

BOROUGH PLAN BACKGROUND PAPER – Contamination and Land Instability

Nuneaton and Bedworth Borough Council

2015

Contents

1. INTRODUCTION	1
2. LEGISLATION	1
3. THE COAL MINING AUTHORITY	4
4. PREFERRED OPTIONS CONSULTATION RESPONSES	5
5. NUNEATON AND BEDWORTH BOROUGH PLAN VISION AND SPATIAL OBJECTIVES	6
6. EVIDENCE BASE	7
7. POLICY JUSTIFICATION	9
Appendix 1: Nuneaton and Bedworth Surface Coal Resource Plan	12
Appendix 2: Coal Mining Development High and Low Risk Plan	13
Appendix 3: Potentially Contaminated Sites.....	14

1. INTRODUCTION

1.1 Purpose

The purpose of this Background Paper is to explain why the Borough Plan includes a policy on Contamination and Land Instability.

There is a potential risk of land contamination and land instability across the Borough of Nuneaton and Bedworth due to historical land uses, such as coalmining, or from businesses that used or made chemical substances.

Typical contaminants encountered during a redevelopment include metals and metalloids, (such as lead, mercury, arsenic, copper and zinc), hydrocarbons (such as petroleum products, oils, benzene, benzo(a)pyrene and phenol), asbestos and polychlorinated biphenols. Many of these substances can potentially have a serious impact on human health, surface and underground waters or on the environment and eco systems in the vicinity,

Depending on their location, concentration and the proposed use for the site, some or all of these substances:

- may be removed from the site
- may be shown to be located such that exposure is very unlikely
- may demonstrate that the risks are acceptable.

Nuneaton and Bedworth Borough Council is committed to ensuring that redeveloped sites are safe and suitable for their proposed use by including a policy Contamination and Land Instability in this Borough Plan.

2. LEGISLATION

2.1 The Environmental Protection Act, 1990

The Environmental Protection Act 1990 (EPA) is the fundamental structure and authority for waste management and control of emissions into the environment.

Under Part 2A of the EPA, the Contaminated Land (England) Regulations provide a new regime of statutory guidance on contaminated land. The Regulations set out the definition of contaminated land and key methods and procedures by which each local authority will implement Part 2A. This includes specific procedures for apportionment of liability and for securing remediation where unacceptable risks cannot be controlled by other means. It is underpinned by the "polluter pays" principle.

The appropriate person responsible for remedial work is "any person, or any of the persons, who caused or knowingly permitted the substances" causing the designation. If no such person can be identified after reasonable enquiries, the present owner or occupier then becomes the appropriate person (s.78F(4)-(5)).

Any persons controlling other land to which access is required for remediation must grant such access and may apply to the appropriate person for compensation (s.78G). The appropriate person is also deemed to be responsible for remediation of other land into which substances have escaped (s.78K).

In performing such duties NBBC plays a key part in the sustainable development of the area.

2.2 Definition of Contaminated Land

Contaminated land

Any land which appears to the local authority in whose area it is situated to be in such a condition, by reason of substances in on or under the land, that:

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

Pollution

Anything that affects the quality of land, air, water or soils, which might lead to an adverse impact on human health, the natural environment or general amenity. Pollution can arise from a range of emissions, including smoke, fumes, gases, dust, steam, odour, noise and light.

2.3 National Planning Policy Framework

The table below sets out the relevant requirements set out in the NPPF and the policy approach in the Borough Plan.

Relevant NPPF requirement	NPPF sub requirement	Relationship with policy
Paragraph 109 – The planning system should contribute to and enhance the natural and local environment by:	<ul style="list-style-type: none"> • remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate. 	The Contamination and Land Instability policy requires developers to ensure that any contaminated or unstable land will be fit for purpose for its final use.
Paragraph 120 – To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the		The Contamination and Land Instability policy stipulates that developers will need to demonstrate what measures will be put in place to mitigate the impacts of land contamination and land instability on public health, environmental quality, the built environment and general amenity.

