

# case studies

## Case Study 6



### Bawtry, Doncaster - Part IIA case sees High Court ruling on who is liable for cleaning up contaminated land.



#### Background

Cancer-causing chemicals were discovered in the gardens of 48 properties in Ivatt Close, Stirling Avenue and Gresley Avenue, Bawtry, which were all built on the site of an old gas works in 1966. The works, which produced gas from coal and operated during the first half of the 20th century, were run by old city gas companies that were wound up when the industry was nationalised. Coal tar, usually disposed of underground within brick-walled tanks, was first discovered by Steve Curtis when he was levelling the garden of his home in Ivatt Close in October 2001. He and his wife Lisa have two boys who have never known what it is to have a garden to play in. During the opening of the case in April 2006, the court heard that residents were at risk of "significant harm" from contact with the soil or from growing vegetables.

#### Beloved gardens destroyed

Doncaster Council instructed the Environment Agency to investigate, revealing the extent of contamination which included the heavy metal nickel and said that there was no alternative to digging up the gardens as there was a possibility that groundwater might have been contaminated.

A couple in Gresley Avenue spoke of their distress at the destruction of the garden they had worked for years to create. They claim that the Agency had not kept its promise to restore the garden to its original condition. The soil delivered was full of clay, the garden consequently flooded, requiring the couple, both in their 60's, to dig channels to drain it away.

A spokesman from the Environment Agency said that they were aware of the situation and would monitor the gardens over the next 12 months. The clean up operation was initially funded by the EA, but it aimed to recover "a reasonable proportion" of the costs. Phase 2 would be the responsibility of Doncaster Council.

#### Who pays?

The EA declared that it would not be appropriate to recover the costs from the current homeowners and the housing developers who had it built on the site, and would have been responsible for some of the bill, had it been

dissolved. The agency took National Grid Gas (NGG) to the High Court in a bid to make them pay.

NGG – formerly British Gas and Transco, which is responsible for distribution of gas across the country – allegedly "inherited" liability for the £700,000 clean up operation. The EA declared them the "appropriate person" under the Environmental Protection Act 1990 and should be liable for paying for the clean-up on the grounds that the contamination was caused by one or more of its statutory predecessors.

The court rejected NGG's application to set aside the Environment Agency's view that it was the "appropriate person" under Part IIA and was therefore responsible for remediation of the site. NGG had argued that contaminants in the soil had been deposited by the previous owners, and the local town gas or nationalised gas companies that operated the works. The reason that it was determined as a special site under Part IIA was because it was turned into a housing development.

Mr Justice Forbes ruled that NGG was a Class A Person (i.e. prime responsible) and rejected arguments that it did not knowingly cause or permit the land to be contaminated, that no liability was transferred to it as the site was never declared a statutory nuisance and that the Gas Acts could not transfer responsibility under Part IIA.

While this is only the second major case under the Part IIA regime, it does have major implications. Even though the judgement went against NGG, it was clear from the Judge's summing up that the liability would have passed to the builder if they were still in business. The remediation of the site to protect residents is underway, but what are the implications for other utility sites and former landfills? There are an estimated 2,000 past gas works sites and over 500,000 households directly affected by landfills in the UK.

#### Making sure you protect your client

Landmark's unique historic land use dataset would have picked up the extent of the threat from potential contamination here as well as showing the location of the former gas works. This data is unique to Landmark but crucial for assessment. Ensure your client gets the complete picture to avoid these issues as part of your due diligence in all property transactions.

Envirosearch reports of the area clearly identified where and when the contamination occurred and its impact on environmental risk. By flagging these issues up to legal professionals, Landmark is able to give clear guidance on behalf of their clients, reducing any potential grievance with the search process to their practice.

**For more information about Landmark Environmental reports call 0870 606 1700 or email [info@landmark.co.uk](mailto:info@landmark.co.uk)**

