

PART IIA: A Case Study

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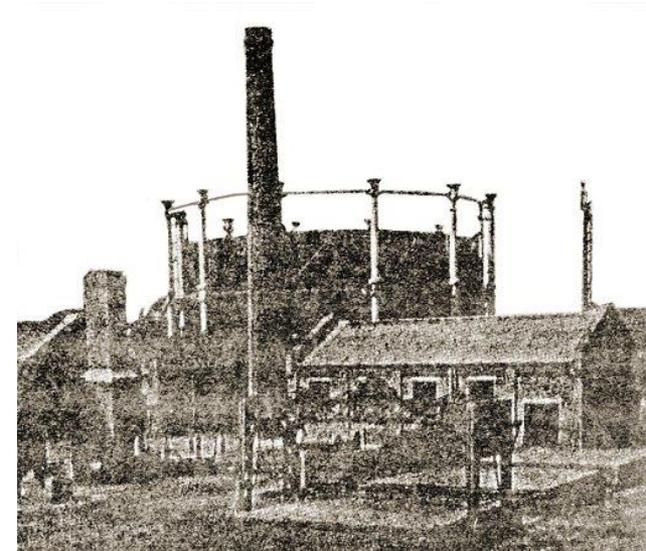
Stonegate Housing Estate Willenhall

- Land identified as contaminated March 2012 by Walsall MBC
- Remediation Notice March 2015
- Inquiry December 2015
- SoS Decision April 2017



Site history

- Willenhall Town gasworks from 1892 till 1957
- Period as gas holder station till 1965
- Area acquired for housing redevelopment by Council in 1965
- Sold to Appellant in February 1972
- Part sold on to E Fletcher in June 1972



Determination

- Consultants appointed to investigate in 2007
- Area divided into seven zones
- Zones 4 and 7 determined
- Determination made under 2006 Guidance
- 2012 Guidance came into force shortly after
- No obligation on Council to review determination
- Linkage of Benzo-a-Pyrene and young resident female child

Matters endorsed in appeal

- Council's consultants derived site specific assessment criterion of 1.02 mg/kg using CLEA model as a concentration at which there is likely to be minimal risk. Found to be “authoritative and soundly based”
- Approach to zoning not unreasonable
- Samples from top metre could reasonably be treated as representative of soils to which human receptors might be exposed

Council's obligations

- Council remained ultimately responsible to ensure advisers are competent – “intelligent customer”
- Lack of experience of lead consultant
- Reports factually incorrect and included a “schoolboy error” confusing SSAC and HCV
- Fell short of expert advice and should have been picked up by Council

Representative results?

- Council's expert acknowledged they simply did not know whether elevated samples were a genuine risk across the zone or merely hotspots
- No excuse for not carrying out further exploration to confirm in accordance with CIEH Guidance
- Mean concentration of 38 mg/kg not reliable
- Lack of scientific and technical assessment of risks arising as required by 2006 Guidance

SPOSH

- 2008 non-statutory guidance confirmed DQRA usually required if SGV exceeded
- 2006 Guidance referred to “unacceptable intake” but did not define it
- Ultimately risk assessment informs but cannot answer the question of policy
- Simple exceedance of SSAC does not imply SPOSH
- No proper exposure and toxicological assessment based on sound science undertaken

2012 Guidance

- Possible to “cure” initial unreasonableness by later evidence and SoS discretion
- Issue of whether Category 2 or 3
- SP1010 on CS4L for B(a)P said 5 mg/kg was “minimal risk”
- Failure to follow up review work on recognised expert in 2014
- Errors identified in DQRA work meant not possible to show “strong case”
- Failure in 4.27 appraisal to consider property blight and stress due to determination

Conclusions

- No absolute requirement of assessment process and balance must be struck
- However, determination has serious consequences and there is a public interest in ensuring decisions are made in a rigorous and robust manner
- Note also the criticism for lack of proper data: costs



Ground (c)

- No evidence Jim 2 “caused” (compare St Leonard’s Court decision)
- Knowledge of harmful properties/risks of B(a)P not necessary
- Knowledge of coal tar, coke, ash, clinker sufficient
- Knowledge of “gas works waste” not sufficient
- Control for 3 months sufficient to have “permitted”

Ground (d) and (e) – other persons

- Council could exclude itself under Test 6 as not having introduced receptors.
- Gas companies could not be found, but if they could would also be excluded under Test 6
- E Fletcher was also a “knowing permitter”, but had been dissolved and it was not reasonable to expect Council to seek its restoration to the register

Conclusions

- Relevant lessons for developers of land in the era before site investigations were common
- For councils: importance of good consultants and overseeing them properly; thorough preparation of evidence; proper risk assessment and investigation of outlier results
- Context – current lack of funding for councils to investigate and identify

Practical advice – what to do in Walsall before Christmas

- Excellent Premier Inn with enticing range of eateries nearby
- Great art gallery
- Good market with excellent pork pie stall
- Christmas lights could be better
- Very good Gala Baths, but since closed



Thank you for your attention



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