Relevant NPPF requirement	NPPF sub requirement	Relationship with policy
<p>potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.</p>		
<p>Paragraph 121 – Planning policies and decisions should also ensure that:</p>	<ul style="list-style-type: none"> the site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation including land remediation or impacts on the natural environment arising from that remediation; 	<p>The Contamination and Land Instability policy stipulates that developers will need to demonstrate what measures will be put in place to mitigate the impacts of land contamination and land instability on public health, environmental quality, the built environment and general amenity.</p>
	<ul style="list-style-type: none"> after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and 	<p>The Council will rely on the NPPF and legislation.</p>
	<ul style="list-style-type: none"> adequate site investigation information, prepared by a competent person, is presented. 	<p>The Contamination and Land Instability policy requires developers required to demonstrate that the development site is, or will be, made suitable for the proposed final use. It</p>

Relevant NPPF requirement	NPPF sub requirement	Relationship with policy
		specifies that evidence that will need to be provided.

3. THE COAL MINING AUTHORITY

The Coal Authority is a Non-Departmental Public in 1994. It undertakes specific statutory responsibilities associated with the licensing of coal mining operations in Britain; handles subsidence claims which are not the responsibility of licensed coalmine operators; deals with property and historic liability issues; and provides information on coal mining.

The Coal Authority established a new Planning and Local Authority Liaison Department in 2008. It is a statutory consultee for planning matters and aims to ensure plan making and planning decisions:

- safeguard coal as a mineral in accordance with the NPPF in England;
- ensure development is undertaken safely and reduces the future liability on the tax payer for subsidence and other claims arising from the legacy of coal mining in line with the NPPF in England.

3.1 Coalfield Plans

3.1.1 Nuneaton and Bedworth Surface Coal Resource Plan

The Coal Authority has prepared Coalfield Plans for local authorities which detail areas of coal assets and areas of high and low development risks. The purpose of the plans is to ensure that mineral resources are not needlessly sterilised by new surface development and that specific coalmining related risks are identified.

The Nuneaton and Bedworth Surface Coal Resource Plan illustrates the areas of Surface Coal Resources within the Borough's administrative area. If the Council fails to safeguard these resources, it may cause insufficient supplies for future generations. The Nuneaton and Bedworth Surface Coal Resource Plan is shown in Appendix 1.

3.1.2 Coal Mining Development High and Low Risk Plan

Development High Risk Areas are coal mining reporting areas which contain one or more recorded coalmining related features which have the potential for instability or a degree of risk to the surface from the legacy of coal mining operations. Coal mining legacy features include:

- mine entries;
- shallow coal workings (recorded and probable);
- recorded coal mining related hazards;
- recorded mine gas sites;
- fissures and breaklines; and
- previous surface mining sites.

The coalfield is divided into two areas referred to as High Risk and Low Risk.

- The High Risk Area (15% of the coalfield area) is where coal mining risks are present at shallow depth and likely to affect new development.
- The Low Risk Area (85% of the coalfield) is where past coal mining activity has taken place at sufficient depth that it poses low risk to new development.

The development high risk areas have been defined to enable developers and planners to understand and consider the potential for instability or degree of risk from the legacy of coal mining operations. New development in development high risk areas need to demonstrate that the development will be safe, stable, and take full account of former coal mining activities.

The Development High Risk Area Plan is shown in Appendix 2.

4. PREFERRED OPTIONS CONSULTATION RESPONSES

The Preferred Options Consultation lasted for eight weeks between 5/07/2013 and 30/08/2013. At the time there was no Contamination and Land Instability Policy in the Preferred Options Document.

The policy aims to ensure that public safety, land instability and contamination are considered and addressed and that mitigated sites are no longer considered contaminated and appropriate for final use.

