

Redeveloping land affected by contamination or underdeveloped land: the potential cost barrier of landfill tax

Call for Evidence on a Proposed Landfill Tax Grant Scheme

South Tees Development Corporation Response

Question group 1: Definition and Prevalence of the Landfill Tax Trap

We propose that a site falls within the Landfill Tax Trap if:

1. The use of landfill is reasonably necessary to dispose of some or all of the contamination or material present at the site to realise opportunities for remediation, economic development, or to secure long term environmental or human health protection of surrounding land or water body, AND
2. LfT obligations arising from the disposal of material from remediation to landfill would result in the total costs of site remediation exceeding the land value uplift from bringing land affected by contamination back into beneficial use, so it is suitable for use that serves the needs of the local community, BUT
3. All other costs of remediation, absent the LfT obligation, would be less than the land value uplift.

Q1. Do you consider that this definition represents a fair definition of the Landfill Tax Trap?

- a. Yes
- b. No
- c. If no, how would you alter the definition?

Land Value uplift is an unnecessarily narrow definition for the Landfill Tax Trap. It is entirely possible, even likely, that on former industrial sites, the value of un-remediated land is negative, even after accounting for the negation of Landfill Tax. In such circumstances, it is not unusual for the public sector to intervene to bring the land back into operational use because of the wider economic benefits of so doing.

Another challenge with the proposed approach is that assessing remediation costs is often difficult when dealing with contaminated land, especially where sites have a long history of former industrial uses. For example, on the Teesworks site, we have already found, on remediation works delivered to date, many instances of unforeseen adverse ground conditions not represented within available site records, such as extensive buried structures requiring

removal, that were only detected once the remediation works were underway, and ground contamination that proved far more extensive and onerous than ground investigation data had suggested. This is why the cost per acre for delivering remediation can vary widely, and this can typically be in the range of £120k to £300k per acre, based on our recent experiences on Teesworks. This makes it impossible to know for certain what the costs of remediation will be on any given project to inform the value for money assessment in advance. This will create a circularity if the grant is dependent on assessing the costs and benefits of remediation upfront

Additionally, there are potential scenarios where the remediation costs exceed the land value uplift (absent of the LfT obligation), for example, brownfield and contaminated sites in lower value market areas. This reflects the vast discrepancies in land values nationally, as noted at page 7 of the consultation document. Notwithstanding, such sites may not be economically viable to bring back into active use on a pure financial model; other strategic objectives often support the investment case, e.g., regeneration, bringing brownfield sites back into use, job creation or environmental enhancements.

Therefore, socioeconomic benefits such as economic development, and long-term protection of the environment and human health should also be considered despite these not necessarily resulting in an uplift in land value, especially for land that has a negative value due to contamination.

It is, therefore, important that the definition allows for these strategic objectives to be met, for example, by amending clause 3 as follows:

“All other costs of remediation, absent of the LfT obligation, would be less than the land value uplift. **In circumstances where the remediation costs exceed the land value uplift it must be demonstrated that the remediation can be delivered and is in alignment with the Local Authority’s (including Combined Authorities and Mayoral Development Corporations) strategic vision and objectives for the area.**”

We therefore consider that the definition of the Landfill Tax Trap should reflect the economic (and wider socio-economic benefits calculated in accordance with the HMT Green Book, such that those benefits are in excess of the costs of remediation.

Q2. Are you aware of any specific site or sites that you believe meet the above definition of the Landfill Tax Trap? If yes, please provide details including a summary of the location, type of contamination, estimated land value or other benefits, if remediation where to take place, and estimated cost of remediation including likely Landfill Tax obligation if known.

The Teesworks site is a Mayoral Development Corporation (MDC) in Tees Valley.

Teesworks is home to the UK’s first and largest Freeport. The MDC was established following the closure of the SSI Steelworks in 2015, which resulted in significant job losses for the region, and which left behind extensive areas of derelict, contaminated former industrial land requiring intervention. The MDC area is sized at 4,500 acres, of which approximately 2,600

acres are available for redevelopment. The MDC is tasked with regenerating the site, driving forward its redevelopment to create jobs, secure investment and transform the region.

Significant Government funding has already been invested in the site. Since 2015, over £200m has been committed to preparing the site for redevelopment, already unlocking over 775 jobs. Around £393m of capital investment is expected over the next 12 months. The site is stimulating confidence and attracting significant private sector investment, which is set to deliver significant economic growth opportunities and thousands of jobs. Once complete, Teesworks will be a strategic location for the clean energy and advanced manufacturing sectors. It will be at the heart of the UK's Net Zero strategy, providing major development space for offshore wind manufacture and marshalling, and carbon capture, utilisation and storage.

