

case studies

Case Study 4



Brades Rise, Oldbury, Sandwell – a complex site involving on-going Part IIA and 1990 planning issues

Brades Rise was originally a clay pit with a long history of municipal waste dumping, but given it was also adjacent to a factory had a significant quantity of industrial waste added to it. The pit was filled in and then became a sports ground.

It was sold by a sports equipment manufacturer in the 1980s and in recent years has had several developers competing to build but planning applications have been turned down. Most recently Morris Homes bought the site (with existing knowledge). It wanted to reclaim the site and develop the land into residential units. But the outline planning application was turned down a couple of years ago because of land stability issues.

A row of 40 terraced houses, built in the 1970s, runs alongside the playing field that are potentially affected. Their gardens are on the edge of the old landfill and tests have indicated elevated contours of methane and CO₂ in and around the gardens. Sandwell Council has been aware since the early 1990s that the site was a potential methane and CO₂ gassing site.

Determination

Part of the site was determined under Part IIA of the Environmental Protection Act in 2001. With the pollutant gas and vapours the transmitter and buildings and controlled waters the potential receptors. The site also lies on the Staffordshire coal seam, and the pit in the area was closed around 1900. Investigations include establishing whether there is any leaching through the mine drainage system to a minor aquifer. Waste dumping occurred before the 1970s, but exactly what was dumped is not wholly known.

There are also several adjacent holes where liquid industrial waste was disposed. Investigations are ongoing as to whether any inter-reaction between the different wastes is occurring or has occurred.

Adjacent to the site is an old Albright and Wilson factory, where chemical waste has been deposited over a number of years, including phosphorus lagoons, representing potential danger through remediation to existing houses and any new development.

Safety and confidence

The remediation of such a complex site could have consequences for the proposed development as well as the existing properties. Part of this will require that the site is continually monitor for CO₂ and methane, with residential properties requiring even higher safety margins, in order to help people to buy and sell houses with confidence.

The developers have called in consultants for a comprehensive site investigation, including looking at potential sources and pathways of contamination. One issue the site investigation should resolve is whether methane is being caused by a chemical reaction or a biological one.

Establishing liabilities

Part of the problem of going down the Part IIA legislative route is identifying the original polluter(s), when original companies no longer exist and there are holding company complications, as well as what exactly the pollution is.

Much depends on the risk assessment and site investigation work. After that is finished, the developer could appeal, or submit a new planning application. Contamination in the ground on any site coming up for redevelopment needs to be considered within planning legislation and remediation conditions should be set by the planning authorities.



More detailed investigations

The situation has been altered by the change to Planning Guidance in PPS23, specifically the wording “land affected by contamination”, as opposed to “significant possibility of significant harm” under Part IIA. The wording of PPS23 means that a more detailed site investigation and risk assessment is required, and most probably a higher standard of remediation, given the change of use.

Navigating through the minefield

The case demonstrates just how murky contaminated sites can be for conveying residential properties on brownfield sites, where legislation and liabilities may be hard to define between the original polluter, who is often long gone, affecting developers, with knock on effects of liabilities for residents affected by adjacent pollution.

It is essential that legal professionals arm themselves with the full context of historic land use, so that they can advise clients with confidence about potential contaminative risk.

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