated Land Working Group
Julia Thrift	Town and Country Planning Association (TCPA)
David Middleton & Nicola Riley	Defra
Peter Johnson	UK Build/UK Strategic Forum for Construction
Nicky Linihan/John Silvester	Planning Officers Society

Agenda

1. Welcome and Apologies
2. Introductions of represented organisations
3. Review of previous minutes & actions
4. Update from Government Departments and Environment Agencies
 - Welsh Government & Natural Resources Wales
 - Scottish Government & Scottish Environment Protection Agency
 - Department of Agriculture, Environment & Rural Affairs & Environment Agency Northern Ireland
 - Communities & Local Government
 - Defra Soil and Contaminated Land Team
 - Environment Agency
 - Homes & Communities Agency
5. Standards update: what's new – paper attached
6. Discussion Topics
 - National Quality Mark Scheme for management of land contamination – update
 - BREXIT – Which relevant EU derived policies are important to keep, and where does the Land Forum see opportunity for improvement?
 - Definition of Brownfield – paper to follow
 - Progress update on new working groups
 - The role of Land Forum in Land reuse – paper attached
 - Standards & Technical Guidance Group
7. AOB
8. Date and location of next meeting

Meeting Notes

1) Welcome & Apologies

Paul Sheehan (PS) welcomed everyone and apologies were given. He thanked Lisa Hathway for arranging a meeting room in NHBCs Offices. Housekeeping and a health and safety awareness briefing was provided.

2) Introductions of represented organisations

Introductions were performed around the table and on the phone.

3) Review of Previous Minutes & Outstanding Actions

All actions were completed or would be addressed during discussions in the meeting except the action to invite the Infrastructure Commission (IC) to present at a Land Forum

meeting. PS confirmed that contact had been made, however as the IC had only recently been formed they had been inundated with requests to attend meetings and they had to decline. PS confirmed that he plans to get back to them.

4) Update from Government Departments and Environment Agencies

Welsh Government and Natural Resources Wales

Matthew Llewellyn (ML) provided an update of activities on behalf of Welsh Government (WG) & Natural Resources Wales (NRW). He confirmed that following the Welsh Government elections Lesley Griffiths had been appointed the new Cabinet Secretary for Environment and Rural Affairs. ML, confirmed that an internal paper focussing on land contamination and Part 2A issues had been prepared for the minister. WG are also reviewing the recently published Environmental Audit Committee on Soil Health and looking at whether there are any areas that WG can work with Defra.

ML confirmed that the State of Contaminated Land Report for Wales was published in April 2016 and is available to download: <https://naturalresources.wales/our-evidence-and-reports/the-state-of-contaminated-land-in-wales/?lang=en>

ML confirmed that all local authorities in Wales had been written to asking if they had updated their inspection strategies as part of their Part 2A duties. This had been carried out to try and keep contaminated land on the political agenda as there is currently no additional funding for local authorities to undertake this activity.

ML informed that NRW are planning to follow the EA and charge for their time on pre-planning application consultations. They are also looking at the possibility of charging for their time on voluntary schemes when asked to comment. Cost schemes are being worked up but NRW want to ensure that the costs are not seen as a burden financially.

ML confirmed that NRW had discussed with CL:AIRE about the Definition of Waste: Development Industry Code of Practice draft v3. NRW has also discussed the National Quality Mark Scheme with local authorities and broadly there has been positive feedback. NRW and Welsh Local Authorities are looking at the possibility of having one collective position statement.

NRW also commented on the Public Health England Radioactively Contaminated Land consultation where they are reviewing guidance that is available.

Scottish Government & Scottish Environment Protection Agency

Caroline Thornton (CT) was unable to attend in person however sent the following report to be shared with the Land Forum.

SEPA

There is a lot of internal change happening or being considered at the moment in relation to the organisation, it's structure and how to make the best use of tight resources.

Waste and Land: SEPA is undertaking a review of the permitting scheme for Waste Licensing. There are currently proposals to revise the system to one which is similar to the Controlled Activities Regulations (water) licencing regime where there are different levels of permit based on potential environmental risk. There will be a formal consultation later in the summer.

Obviously there are various industries involved; however SEPA is aware of some of the current shortfalls of Paragraph 19 exemptions for soil movements to, from and between brownfield re-development sites. The current thinking is as follows:

Para 19 is likely to fall between Registrations and Permits. A registration would involve a shorter application form with less information required and have a shorter determination period. A Permit would be a significantly longer process and require more information to be provided and undergo significantly more scrutiny.