As there is a legacy of contaminated and unstable land in the Borough as a result of coal mining the Coal Authority raised a number of concerns. The Coal Authority suggested a new policy to address:

- Potential public safety and stability problems.
- The risks of development within defined Development High Risk Areas through the submission of Coal Mining Risk Assessments with planning applications.
- The legacy of past coal mining activity and any resulting issues of land instability are afforded due consideration as part of new development proposals, in line with the requirements of paragraphs 120-121 of the NPPF.
- The legacy of coalmining entries. Within the Nuneaton and Bedworth Borough Council area there are approximately 430 recorded mine entries. Mine entries may be located in built up areas, often under buildings where the owners and occupiers have no knowledge of their presence unless they have received a mining report during the property transaction. Mine entries can also be present in open space and areas of green infrastructure, potentially just under the surface of grassed areas. Mine entries and mining legacy matters should be considered by Planning Authorities to ensure that site allocations and other policies and programmes will not lead to future public safety hazards.

5. NUNEATON AND BEDWORTH BOROUGH PLAN VISION AND SPATIAL OBJECTIVES

The Borough Plan (BP) aims to promote development that positively contributes to making the Borough a better place. Policies within the BP will ensure the highest possible sustainable design standards are achieved in order to maintain and improve the Borough's built environment. Policies will also focus on improving the appearance of buildings, their impact on the environment, their long-term future adaptability and resilience to the effects of climate change.

Relevant to this Background Paper the Nuneaton and Bedworth BP vision states that by 2031, Nuneaton and Bedworth Borough will be a place where there are opportunities for sustainable economic growth with diverse job prospects, healthy living and an integrated infrastructure network. Business will want to invest in the Borough as a result of the outcomes of policies in the Plan, which will include creating an attractive environment.

The relevant strategic objective from the Borough Plan is 7, which states that new development [will] enhance and improve the quality and appearance of the existing urban area. In particular:

To ensure that new development enhances and improves the quality and appearance of the existing urban area. In particular:

- a) Important open spaces such as Riversley Park, Miners Welfare Park, Whittleford Park and Community and Local parks are protected and enhanced. Landscape character, historic, geological and natural features such as Arbury Historic Park and Garden, Stockingford Railway Cutting and Ensor's Pool are protected and enhanced.
- b) Derelict, contaminated and untidy sites are brought back into beneficial use.
- c) Minimise the negative impact of development and make improvements where possible to air quality in Air Quality Management Areas.
- d) Maximise opportunities to use the River Anker, Wem Brook, the Coventry Canal and Ashby Canal as attractive focal points for open space and new development where there is no negative impact on the green network or the water quality.
- e) Infill development positively responds to local character and does not result in town cramming.
- f) High quality and sustainable design and construction in line with design standards.

6. EVIDENCE BASE

6.1 Nuneaton and Bedworth Borough Council Contaminated Land Strategy: Phase 2, January 2010

Nuneaton and Bedworth's land quality is generally good or excellent but its industrial heritage means that there are many sites that have had one or more industrial or commercial uses, potentially resulting in land contamination or instability. The Contaminated Land Strategy aims to resolve issues from its industrial legacy.

The first Contaminated Land Strategy was published in July 2001. This document (Phase 2) is the first review of the Strategy and describes progress to date and the objectives that need to be attained to continue to discharge the Council's obligations under the Environmental Protection Act 1990. Phase 2 deals with more detailed desk and field investigations of sites prioritised by the risk screening exercise.

Nuneaton and Bedworth Borough Council has the sole responsibility for determining whether any land within its administrative boundary appears to be contaminated land. In broad terms this role includes:

- Causing the area to be inspected to identify potentially contaminated sites
- Determining whether any particular site is contaminated (by definition)
- Determining whether any such land should be designated a 'special site'
- Acting as the enforcing authority for contaminated land not designated as a 'special site'

Where the Borough Council identifies contaminated land, it must designate the site as a special site and notify the Environment Agency. The local authority must then serve a remediation notice on the *appropriate person*. Once served the Environment Agency becomes the enforcing authority.

