

APPENDIX 1

COPY OF THE NOTICE OF IDENTIFICATION OF CONTAMINATED LAND DATED 7th AUGUST 2012 AND ACCOMPANYING DOCUMENTS



Walsall Council

Engineering & Transportation Services

Pollution Control

Company Secretary
Jim 2 Limited.
Registered Office
Gate House,
Turnpike Road,
High Wycombe,
Buckinghamshire.
HP12 3NR

Your Ref:
Our Ref: WTGW – J2L/1
Date: 7 August 2012
Please Ask For: Ian Jarrett
Direct Line: (01922) 652237

FAO The Company Secretary

Dear Sirs,

Environmental Protection Act 1990, Part IIA. Section 73B(3).
Notice of Identification and Determination of Contaminated Land at the Stonegate housing estate, Willenhall, Walsall, West Midlands. (former Willenhall Town Gasworks)

Walsall Metropolitan Borough Council has in accordance with its statutory obligations imposed by Section 78(B) of the Environmental Protection Act 1990 carried out an inspection to identify land within its area and that may be contaminated.

Following on from the ground investigation and laboratory testing of soils from gardens and open space on the site of the former Willenhall Town Gasworks the Council has reviewed the results and information gathered and determined that the land identified in the enclosed documents is "Contaminated Land"

The Executive Director of Neighbourhood Services has authorised the Record of Determination that confirms land at the Stonegate estate in Willenhall needed to be determined as contaminated in accordance with the provisions of the Environmental Act 1990 as stated above.

Under section 78B(3)(d) of the Environmental Protection Act, Walsall Metropolitan Borough Council is obliged to notify any person it considers may have potential liability for the presence of the contamination that has led to the declarations being made.

On the 27 March 2012 Walsall Metropolitan Borough Council determined the properties identified in the attached documents to be contaminated land in accordance with the Environmental Protection Act 1990. This commenced a three month formal consultation period.

During the consultation process Walsall Metropolitan Borough Council received additional information from the Class A Appropriate Persons and undertook a further review of information relating to the ownership of the land. This process has revealed the following additional information:

- Mclean Homes Midland Limited changed its name to Jim 2 Limited on the 29th January 1993.
- The registered office of Jim 2 Limited has recently been changed from 80 New Bond Street London W1S 1SB to Gate House, Turnpike Road, High Wycombe, Buckinghamshire. HP12 3NR.
- The Company registration number for Mclean Homes (Midlands) Limited 00977338 is the same as that for Jim 2 Limited. A copy of the Certificate of Incorporation for Jim 2 Limited is attached.

Accordingly, as the determination notice dated the 28 March 2012 and accompanying documents was served on McLean Homes (Midland) Limited at the former registered office of Jim 2 Limited 80 New Bond Street, London by recorded delivery and was signed for at the that address., please find attached copies of the following documents:

- i) Covering letter addressed to McClean Homes (Midlands) Limited
- ii) Notice of Identification of Contaminated Land (referred to above).
- iii) Written Record of Determination for the land identified as Contaminated Land dated 27 March 2012.
- iv) Certificate of Incorporation for Jim 2 Limited

This letter is being sent to you as formal notification that land specified above which was previously owned by you and subsequently developed for residential use has been determined as contaminated land.

Walsall Metropolitan Borough Council considers you to be a potential Appropriate Person because you purchased the site of the former gas works in January 1972. Included in the Contract for Sale agreed with you at the time of the conveyance was information to confirm the former use of the site and that because of this use some or all of the land may not be suitable for residential use.

Walsall Council is of the opinion that you are a potential Appropriate Person as detailed in the Environmental Protection Act 1990, Part IIA, Section 78F(2) in that you knowingly permitted the substance causing the contamination to be in, on or under the land that has been determined as contaminated land.

Having identified you as an Appropriate Person the Council is required to send to you the following documents:

- i) Notice of Identification of Contaminated Land
- ii) Written Record of Determination for the land identified as Contaminated Land.

A copy of the documents is attached with this letter. Current occupiers of the land, freeholders and any lessees have also been sent these documents.