Contaminated land: No new contaminated land or special sites have been identified by local authorities.

Similar to elsewhere, the overall activity in relation to Part IIA is low at the moment. Although there is variation from one local authority to the next in terms of Part IIA work, and some are continuing to investigate sites, it is suspected that many contaminated land officers are struggling internally to secure their 'allocation' of single outcome agreement funding and this is reflected on the ground.

Scottish Government

Section 45 Guidance: Scottish Government is currently drafting guidance in relation to section 45 of the Regulatory Reform (Scotland) Act 2014. This section provides new powers to local authorities to allow them to serve 'non –contamination' notices on sites which they consider are no longer contaminated land and remove them from the register. It also allows them to remove special site particulars from their register if SEPA has terminated the special site designation.

The provisions seek to address concerns from communities and other stakeholders on the perception of permanent blight on land which has been identified as contaminated land (or a special site) and placed on the public register.

It is anticipated that the guidance will be consulted upon towards the end of the year.

Department of Agriculture, Environment and Rural Affairs (DAERA) and the Northern Ireland Environment Agency

Theresa Kearney (TK) was unable to attend the Land Forum but gave an update on the activities of DoE and Northern Ireland Environment Agency to be shared.

TK confirmed that a new government department DAERA has been established with the Environment Agency being an executive department.

TK confirmed that they are continuing to work on the internal project that is looking at the environmental and financial risks of not having a Part 3 in Northern Ireland. This project is aiming to conclude in Autumn 2016.

TK confirmed that they are continuing to contribute to the Technical Advisory Group on UK Groundwater Hazardous Substances for regulated sites and the work of the Joint Agencies Groundwater Directive Advisory Group (JAGDAG). This is being led by Environment Agency and SEPA.

Planning departments continues to be busy and they are supporting where possible.

Department of Communities and Local Government (DCLG)

Representatives from DCLG were unable to attend the meeting but sent a short report to be shared with the Land Forum.

The Housing and Planning Act 2016 received Royal Assent on the 12th May. The consultation seeking views on the proposed approach to the implementation of measures in the Housing and Planning Bill, including those on the statutory register of brownfield land and permission in principle closed on 15th April. The local authorities who have been developing registers on a voluntary basis began publishing their registers at the end of June. DCLG are considering the responses to the consultation and feedback from the pilot authorities and will use these sources to inform development of the secondary legislation and guidance.

In December, DCLG went out to consultation on a number of specific changes to the National Planning Policy Framework, to deliver key commitments aimed at increasing housing supply and home ownership. The consultation period closed in February and DCLG are carefully considering the responses received. There is no firm date on when changes will be made to the Framework.

Following DCLGs update there was discussion about the Brownfields Registers. It is understood that within some local authorities that are participating in the brownfield register trials, it is being led by policy people following the handbook provided by DCLG with little/no technical input. There was some concern how constraints on the sites were being considered such as flooding, ground instability, contamination etc. If technical issues weren't understood fully then these could be significantly over or under estimated. It was understood that DCLG did not want to be too prescriptive, therefore had provided general guidelines. Land Forum members thought that it would be useful to understand how local authorities are provided guidance on considering constraints.

Defra Soil and Contaminated Land Team

Nobody from Defra's soil and contaminated land team were available to attend, however they sent an update to be shared with the Land Forum.

- Currently Defra is responding to the Environmental Audit Commissions report on soil health
- Defra has recently fed into the European Commission gap analysis that will highlight any gaps on soil protection across Europe. They will also be feeding into the future approach on soils as well.

- With the changes in Minister and as things develop due to Brexit, Defra will keep the Land Forum informed via the secretariat.

Environment Agency (EA)

Nobody from Environment Agency was available to attend, however they sent an update to be shared with the Land Forum.

The Environment Agency published the latest State of Contaminated Land report in April 2016 (just after the last Land Forum meeting). This utilised the data from the Cranfield University survey carried out for Defra which reported in 2014. It provides an overview of progress on Part 2A from 2000-2013. However, the relatively low response rate to the survey means that some figures need to be viewed with caution.