6.2 Priorities

The Borough Council adopted a two-stage approach to identifying contaminated land:

- Phase 1 – Risk Screening to prioritise sites for further inspection
- Phase 2 – Detailed Site Inspection to assess pollutant linkages.

The Council's priorities in order of importance will be to:

- protect human health
- protect controlled waters
- protect designated ecosystems
- prevent damage to property
- prevent any further land contamination
- encourage voluntary remediation
- encourage the re-use of land considered to be brownfield or contaminated

6.3 Phase 1: Risk Screening

The initial Phase 1 Risk Screening is now complete. More than 3,100 sites with previous potentially contaminative uses were identified (see Appendix 3). The sites were listed in order of risk screening scores, derived from the British Geological Survey ConSEPT software in conjunction with desktop ArcGIS 9.2. These overall scores were then used to determine the ranking of sites. A lower score signifies a lower potential for a pollution linkage. Conversely, a higher relative score signifies greater potential. This ranking was used to assist in identifying higher priority sites which require further detailed investigation.

The assessment of a site as high priority does not necessarily infer the existence of a significant risk to one of the specified receptors, but it does identify the need for a detailed risk assessment.

6.4 Phase 2: Detailed Risk Assessment and Investigation

Following the completion of the risk screening process the Council systematically reviewed those sites identified in order of ranking, although some sites may be prioritised based on their land use e.g. schools and residential areas. At this stage a finer detailed analysis is undertaken to confirm whether or not the pollutant linkage identified is:

- resulting in significant harm (or the significant possibility of such harm) being caused to the receptor(s), or
- resulting in the significant pollution (or the significant possibility of such pollution) of controlled waters

Where evaluation of all available data suggests that a pollutant linkage may exist, it may be necessary to visit the site and carry out some form of intrusive investigation. In every case this will be carried out by a “suitable person”, adequately qualified to undertake the work. The utmost discretion will be used at all times to minimise the effect on occupiers of the land.

To ensure the most appropriate technical procedures are employed, the Council will have regard to best practice. This will be evaluated using Government and industry guidelines. Sites identified for detailed risk assessment will be subject to consultation with the Warwickshire County Council archaeologist to advise on known or potential archaeological issues on the site.

In line with the Environmental Protection Act 1990 and the National Planning Policy Framework, the standard of remediation to be achieved through the grant of planning permission is the removal of unacceptable risk and making the site suitable for its new use, including the removal of existing contaminant linkages. All receptors relevant to the site should be protected to an appropriate standard. As a minimum, after carrying out the development and commencement of its use, the land should not be capable of being determined as contaminated land.

6.5 Liability

Apportionment of liability for the costs of investigation and remediation of sites is based on the precept of “polluter pays”. However, liability issues may be very complex, particularly where the polluter no longer exists.

6.6 Contaminated Land Register

In accordance with Part 2A of the Environmental Protection Act (EPA) 1990 and the Contaminated Land (England) Regulations 2000, all local authorities are required to maintain a public register of contaminated land within their borough. The register aims to provide a permanent record of land that is, or has been, classed as a ‘Special Site’ and any actions taken, or proposed to remediate the land in question.

The regulations clearly state that the register should include:

- Remediation Notices
- Remediation Declarations/Statements
- Appeals against Notices
- Designation of special sites
- Notification of Claimed Remediation
- Convictions for Offences

Presently, no sites within the Borough have been determined as "contaminated land" or a "special site" according to the legislation. Therefore there are currently no entries in the register.

7. POLICY JUSTIFICATION

Since there are over 3100 potentially contaminated sites and 430 recorded mine entries in the Borough, developers should assume that all land subject to or adjacent to previous industrial use is contaminated or unstable. The precautionary principle should be applied where land uses are particularly sensitive to contamination, for example, housing, schools, hospitals and children’s play areas.

