

Uncovered

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Case Study this edition:

Brades Rise, Oldbury, Sandwell

Complex history of site reveals dumping of both municipal and industrial waste.

Latest Landmark news:

Improved Flood Data From Landmark

The very latest flood data to be included across all environmental reports.

Latest Environment news:

Council Grants Approval For Development on Landfill Site

Nine houses to be constructed on former landfill site subject to a remediation.

Case study

Brades Rise, Oldbury, Sandwell – a complex site involving Part IIA of the Environmental Protection Act 1990 alongside planning

Summary: Brades Rise has a complex history of industrial and domestic waste disposal. Already carrying a Part IIA determination, the developers have to overcome challenges ranging from gas monitoring to stabilising the land.

The key issue: Solicitors have an increasing responsibility to identify environmental issues when involved in property transactions. Changes to planning guidance will mean that much more detailed risk assessments and site investigations will be required in future, which could radically affect the process of buying and selling with knowledge.



The map above is an extract from a Landmark Environmental Report clearly showing the presence of two areas of landfill adjacent to the property.

Introduction

The Brades Rise case study demonstrates the importance of conducting thorough environmental research in any transaction involving the purchase, development, sale or lease of a property or land, highlighting some of the potential liabilities that arise from environmental issues.

Since the issue of the Law Society's 'Warning Card' in June 2001, solicitors have been strongly advised to be aware of their responsibilities in addressing potential environmental issues involving property transactions. The potential impact of the failure to do so ensures that the need for solicitors to guard against potential litigation is paramount.

Background

This site has a complex history. It was a clay pit where dumping of municipal waste occurred, but also industrial waste, as it was adjacent to a factory. The pit was filled in and became a sports ground.

It was sold by a sports equipment manufacturer in the 1980s, along with the sports ground, to a holding company of three people – who were subsequently bought out by one individual, Ted Stern.

The site has had several developers competing over the last few years, 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 (22 December 2003) because of stability of the land issues.

A row of terraced houses, built in the 1970s, runs alongside the playing field. There are around 40 houses which now belong to a housing association which 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 from 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 1990 on 27 June 2001.

The site designation records it as being 5-10ha, with the pollutant gas/vapours and the receptors buildings and controlled waters. The site lies on the Staffordshire coal seam, and the particular pit was closed around 1900. Investigations include establishing whether there is any leaching through the mine drainage system to a minor aquifer.

The clay pit measures 23m deep in parts. Waste dumping occurred before the 1970s, but exactly what was dumped is not wholly known.

There are also several adjacent marl 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. Particular stress is laid on having confidence in the existing structure and how it would fare under the Building Regulations.

Part of that confidence is related to monitoring for CO2 and methane. Sandwell Council had a monitoring station in a school for 10 years before the property was declared safe. In residential properties that safety margin has to be even higher, in order to enable people to buy and sell houses with confidence.

Monitoring issues are prevalent in this case, particularly as the end use is not yet known. There are also questions on how the monitoring will be managed and who will have legal control. A complicated Section 106 Agreement will involve the monitoring and setting up of a management company. A flare stack is needed to extract the gas. The question of who will be responsible for keeping the flare stack going, or deciding to close it down, has also arisen.

The developers (Morris Homes) have called in Arcadis GMI for a comprehensive site investigation, including looking at potential sources and pathways of contamination. Since the original determination,

the council need to know the level of methane and CO2 production. Mouchel Parkman is advising Sandwell Council.

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 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.

Currently, issues over the site could end up in the legal arena, which would mean having to trace Part A and Part B liabilities. 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 is a consideration for the purposes of planning legislation and remediation conditions will therefore be set by the planning authorities.

Going through the planning process rather than remediation notices through Part IIA lessens the danger of developers pulling out due to overly high costs. It is clear that remediation of the site will run into the millions and that has to be recovered through land values.

The council has a precautionary attitude to the Part IIA process, this being its first determined site, and wants to undertake the whole procedure correctly.

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.