The report is available:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/513158/State_of_contaminated_land_report.pdf

Cranfield Research Report:

<http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=136>

The smarter guidance initiative is ongoing and we are working with Defra's Smarter Environmental Regulation Review team (SERR). There is still an intention to redraft the Guiding Principles documents and an introduction to the CLR11 process has now been published (which links to the full document on CL:AIRE's WALL).

The EA are still seeking approval for our Position Statement on the use of the National Quality Mark Scheme. Once approved we will share this with the Land Forum.

Homes and Communities Agency (HCA)

Richard Boyle (RB) provided an update on HCA's activities.

- Sir Edward Lister has been appointed the new chairman of the Homes and Communities Agency, Communities Secretary Greg Clark announced. For the last 5 years he has been London's Deputy Mayor for policy and planning and chief of staff at the Greater London Authority (GLA).
- Tailored Review is coming to an end. This is not expected as a formal report but a statement to the Commons is expected since the review was announced there.
- As a reminder the HCA administers a range of recoverable investment loan funds on behalf of Government. The main programmes include Get Britain Building for large developers, and Rent to Buy and Help to Buy for people. However, other loan funds are

available that support small and medium sized builders to develop new homes as well as other initiatives, for example:

- Builders Finance Fund (£525 million) is designed to help restart and speed up smaller housing developments that have slowed down or stalled.
 - Custom Build Serviced Plots Loan Fund (£150 million) to help to address the challenges that custom builders face and provide finance for the development of serviced plots to support people who want to build their own home.
 - Estates Regeneration Programme (£150 million) to help regenerate run down estates, increase the number of homes and improve the quality of life for residents.
 - Empty Homes Programme (£100 million) to bring empty properties back into use as affordable housing. A further £30 million was also made available to community and voluntary groups via a separate funding programme run by Tribal Education on behalf of government.
 - Following the announcement in the recent Queens Speech, the Government intends to launch a new fund that amalgamates a number of our existing recoverable investment programmes into one new fund with a concise set of core eligibility criteria and streamlined application process. The new fund will be available to all private sector organisations who deliver new homes and provide enabled sites ready for residential led schemes. As well as helping mainstream larger builders and developers, the new fund is also open to small builders, community builders, custom builders and regeneration specialists.
- The updated Land Development and Disposal Plan (LDDP) has been issued. The plan details sites that the agency expects to bring forward for development and/or disposal over the next 12 months (up to end of 2017/18 Q1). This document replaces the LDDP issued in January 2016 and will be updated on a quarterly basis.
 - Reminder that Managing Public Money (and the binding Disposal of Surplus Public Sector Land and Buildings – Protocols for Land Holding Departments) makes it mandatory for government departments and agencies (with the exception of MoD, NHS Trusts and Public Forest Estate) to establish if their surplus sites should transfer to the HCA before going on the open market. The HCA will take the transfer of any developable and viable sites and for those previously transferred we are now working on their development and disposal. Further sites are in the pipeline for transfer, including several from the MoD.
 - Starter Homes £1.2bn Land Fund (of the total £2.3bn funding package confirmed in November's Spending Review) will go towards the first 30,000 starter homes and is focused on housebuilding on brownfield sites. HCA is currently working with Government in considering an initial round of Expressions of Interest from local authorities to work with the HCA in accessing this funding.
 - Locally-led garden villages, towns and cities programme. This prospectus sets out how we can support local areas who want to create new garden villages, towns and cities. It offers tailored government support to local areas with ambitious and

innovative proposals to deliver 1,500 homes and above. It is divided into 2 parts covering expressions of interest for different scales of development:

- The first part of the prospectus invites expressions of interest by 31 July 2016 for new 'garden villages' of between 1,500 to 10,000 homes. The additional document provides further guidance on the type of information that the expression of interest should include where possible.
- The second part of the prospectus invites expressions of interest on a rolling basis in new garden towns and cities of more than 10,000 homes.

5) Standards

Mike Smith had sent details about the number of standards that are currently in preparation. These were kindly prepared on a separate sheet that was shared with Land Forum members. A link to these documents can be found here:

<http://www.claire.co.uk/component/phocadownload/category/26-landforum?download=556:standards-projects-16-06-30>

<http://www.claire.co.uk/component/phocadownload/category/26-landforum?download=554:iso-18400-standards-proceeding-to-full-international-standards-16-06-29>

There was discussion about what will happen to CEN standards now BREXIT has occurred. It was acknowledged that there are some CEN committees that have non EU country members on, so Land Forum members will need to wait and see as things settle.