The Borough’s legacy of heavy manufacturing and coalmining prompted the Coal Authority to request the inclusion of a Contamination and Land Instability Policy to ensure:

- public safety,
- safeguard coal resources from being sterilised,
- direct development away from Development High Risk Areas (DHRA), or
- where development does take place in DHRAs, ensure that a risk assessment accompanies the planning application and demonstrates that the development and receptors will be safe, stable and take full account of former coal mining activities.

The Contamination and Land Instability Policy will contribute to the Council’s priorities set out in the Contaminated Land Strategy: Phase 2, 2010. The policy will also ensure that the standard of remediation removes unacceptable risk and ensures

the site will be suitable for its new use, consistent with the Environmental Protection Act, 1990; the National Planning Policy Framework; and the Council's Contaminated Land Strategy.

Implementing the policy effectively will bring back into use sites that were previously considered undevelopable, due to their perceived level of contamination or instability, to a standard that they are no longer capable of being considered as contaminated or unstable.

7.1 Contamination and Land Instability Policy

Precautionary Principle

Development proposals located on or adjacent to land which may have been subject to contamination and / or land instability will need to demonstrate that measures can be taken to effectively mitigate the impacts of land contamination and instability on public health, environmental quality, the built environment and general amenity.

Risk Assessment

Developers will be required to demonstrate that the development site is, or will be, made suitable for the proposed final use and will need to provide, as a minimum, the following documents with the planning application:

- i. detailed site history identifying contaminative uses and land instability;
- ii. the nature and extent of the contamination, land instability and the hazards and risks posed.

7.2 Delivery Mechanisms

Work with Development Management, Environmental Health, the Environment Agency and the Coal Authority to identify contaminated sites and bring about remediation.