The issuing of the Notice of Identification of Contaminated Land commences a formal three month consultation period with all those who have liability for the cleaning up of the property and all those with an interest in the land. In this instance as documents previously served on 28th March are enclosed with this letter dated 7 August 2012 a date of 13 November 2012 has been set for expiry of the consultation period to allow for postal delivery and public holidays etc.

The Council would welcome the opportunity to meet with you at your earliest convenience to discuss matters relating to how remediation of the identified land can be achieved.

On completion of the consultation period with notifiable persons the Council will be looking at who may have liability for the remediation of the contamination and will apportion liability as appropriate. You may wish to consider what information you hold that would help the Council complete this process. This should be provided to us as soon as possible.

The Council will welcome informal discussions with your company on this matter, prior to the expiration of the 3 month consultation period. I would therefore urge that you contact me as soon as possible to arrange such discussions.

If you would like to discuss this matter further, or wish to request additional information please let me know as soon as possible.

Yours faithfully,

**Ian Jarrett.
Principal Pollution Control Officer**

EXPLANATORY NOTES

Background

Over the last few years the Council has been investigating the condition of the land in and around the Stonegate Estate, due to the fact that part of it was built on the former Willenhall Town Gas Works. During these investigations it has been discovered that certain areas contain pollution to the point that we need to ensure it is cleaned up. This places us under a legal obligation to determine the land identified in the enclosed documents as contaminated land.

The Notice of Determination

Enclosed is a "Notice of Identification of Contaminated Land" (the notice) relevant to your home and garden. This has been sent to you because you live at the property either as the owner or as a tenant.

The notice is formal confirmation that the council has carried out an assessment of contamination levels in soils at or around your home and considers them to be at levels which may pose a risk to health. For more information about the contamination identified, the risk and advice on how to reduce your exposure please refer to the information sheets previously provided and enclosed again for information.

The Record of Determination

Included with the notice is a copy of the "Record of Determination". This sets out the evidence, reports and other information that the council has considered before making its decision. Complete copies of all the evidence and reports can be accessed by contacting the council at the above address.

The plan in the "Record of Determination" shows the area of land considered to be contaminated and you will see that this is made up of six blocks of domestic properties and gardens. The roadways, footpaths, verges and other open space linking these blocks is not included in the determination. This is because the likelihood of people coming into contact with contamination in the ground there is greatly reduced by the use of the land or hard surfacing.

Also attached to the notice is a plan showing the location and boundary of your home in relation to the land that has been determined. This is to clarify that the notice specifically relates to the property that you occupy. If you are a leaseholder or tenant a copy of this notice will be sent to the freeholder of the land or owner of the property. The council has also sent copies of the notice to those it considers may have a responsibility for cleaning up the contamination. A list of everyone who has been sent a copy is included with the notice.

How will the Notice of Determination Affect Your Property

By making the determination and issuing the notice the council is confirming that it believes things need to be done to prevent or reduce the chances of people coming into regular contact with the contamination. Legislation stipulates that responsibility

for the cost of cleaning up contamination should rest with anyone who caused it to be there or who had a previous opportunity to deal with it but failed to do so. In this instance as the Willenhall Town Gas Company and West Midlands Gas Board have long since ceased to exist. Therefore the Council believe that those who developed the site and built the houses should be held responsible.

What is the Three Month Consultation Period

Following service of the notice there is a minimum consultation period of three months. During this time discussions about what is to be done to clear up the contaminants can take place between those with an interest in the land and in particular between the Council and those it considers responsible for the cost. This period of consultation also gives an opportunity for those potentially liable to demonstrate why they feel they should not be accountable for the pollution in question. The three month period can of course be extended in situations where meaningful discussion is ongoing and there is a reasonable expectation that clean up of the determined area will be achieved. Where this is not the case the Council will need to consider implementing formal action to secure clean up.

Determination of the land upon which your home is situated as contaminated land can have legal and financial implications depending upon your particular circumstances. While the council will endeavour to provide all the assistance it can to answer questions that you have we would advise you to seek independent legal advice relevant to your own situation. You may also wish to discuss the situation with your mortgage provider or lessee, if you have one and your household insurers.