Protect Yourself and Your Clients

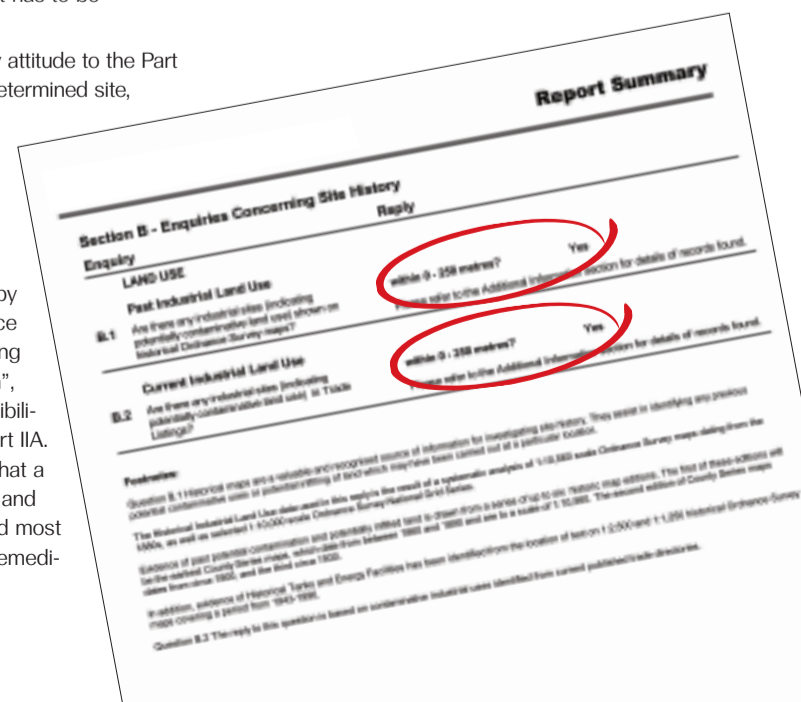
Landmark Information Group produces a range of reports that provide a detailed assessment of the potential environmental risks involved in property or land transactions.

They include an environmental risk assessment from leading environmental consultancies and surveyors, which indicates the likelihood of the property being described as contaminated (as defined by Section 78(A) of Part IIA of the Environmental Protection Act 1990). The certificate also highlights non-contamination issues such as radon, flooding and subsidence.

The report addresses the issues raised by the Law Society Warning Card, as well as removing the burden of interpreting the results of the report.

Reports are available from just £29 (plus VAT) direct from our website by registering at www.landmarkinfo.co.uk or from one of over 100 authorised resellers.

For details of your nearest re-seller, or for any further information, please call one of our customer service advisors on 0870 606 1700 or email info@landmarkinfo.co.uk



Landmark News

Landmark Environmental Seminars – sign up now for 3 hours CPD

Remaining spaces are going fast for the 2005 Landmark seminar programme on *Environmental Risks In Property Transactions*.

The events in Oxford and York were well attended and due to huge demand, a second session is now open for reservations in London later in the year.

Fully accredited by the Law Society, the seminars provide legal professionals with the latest on environmental law issues and potential impacts on risk in the conveyancing process. Two of the UK's foremost industry experts will give unique insight to support your advice with clients before exchange and completion.

Attendees get a full briefing pack, presentation notes and will receive official CPD certification. Call Gary Bullet today on 0208 315 4522 or email seminars@landmarkinfo.co.uk

Dates for your diary:

| | | |
|---------|------------|----------------------------|
| 18 MAY | BIRMINGHAM | SORRY: FULLY BOOKED |
| 8 JUNE | NORWICH | Ramada Jarvis Hotel |
| 5 JULY | MANCHESTER | SORRY: FULLY BOOKED |
| 15 SEPT | PLYMOUTH | Holiday Inn |
| 18 OCT | LONDON | The Law Society Halls |
| 22 NOV | NOTTINGHAM | Holiday Inn |
| 7 DEC | NEWCASTLE | Holiday Inn |

Bite size seminars direct to your practice

If you can't make the main seminar programme, then don't worry! Landmark Personnel have recently passed rigorous assessment by The Law Society to be able to present local seminars direct to your practice or in conjunction with our nationwide network of resellers. These are designed to fit into lunchtimes and offer a 1 hour CPD credit. If you would like to arrange a session, please call Gary Bullet on 0208 315 4522 or email seminars@landmarkinfo.co.uk