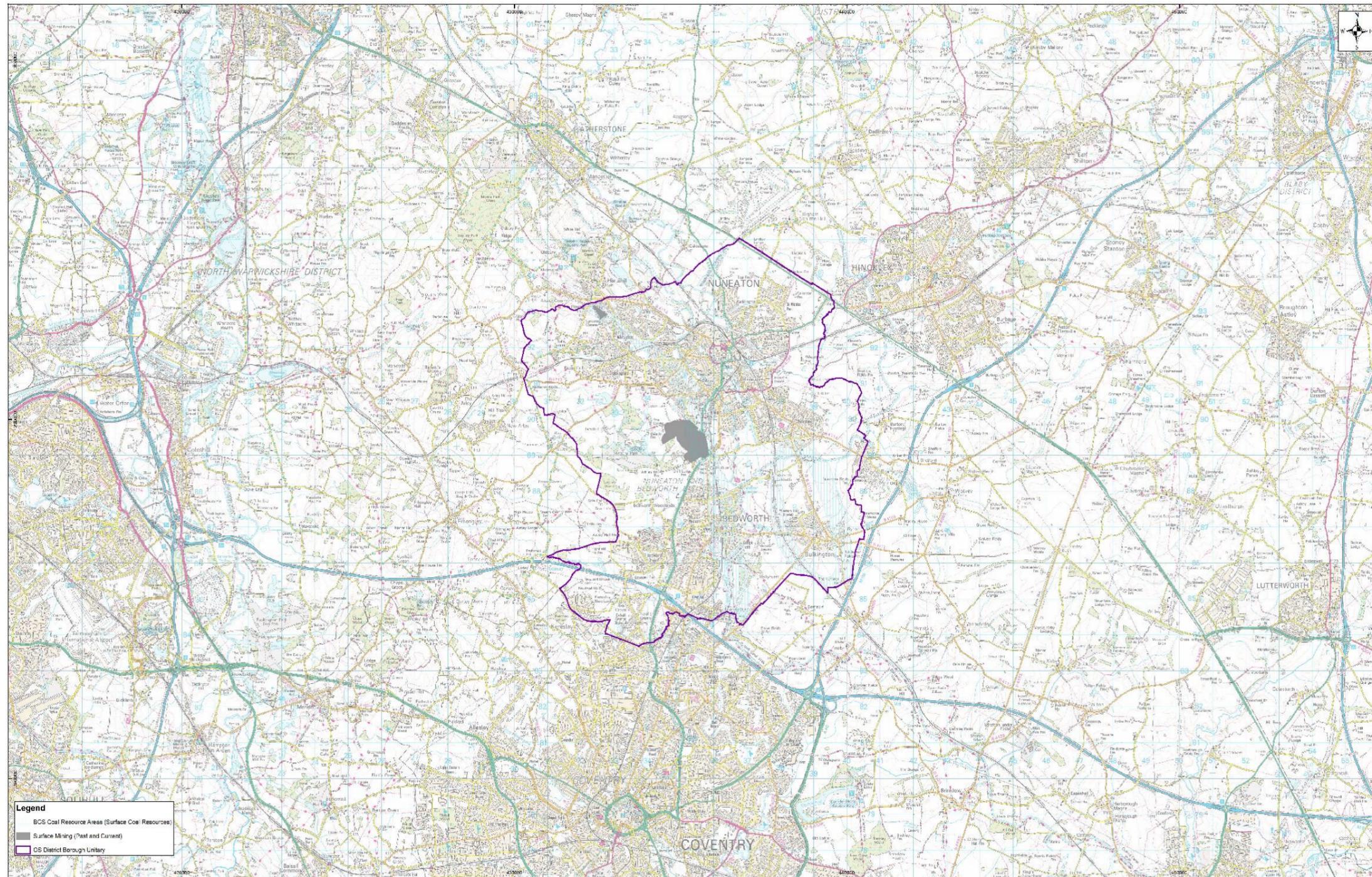
7.3 Monitoring

Indicator	Target
Development of a potentially contaminated or unstable site.	Remediation is suitable for new use and is no longer considered contaminated.

APPENDICES

Appendix 1: Nuneaton and Bedworth Surface Coal Resource Plan

Nuneaton and Bedworth District (B) - Surface Coal Resource



This map is reproduced from the Ordnance Survey material by the Coal Authority [or division thereof] with the permission of the Controller of Her Majesty's Stationary Office, Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. License Number 100020315. (2014)

The Coal Authority and British Geological Survey own the copyright to these maps. The information we have used to produce these maps is protected by our database right. All rights are reserved and unauthorised use is prohibited. If we provide the map to you, this does not mean that copyright and any other rights will pass to you. However you can use the map for your own purposes.