6) Discussion Topic:

National Quality Mark Scheme for Management of Land Contamination (NQMS)

Nicola Harries provided a short presentation on the NQMS website that CL:AIRE has developed (www.claire.co.uk/nqms). This is currently live with sections currently unpublished while the declaration processes is finalised. This website provides all the links to the relevant documents and to SILCs website for those that wish to become Suitably Qualified Persons (SQPs). There are frequently asked questions (FAQ) that will be added to as questions arise. It was felt that there should be two additional FAQs that people had been asked whilst presenting on the NQMS:

1. What is the difference between the Definition of Waste: Development Industry Code of Practice Qualified Person and the NQMS SQP?
2. Does an a SQP have to be independent of the project? NH explained that she had been asked this question at a conference. She explained that the SQP does not have to be independent and in fact should be working alongside the project to ensure that the correct processes and procedures are being followed. The idea is to get things right first time. It could be extremely time consuming and therefore costly if an SQP was involved only at the end of a project as the correct processes and procedures may not have been followed.

NH explained that the declaration process is currently being beta tested, to ascertain if all the correct information is being requested and whether all the information is actually needed.

There has been discussion about some of the wording on the declaration, and NH has been asked to go back to the Professional Standards Sub-Group to agree changing some of the words to make the declaration more definite on what the SQP is declaring.

ACTION: NH to contact the Professional Standards sub-group to finalise the wording.

SoBRA confirmed that they had also recently launched their accreditation scheme and are aiming for the first accredited risk assessors to be available early 2017.

SiLC confirmed that they are working on the conversion course and preparing questions to test existing SiLCs who wish to convert.

BREXIT – Which relevant EU derived policies are important to keep, and where does the Land Forum see opportunity for improvement?

There was a discussion whether the Land Forum could assist Government (CLG & Defra) and provide guidance of which policies industry feel work for them and which do not. It was felt that currently there are a lot of unknowns so it is difficult to see how the Land Forum can get involved.

It was felt that there could be a role, however currently government is moving very quickly so it would be difficult for the Land Forum to respond at the speed necessary. High level briefing has already occurred on what impact will Brexit have on different legislation, what is good/bad. This will continue over the next few months so there will be a clearer picture ahead of the government negotiating with Europe.

It was felt that different legislation will be more difficult than others to unpick from Europe such as Waste Legislation.

It was suggested that perhaps the Land Forum canvass the sector asking which legislation is the least popular and would like to see England and Wales remove itself from?

It was recognised that the government will be setting up a separate “Brexit” department to identify the possible areas to be changed. This department should be monitored to see if the Land Forum can assist at all.

Definition of Brownfield

Paul Nathanail (PN) presented a paper that outlined how the term “Brownfield” should be defined (<http://www.claire.co.uk/component/phocadownload/category/26-landforum?download=555:land-forum-definition-of-brownfield>).

It was felt that the Land Forum could offer to help CLG to define the term “Brownfield”. The present government’s land use policy is placing a great deal of emphasis on the use of “brownfield” sites for development for housing. The “permission in principle” that land on the ‘brownfield registers” is giving the status of being brownfield enormous and novel significance. However, DCLG in the National Planning Policy Framework uses the term

“previously developed land (PDL)”. PDL is defined and is quite different to what has been defined as “Brownfield” by other bodies suggest as CABERNET.

It was agreed that this would be an extremely useful exercise and a good way to engage with DCLG. It was felt that the Land Forum should write to DCLG to offer advice why the two terms should not be interchangeable and to offer an appropriate definition.

It was felt that definitions had been discussed previously at a Land Forum workshop. NH to check the files.

ACTION: NH to check previous workshop files.

ACTION: NH to work with PN about the Land Forum writing to DCLG about the “Definition of the term Brownfield”.

Progress Update on New Working Groups

Working Group: Role of Land Forum in Land Reuse

Euan Hall (EH) unfortunately was unable to attend the Land Forum meeting however prepared a paper for discussion. The paper presented three questions for discussion:

1. Is there a role for the Land Forum to consult and advise the UK Government on a replacement for the English Partnerships state funded investment scheme, to help developers tackle more problematic land?
2. Should the Land Forum, manoeuvre to become more of a policy voice on Land Use?
3. How much land is needed for housing?