Development at Teesworks has been noted as an exemplar in delivering the Government's flagship Levelling-up agenda and is helping to establish Tees Valley as a global lead for Net Zero Industry.

Critical land preparation work is ongoing at the site to enable further development and unlock private sector investment. This work includes the need to remediate and restore an historic landfill, address the removal to landfill of extensive volumes of hazardous waste (a by-product from the previous steelmaking processes) from a proposed development site, and remove an existing closed landfill for development reasons; proposals that are supported by the Environment Agency. Landfill tax costs associated with these examples alone are anticipated to be in excess of £250m.

There are other areas of the site that will present similar remediation challenges, requiring reliance on disposal of significant volumes of waste materials to landfill, such as the land area occupied by the Redcar Blast Furnace, Redcar Power Station, and Redcar Coke Ovens, dating back to the 1970s, which collectively occupy a major land area within the Foundry development zone on Teesworks. This is a prime development site due to its size (at approximately 150 acres) and its location close to the river and related deep-water port facilities. It has already been subject to a number of major enquiries from significant international inward investors. The opportunity cost of not remediating and redeveloping this area could, therefore, be significant, in failing to attract, for example, a large-scale multinational operator requiring quayside access and use of world class port facilities, so missing out on the job creation opportunities and wider economic benefits this would deliver. This further emphasises why the LfT issue should not be solely connected with viability in terms of remediation costs and land value uplift,

We are currently demolishing assets on these plots, and until the asset demolitions and follow-on ground investigations are concluded, it is impossible to accurately estimate the cost of bringing the land back into beneficial use. Indeed, it may be the case that the full cost of remediation will only be clear once the remediation is undertaken, as it is not possible to be absolutely certain on the severity of land contamination and other ground challenges until the remediation works have been undertaken.

The supply of employment land across the Tees Valley is extensive and land values are depressed. We have already mentioned in our response to Q1 that the typical cost of remediation of land can vary widely depending upon what is ultimately found within the ground – between £120k and £300k per acre on Teesworks to date, before any Landfill Tax is accounted for. As such, in a number of instances, taken in isolation, it will not be economically viable to proceed with remediation, however essential such projects may be to the our wider redevelopment objectives, hence the Governmental support received to date.

The above circumstances create a circularity in assessing value for money, and where strategically important sites are concerned, especially where we are trying to bring former industrial sites back into beneficial use rather than develop greenfield sites, a more pragmatic approach is needed.

In demonstration of some of the challenges presented, a number of Teesworks case studies have been appended to our response. These are:

1. SLEMS – involving remediation of a prime development site impacted by years of hazardous waste by-products deposition from the steelmaking process.
2. Long Acres East – addressing the remediation on the site of an existing, closed landfill.
3. Dorman Point South – where remediation of the site is impacted by former iron and steel making uses such as a coke works and open-hearth furnaces dating back to the early part of the 20th century.
4. Foundry North – where land is occupied by a coke works and associated by-products plant, a power station, and a blast furnace.

The case studies are accompanied by a plan defining the locations of the four sites.

Q3. What type of site should qualify as meeting the Landfill Tax Trap definition?

- a. Redevelopment only
- b. Sites where land remediation will have a wider economic, environmental, and socioeconomic benefit, including through improvements to public health
- c. Other, please specify

The definition should incorporate both 3a and 3b, i.e., Redevelopment sites and/or sites where land remediation will have a wider economic, environmental, and socioeconomic benefit, including through improvements to public health.

Additionally, consideration could be given to the definition of a qualifying site including....”**Sites with a specific end user requirement that cannot be satisfied elsewhere**”, to ensure economic development opportunities are not lost.

Question group 2: Environmental criteria

1. The applicant must demonstrate that use of landfill is reasonably necessary, and steps have been taken to minimise the quantity of waste that will be landfilled.
2. Reasonableness may be evidenced with respect to:
 - a. The nature of the waste and / or the location of the site meaning there is a lack of a suitable alternative,
 - b. The treatment operation that would be carried out to move up the waste hierarchy and minimise the amount of disposal to landfill,
 - c. Restrictions to the future utility of the site post-remediation (e.g., due to instability) absent removal and landfilling,
 - d. Disproportionate delay and opportunity costs arising from an alternative remediation method, and / or
 - e. Current or imminent pollution that may cause harm to the environment.
3. The applicant should evidence that the contamination has been present for a minimum period of time prior to the commencement of any new grant offer, ensuring contamination is historic and so removing any incentive to add new contamination to the site.
4. No party benefitting from the remediation or planned development should be subject to any past or current legal action in respect of the contamination to be removed.

Q4. Do you think these criteria are appropriate and sufficient to proportionately protect the waste hierarchy?