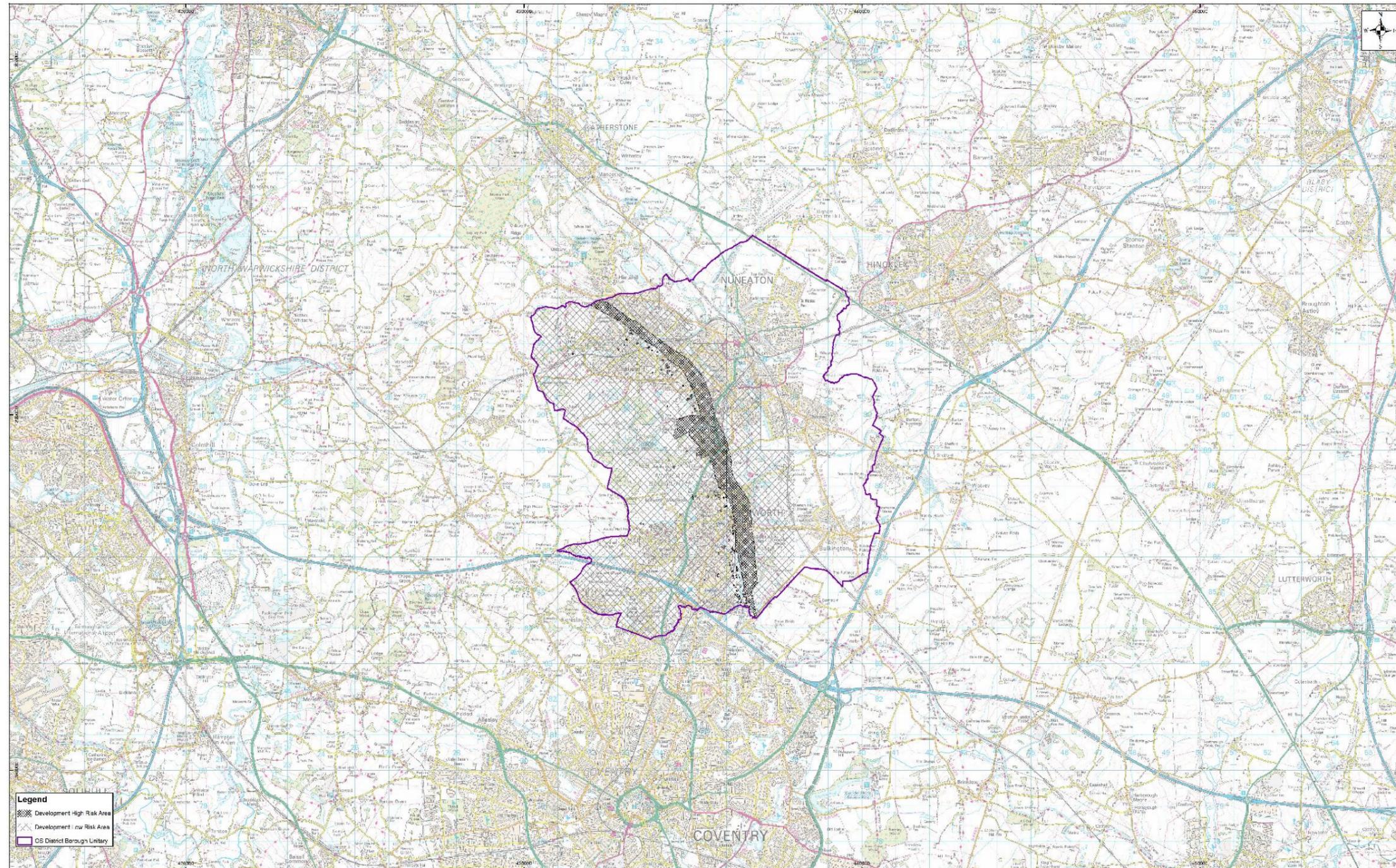
The copyright and all other intellectual property rights in the maps will remain the property of the Coal Authority and British Geological Survey or other third parties (as appropriate). Neither the user nor any other third party will acquire any rights in respect of the maps other than as expressly provided in these Terms.

Scale 1:50000@A1

Published on: 07/06/2014

Appendix 2: Coal Mining Development High and Low Risk Plan

Nuneaton and Bedworth District (B) - Development Risk



This map is reproduced from the Ordnance Survey material by the Coal Authority [or division thereof] with the permission of the Controller of Her Majesty's Stationary Office, Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. License Number 100020315. (2014)

