

Council – 12 January 2015

Notice of Motion – Former Willenhall Town Gas Works

Purpose

This Report provides background information in response to the following Notice of Motion as submitted to Council by Councillors I Shires, D Shires and D Barker as follows:

(a) Council notes that:

- (1) The former Willenhall Gas Works site was redeveloped in the 1970s with no apparent remediation or protection from ground pollution.
- (2) That Walsall Council commenced investigations of the site in 2008 as part of its duties as Regulator. These investigations identified the presence of Benzo[a]pyrene.
- (3) Extensive consultation with residents and landowners led to Determination Notices being served in March 2012. Investigations revealed that the original polluter (the Gas Board) no longer exists. This left three Class A Parties, those being two of the housing developers along with the Council in the form of Willenhall Urban District Council, which held ownership for a while before selling on for development.

(b) Council further notes that:

- (1) This is a legally and technically complicated area of law and that whilst this protracted process continues, homeowners claim to have been incapable of selling their homes and continue to live in fear of the effects of exposure to elements which have the potential to damage health and have as a consequence been unable to lead a normal life.
- (2) In March 2014 the Council was concluding its consultation process prior to issuing Remediation Notices when DEFRA issued new guidance which required the Council to review all of its findings to date. This has resulted in a further period of apparent fear and uncertainty for those residents affected.

(c) Council resolves that:

Notwithstanding the legal process, and in the interests of the health and well-being of residents, the Chief Executive is authorised to write to the relevant Secretary of State to intervene in order that the government fund the remedial works required to remove the pollution.

Report

1. Summary

- 1.1. The Notice relates to the ongoing issue of contaminated land associated with the former Willenhall Town Gas Works.
- 1.2. The site is now occupied by approximately 90 houses which were built in the early 1970s. Extensive investigation and analysis has concluded that the site is significantly polluted and it was declared as contaminated land in March 2012.

- 1.3. This is a complex issue and the subsequent time being taken to reach a solution is causing extreme concern to residents.
- 1.4. The Notice of Motion asks that: *“Notwithstanding the legal process, and in the interests of the health and well-being of residents, the Chief Executive is authorised to write to the relevant Secretary of State to intervene in order that the government fund the remedial works required to remove the pollution.”*

2. Recommendations

- 2.1 That Council note the legal position of the Council as regulator and as a potential Class A party.
- 2.2 That Council authorise the Chief Executive to write to the Secretary of State asking for the Government to intervene and fund the remedial works.

3. Background Information

- 3.1 The site was used to produce town gas from 1892 to 1963 when it ceased operation. This activity is now known to produce significant amounts of toxic materials. In 1965 the site was purchased by Willenhall Urban District Council who later sold the site to a developer. From what is known two development companies were then involved in site clearance and construction of the houses in the 1970s.
- 3.2 As part of its statutory duty under Part IIA of the Environmental Protection Act 1990 the Council is required to search for contaminated land in a way that prioritises the potentially most serious issues first. As a result of this prioritisation detailed investigation of the former Willenhall Town Gas Works commenced in 2008. Where land is found to meet the legal definition of contaminated land the local authority are under a statutory duty as regulator to secure its remediation.
- 3.3 Investigations were phased over several years during which time the Council has been in receipt of external legal and technical advice. Both the technical data and the legal issues relating to this matter are complex and the decision to determine a site as contaminated land comes with significant implications. Such a decision cannot be taken lightly; however, in March 2012 it was deemed that a part of the site contained levels of Benzo[a]Pyrene (BaP) (a known carcinogen) in concentrations that met the definition of contaminated land at that time.
- 3.4 The determination of the site as contaminated land commenced a minimum three month statutory consultation period which remains ongoing. The purpose of the statutory consultation process is to decide who could potentially be held liable for the cost of remediation. Part II A of the Environmental Protection Act 1990 is a liability-based regime to deal with historical contamination of land and is based on the legal principle that the *‘Polluter Pays’*. The persons responsible for causing or knowingly permitting the contamination to be in, on or under the land are referred to as the Class A persons. If there are no Class A parties in existence then liability falls to Class B parties which are the land owners. There is also potential that, in the absence of either Class A or Class B parties, liability can fall to the Local Authority. There are currently three potential Class A parties: Walsall Council and the two derivatives of the development companies who built the houses.

- 3.5 In March 2014, the Authority was nearing completion of its deliberations concerning potential liability when the Department for Environment Food and Rural Affairs (DEFRA) introduced new technical guidance on the acceptable levels of certain pollutants (including BaP) in soil. This required the authority to completely review all of its technical evidence to date in order for it to understand the impacts of the changing guidelines. This has also required additional soil testing of a section of the site which is ongoing at this time.
- 3.6 The next stage in the process is for the Council to serve remediation notices on those parties it deems as liable, requiring the remediation of the site. There is a right of appeal to these notices which is heard by the Secretary of State. At the time of writing this report, remediation notices have not yet been served but this is expected to be done very shortly.
- 3.7 The recipients of remediation notices have 21 days to appeal although it is likely that it would take in excess of 12 months for the Secretary of State to reach a decision on liability after that point. The total costs of remediation are estimated at between £3m and £7m.
- 3.8 Residents have expressed a great deal of concern throughout this process as they feel they are living with the threat of being exposed to toxic chemicals, that this could be having an adverse effect on their health and that they are unable to sell their homes as mortgage lenders are unwilling to finance these properties whilst this issue is ongoing.
- 3.9 Grant funding used to be available from DEFRA for the investigation and remediation of Part IIA sites where there was no recognised liable party. This funding was withdrawn in April 2014 and replaced by an emergency fund of £0.5m in total. DEFRA's published position is that access to this fund will only be available to deal with cases of imminent danger where there is no possibility of recovering the costs from liable parties. The current circumstances of this case are unlikely to qualify for access to this funding stream.

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29 December 2014