- a. Yes
- b. No
- c. If no, please provide details:

We agree with the appropriateness of the criteria subject to the inclusion of some additional wording at 2d.

Economic opportunities and specific end user requirements are often time sensitive. As such, while it may be theoretically possible to remediate a site and avoid the use of landfill, the related methodologies typically require overly long timescales to implement, resulting in the inward investment and job creation opportunity being lost.

We therefore propose that clause 2d be amended to read as follows:

“Disproportionate delay and opportunity costs arising from an alternative remediation method **including where specific end user requirements cannot be satisfied elsewhere,** and/or”

Q5. What should count as historic contamination?

- a. 1-4 Years
- b. 5-10 Years
- c. 10 Years +
- d. Other, please specify:

We consider “5 Years +” to be a better timeframe. This would prevent polluters gaining advantage from their own actions, mitigate long term harm to and from sites, and allow sufficient time to elapse from the time of contamination for all options for remediation and future redevelopment to have been explored, prior to applying for the grant.

Q6. Who should scrutinise whether a proposed project meets these environmental criteria?

DEFRA is best placed to scrutinise whether a project meets the criteria. DEFRA would need to ensure that adequate and competent resources are allocated to the scrutiny of applications to ensure timely determination, in order to avoid delays that could jeopardise projects. STDC suggests that strict determination periods (i.e., maximum 13 weeks) are implemented and enforced. This will help ensure that engagement on the potential inward investment and job creation opportunity can be progressed with certainty on the decision-making timeframe, to mitigate any risk of said opportunity being lost, and ensure the project stays on schedule.

Given the impossibility of accurately defining the level of LfT Grant required at the outset of the application process, it will be beneficial if the basis of the grant is an estimation of costs based on a schedule of qualifying material typologies and related quantities that require to be disposed of to landfill in connection with the remediation project (and, thereby, those that don't), with such information being provided to the landfill operator (or operators). Qualifying materials would then be disposed of to landfill, supported by an audit trail, with the grant monies being reimbursed to the applicant in arrears, on a monthly basis, with periodic reviews and updates (say quarterly) on the likely outturn total grant amount required.

The grant should be awarded on the basis of the full LfT burden arising from the remediation project, not the net amount of LfT charges once the estimated land value uplift, absent of the LfT imposition, has been calculated and deducted.

It is assumed that the scrutinising body and/or HMRC will develop a pro forma application template to standardise the approach to applicant submissions.

Q7. What evidence do you consider that you / an applicant could be reasonably asked to present to demonstrate that a proposed project meets these environmental criteria?

Evidence of contamination:

The “nature of the waste” and “current or imminent pollution that may cause harm to the environment” should be evidenced by:

- A comprehensive ground investigation report in line with BS 5930:2015 +A1:2020 demonstrating the quantity and extent of the problem material within the site and waste classification if discarded.
- Demonstration that the material is contaminated and not suitable for use by a detailed quantitative risk assessment (DQRA) conducted in line with LCM 2020.
Demonstration that the material is geotechnically unsuitable without improvement (e.g., stabilisation) to meet the project required earthworks specification, but, critically,

only where such stabilisation is proven viable in the timeframe available for the project – which is often not the case.

- Confirmation that the EA has already classified the material as waste, e.g., via disposal permit records, correspondence, etc.
- The historic nature of the contamination should be evidenced
 - A Phase 1 Environmental Site Assessment / Desk Study which should review the site development history / pollution records and assess the likely dates of any pollution events.
 - Contaminant ageing assessments if possible / available (noting these will not be obtainable in all cases).

Reports should be authorised by an environmental professional holding a SiLC qualification to provide certainty to DEFRA / HMRC that they are to an appropriate professional standard.

Remediation Options Appraisal (ROA):

Assess disposal to landfill (both with and without the application of the proposed scheme) alongside other potential remediation and treatment technologies, where such treatment technologies present viable alternatives from a project timescale perspective. The ROA should demonstrate, using a suitable scoring matrix, that the scheme is the most appropriate approach for the management of the material.

- The ROA should consider:
 - Both contaminant remediation and geotechnical improvement as required by the development, including related timescale impacts and how these could influence project viability.
 - The site location, surrounding land uses and the impact of the assessed approaches on these stakeholders.
 - The viability of a do nothing “absent removal” approach.
 - If the material could be managed on site and any “Restrictions to the future utility of the site post-remediation” that would result from this approach.
 - Development drivers such as “Disproportionate delay and opportunity costs arising from an alternative remediation method”, which are normally assessed by ROA and should be included.

For sites where more than one problem material is present, the ROA should assess each material separately rather than as a single volume. This will ensure that only the most problematic materials requiring removal to landfill are subject to the grant and that where a “treatment operation that would be carried out to move up the waste hierarchy and minimise the amount of disposal to landfill” this is undertaken where viable in the context of relative project timescales (remediation project versus end user development).