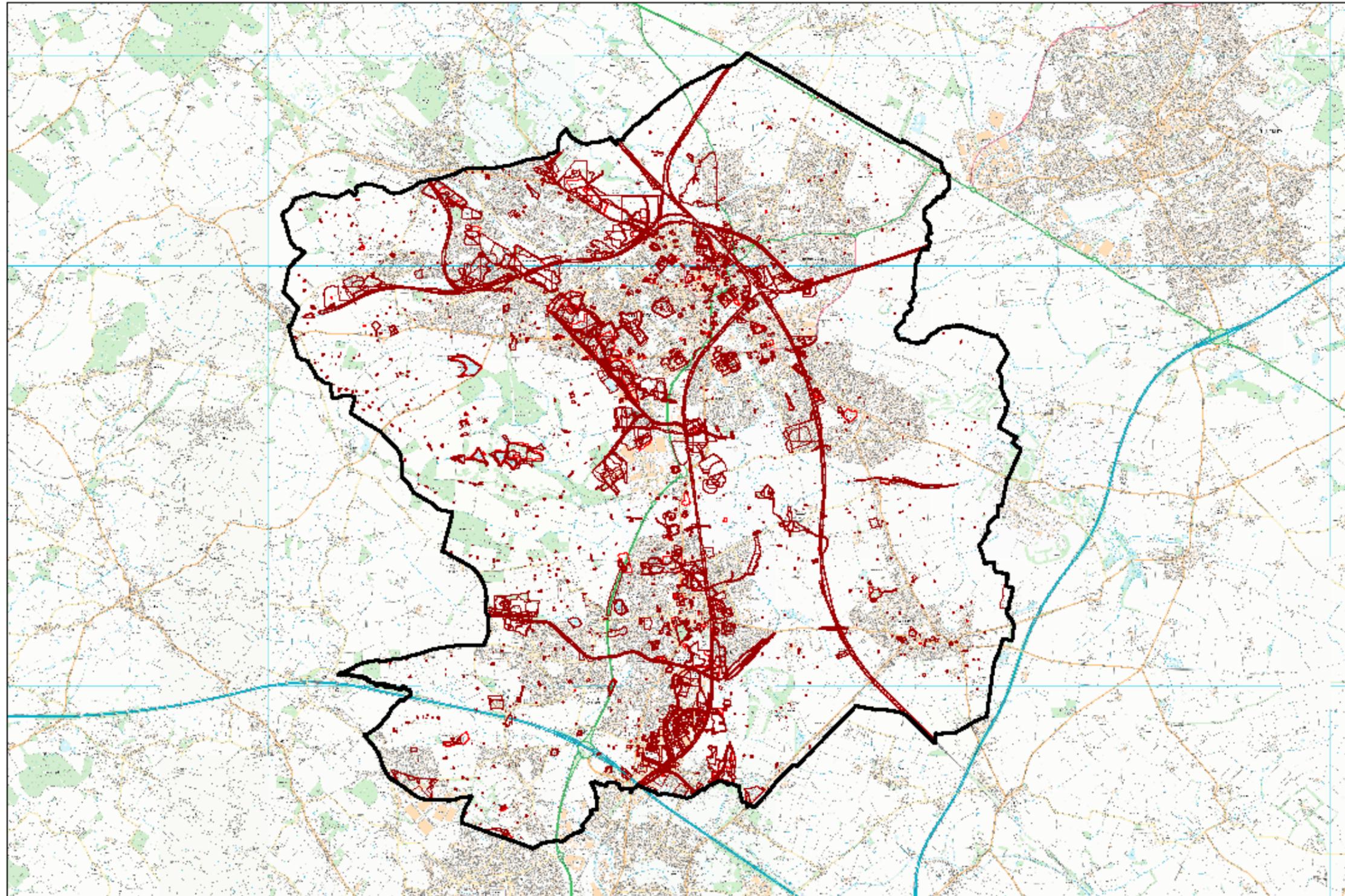
The Coal Authority own the copyright to these maps. The information we have used to produce these maps is protected by our database right. All rights are reserved and unauthorised use is prohibited. If we provide the map to you, this does not mean that copyright and any other rights will pass to you. However you can use the map for your own purposes.

The copyright and all other intellectual property rights in the maps will remain the property of the Coal Authority or other third parties (as appropriate). Neither the user nor any other third party will acquire any rights in respect of the maps other than as expressly provided in these Terms.

Scale 1:50000@A1

Published on: 07/08/2014

Appendix 3: Potentially Contaminated Sites



*Contains Ordnance Survey data (C) Crown copyright and database rights 2015
Nuneaton and Bedworth Borough Council
100018416

Potential contaminated land

Scale 1:50000