<http://www.claire.co.uk/component/phocadownload/category/26-landforum?download=558:the-role-of-land-forum-in-land-reuse-discussion-paper>

Item 1

It was agreed that there is no problem with debating issues, making suggestions and being a sounding board but people did not feel it was the role of the Land Forum to lobby. The Land Forum would need to be very careful how things were presented. If the Land Forum became/or was thought to becoming a lobbying group many of the government agencies and departments would not be able to participate, or the terms of their involvement would need to change.

Item 2 & 3

It was agreed that the Land Forum should have a policy voice on Land Use, however it was thought that this should be more a sub group activity. This sub group needs to define its identity and the scope. Perhaps definition of “Brownfield”, identify what “Ecosystem Services” are. It was felt that there was huge potential “Valuing Land in a holistic way” – but how can this be done.

ACTION: NH to discuss with Euan Hall the Land Forums comments

Working Group: Standards & Technical Guidance

Frank Evans (FE) confirmed that he discussed the potential opportunity of SAGTA chairing a new working group on Standards and Technical Guidance. They were interested in being involved but not to lead.

It was discussed whether the Land Forum was looking to develop/update standards or technical guidance? It is important to be clear because British Standards are already in place to develop standards, therefore this process is already robust and should not be duplicated. It was agreed that the idea of the subgroup was to identify guidance that may need updating. In light of the regulator and government not updating existing technical guidance, has the Land Forum the appetite to take this initiative forward? There appeared to be interest if documents are identified that are needed, however it would be difficult to identify an order of priority. It was suggested that perhaps the important documents identified in the EA Guiding Principles, are the ones to target first. Therefore, perhaps it is best to wait for this document to be updated first.

In the meantime Peter Witherington (PW) identified the "Guidance on comparing soil contamination data with a critical concentration" published in 2008 by CIEH & CL:AIRE should be updated. PW prepared a short paper outlining the reasons why he felt it should be withdrawn.

<http://www.claire.co.uk/component/phocadownload/category/26-landforum?download=557:statistics-guidance>

PN also supported the withdrawal of this document and stated that he had written a paper in 2005 stating that it was being misused. Nathanail, C.P.2005. The use and misuse of CLR 7 acceptance tests for assessment of risks to human health from contaminated land. Quarterly Journal of Engineering Geology and Hydrogeology, v. 37, i. 4, p. 361-367.

"Generic and detailed quantitative assessments of the risks posed to human health from land contamination involve the comparison of representative contaminant concentrations against relevant generic or site-specific assessment criteria respectively. Technical guidance on statistical tests to determine whether contaminant concentrations exceed relevant assessment criteria fails to recognize the effects of sample clustering and heterogeneity in ground conditions on the validity of the test results. Reference to the conceptual model should be made to determine the likely level of contamination to which the critical receptor may be exposed within an averaging area. (Nathanail 2005)."

There was discussion on the consequences of withdrawing the report without something to replace it. It was felt it was important to perhaps identify the issues with the document, and that it was being reviewed and updated.

Howard Price (HP) said that the CIEH, as co-publishers, would not be opposed to a revision though he wanted to point-out that the shortcomings of the original text were a result of the context of its drafting, not any fault of the authors, and it did what was asked of it at the time. Site investigation was an essentially practical and pragmatic process though, not an opportunity for a masterclass in numerical methods, and the result of any revision needed to be simple and economical to apply.

It was agreed that updating the guidance document should be carried out outside of the main Land Forum as a working group and to request members of the Land Forum to assist. It was seen as important that the updated document should be applicable to Part IIA and Planning, and user friendly.

ACTION: NH to ask members of the Land Forum to offer their assistance to be on a working group.

ACTION: NH to liaise with Peter Witherington on moving forward working on updating the guidance document with a working group.

8. Any Other Business:

NH informed the Land Forum that the Joint Industry Working Group for Asbestos in Soil and Construction & Demolition Materials will be publishing the “Control of Asbestos Regulations 2012: Interpretation for Managing and Working with Asbestos in Soil & Construction & Demolition Materials – Industry Guidance (CAR-SOIL)” will be published the week beginning 18/7/16 www.claire.co.uk/asbestos

9. Date of next meeting

The next meeting will be held in November, date to be confirmed.

ACTION: NH to circulate date of meeting.