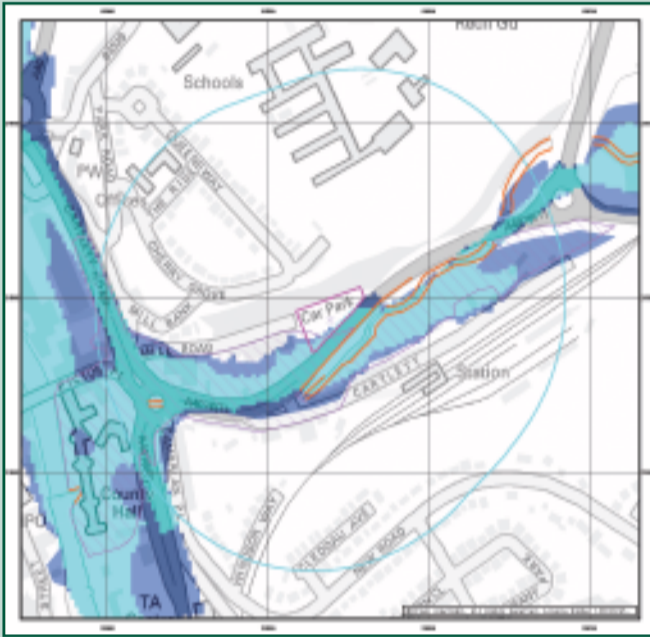
Wet or dry? Get the latest flood data from Landmark

The very latest flood data will be made available across all Landmark Environmental reports for both residential and commercial property from Wednesday 18th May.

The release represents a significant advance in level of detail, including 100 and 1000 year flood events and accounting for topography and the presence of river or sea defences.

This means a far more accurate pinpoint of which parcels of land that are likely to be affected, rather than a general assessment. This could be good news as the map is redrawn away from some clients properties but for others it will provide a far more specific assessment of risk should they wish to proceed.

For more information, contact a Landmark service advisor on 0870 606 1700 or email info@landmarkinfo.co.uk



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Further enhancements to Homecheck Professional Reports

We are delighted to advise that further enhancements have been made to the Homecheck Professional report for residential searches, which became available from last month.

Following feedback from clients, we have updated the content to include

aerial photography of the site, as well as further enhanced data on contaminated and remediated land, as part of our continual product improvement programme.

This means even better value for money, with the latest available view of specific sites that have commenced or completed work to remove contamination or have Part Ila designations.

For further information on these changes or any other matter, please contact one of our customer service advisors on 0870 606 1700 or email info@landmarkinfo.co.uk

We are also undertaking extensive client research into environmental data reports across the country over the coming months. This will be central to new features and enhancements to be developed later in the year.



Environment News

New process for appealing remediation notices

The Clean Neighbourhoods Act 2005, which received Royal Assent on 8 April, has amended the process for appealing against remediation notices served under Section 78E of Part IIA of the Environmental Protection Act 1990.

An amendment to Section 78L now allows people who are served with remediation notices by councils to appeal to the secretary of state (in England) or to the National Assembly for Wales. Hitherto, magistrates courts have considered appeals where served by local authorities and the secretary of state only when they are served by the Environment Agency. Henceforth there will be a single appeal body for remediation notice appeals whoever serves them.

Appeals will be heard by appointed inspectors who may decide them unless they are "recovered" for decision by the secretary of state or national assembly.

The Act, which was fast tracked through its final stages to avoid it falling because of the general election, introduces a range of powers to deal with environmental nuisances. A range of new powers on fly tipping includes removal of the defence of acting under employer's instructions, increased penalties, cost recovery for councils and the Agency for investigations and clean ups and extended provisions on clean up to the land owner, in the absence of the occupier.

Councils face new requirements to report contaminated sites

Local authorities will have to report the number of contaminated sites causing potential concern and how many of these require remediation in the new suite of Best Value Performance indicators.

The Office of the Deputy Prime Minister has finished its cull of BVPIs and although numbers for 2005-6 remain largely unchanged, it has introduced the two new targets for contaminated land. Sites of potential concern are those where potential pollutant linkages may exist and remediation may be

needed; the first indicator includes all such sites, the second those where sufficient information is available to show remediation is needed.

"These two linked indicators measure progress in gathering and considering information to identify sites of potential concern with respect to adverse effects of land contamination, and progress in making decisions about those sites," says the guidance. "Information gathered at a strategic level informs decisions at the level of individual sites about the need for remediation, in accordance with policy and legislation on contaminated land."

The total number of BVPIs is now 94 and deputy prime minister John Prescott said it is now intended to keep the set largely unchanged for two to three years, to help councils build year-on-year information.



Housing approved on former Chelmsford landfill - subject to remediation

Chelmsford Borough Council has given approval to construction of nine houses on a former landfill site in Great Baddow if a satisfactory remediation scheme can be agreed.

Part of the site was once a sand and gravel pit and was used for waste disposal before 1962. Investigations revealed metals and hydrocarbons and some biodegradable material but the water table is below the site.

To prevent gas ingress and risks to occupiers the council says any scheme will need capping, gas protection on structures, hard cover and adoption of clean piling and ground improvement techniques.