Planning documents:

- Planning application documents and /or approvals
- Sustainability assessments
- Geotechnical reports and calculations
- Biodiversity impact assessments/statements .

Question group 3: Financial and socioeconomic criteria

We welcome views on following criteria which we consider may help protect these financial and socioeconomic principles:

1. The applicant is a local authority or other public body who either owns the site (whether directly or through a Development Corporation or similar) or else is prepared to buy it from the Crown Estate (where in escheat).
2. The applicant must supply evidence that LfT is acting as a financial barrier to remediation in line with criteria 2 and 3 of the Landfill Tax Trap definition above.
3. The applicant must evidence that a plan is in place to secure timely redevelopment or other clear social or environmental benefit post-remediation, with any necessary planning permissions already in place.
4. The applicant must evidence that they are able to meet all other remediation costs and agrees that the grant will only be paid at the point the LfT has been paid by the landfill operator and the applicant has provided evidence of invoicing.

Q8. Do you agree that application should be restricted to local authorities?

- a. Yes
- b. No
- c. If no, please provide details

In the context that the definition in the Call for Evidence document defines local authorities as being inclusive of Combined Authorities and Mayoral Development Corporations.

Q9. What evidence do you think an applicant should reasonably be expected to provide that LfT is acting as a financial barrier to remediation?

The applicant will need to submit a Viability Statement for the site/project which clearly articulates compliance with the Landfill Tax Trap and the benefits that would accrue should the scheme be allowed to proceed absent of the Landfill Tax imposition. The Viability Statement would include the following information:

- Estimated remediation costs (or a cost range, where a specific figure is not readily determinable – see earlier comments at Q1)
- Justification behind planned remediation methodology / approach' (i.e., there will be instances in which there is a time-bound opportunity to secure a specific site end-user/operator, which requires remediation and redevelopment by a specific date. This could result in the available / selected remediation options not being the cheapest, but still the best value in terms of achieving the most upside potential in terms of socio-economic, long-term job creation from inward investment, etc).
- Estimated Landfill Tax costs
- Estimated land values (existing and post-remediation)
- Other evidence of market failure as appropriate

- Anticipated benefits of remediation (e.g., jobs created, GVA increase, private sector investment unlocked, environmental / health benefits, etc).

Q10. What evidence do you think an applicant should reasonably be expected to provide that a plan is in place to secure redevelopment or other public benefit?

The evidence provided will vary depending on the site in question and stage of development.

Evidence of planning permission for the remediation of the site should be a requirement. This should be accompanied by a Redevelopment Plan demonstrating how the site will be brought into active use following remediation. The Redevelopment Plan should include evidence of market demand and expected end users. Alternatively, a statement of the clear public benefits should be submitted,

We do not consider that a planning permission for a specific end user development should be a requirement, as in most instances, the end user will not commit until remediation has started or taken place.

The financial Viability Statement would need to demonstrate that the scheme is funded and that contractors have been approached to price and implement the remediation works (hence, the importance of a 13-week approval process for the grant application). If alternative remediation could be brought forward, the applicant would need to demonstrate compliance with our suggested modified clause 2d (of the Question group 2: Environmental criteria) that the opportunity costs are such that an exemption is required.

Other evidence, depending on circumstances, may include:

- How the development fits with the applicant's master plan
- HMT Greenbook compliant Business Case for the associated works
- Governance arrangements and relevant papers and approvals (e.g., MDC Board).

Q11. What evidence do you think an applicant should reasonably be expected to provide that all other costs of development are affordable to them?

This can be addressed in the Viability Statement discussed above, which could incorporate proof of funds. But typically, the following evidence would likely need to be provided:

- Details of proposed funding sources and proof of funds
- Medium Term Financial Plan inclusive of development costs and any funding requirements
- Confirmation by s151 (s73) Officer that the scheme is affordable.

Question Group 4: About you

1. Would you like your response to be confidential?

- a. Yes
- b. No
- c. If you answered yes to this question, please give your reason.

Confidential financial data?

2. What is your name?

John McNicholas

3. What is your email address?

john.mcnicholas@teesworks.co.uk

4. It would be helpful for our analysis if you could indicate which of these sectors you most align yourself/your organisation with for the purpose of this consultation (please tick / circle one which is most applicable to you):

- a. Local authority
- b. Developer
- c. Non-governmental organisation
- d. Member of the general public
- e. Landowner
- f. Lead Local Flood Authorities
- g. Other (please state)

Mayoral Development Corporation

5. If you are responding on behalf of an organisation, what is its name?

South Tees Development Corporation