Contacting the Council

As the formal process commences we will endeavour to keep you updated and informed at each stage of the process. You should be aware that the whole process may take some time to complete. We appreciate that this may be a anxious time for you, but we would like to reassure you that you will be kept informed and that the Pollution Control Team will do their very best to provide you with support throughout the coming months.

Clearly there will be additional information that you require and questions that you wish to ask about the situation. Pollution Control will endeavour to help and can be contacted by telephone on 01922 653348 or by e-mail at pollutioncontrol@walsall.gov.uk



Walsall Council

**Neighbourhood Services- Engineering and Transportation
Pollution Control**

**McLean Homes (Midlands) Ltd.
80 New Bond Street,
London.
W1S 1SB**

Your Ref:
Our Ref:
Date 28 March 2012
Please Ask For: Ian Jarrett
Direct Line: (01922) 652237

FAO The Company Secretary

Dear Sirs

**Environmental Protection Act 1990, Part IIA. Section 73B(3).
Notice of Identification and Determination of Contaminated Land at the Stonegate
housing estate, Willenhall, Walsall, West Midlands. (former Willenhall Town
Gasworks)**

Walsall Metropolitan Borough Council has in accordance with its statutory obligations imposed by Section 78(B) of the Environmental Protection Act 1990 carried out an inspection to identify land within its area and that may be contaminated.

Following on from the ground investigation and laboratory testing of soils from gardens and open space on the site of the former Willenhall Town Gasworks the Council has reviewed the results and information gathered and determined that the land identified in the enclosed documents is "Contaminated Land"

The Executive Director of Neighbourhood Services has authorised the Record of Determination that confirms land at the Stonegate estate in Willenhall needed to be determined as contaminated in accordance with the provisions of the Environmental Act 1990 as stated above.

On the 27 March 2012 Walsall Metropolitan Borough Council determined the properties identified in the attached documents to be contaminated land in accordance with the Environmental Protection Act 1990.

Under section 78B(3)(d) of the Environmental Protection Act, Walsall Metropolitan Borough Council is obliged to notify any person it considers may have potential liability for the presence of the contamination that has led to the declarations being made

This letter is being sent to you as formal notification that land specified above which was previously owned by you and subsequently developed for residential use has been determined as contaminated land.

Neighbourhood Services – Engineering and Transportation
Walsall Metropolitan Borough Council,
The Civic Centre, Darwall Street, Walsall, WS1 1DG
Tel:01922 650000 Fax: 01922 623234
Textphone:0845 111 2910 Translation Line:01922 652426
Visit us online at: www.walsall.gov.uk

Walsall Metropolitan Borough Council considers you to be a potential Appropriate Person because you purchased the site of the former gas works in January 1972. Included in the Contract for Sale agreed with you at the time of the conveyance was information to confirm the former use of the site and that because of this use some or all of the land may not be suitable for residential use.

Walsall Council is of the opinion that you are a potential Appropriate Person as detailed in the Environmental Protection Act 1990, Part IIA, Section 78F(2) in that you knowingly permitted the substance causing the contamination to be in, on or under the land that has been determined as contaminated land.

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- i) Notice of Identification of Contaminated Land
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On completion of the consultation period with notifiable persons the Council will be looking at who may have liability for the remediation of the contamination and will apportion liability as appropriate. You may wish to consider what information you hold that would help the Council complete this process. This should be provided to us as soon as possible.

The Council would welcome formal discussions with your company on this matter, prior to the expiration of the 3 month consultation period. I would therefore urge that you contact me as soon as possible to arrange such discussions.

If you would like to discuss this matter further, or wish to request additional information please let me know as soon as possible.

Yours faithfully


Ian Jarrett
Principal Pollution Control Officer

EXPLANATORY NOTES

Background

Over the last few years the Council has been investigating the condition of the land in and around the Stonegate Estate, due to the fact that part of it was built on the former Willenhall Town Gas Works. During these investigations it has been discovered that certain areas contain pollution to the point that we need to ensure it is cleaned up. This places us under a legal obligation to determine the land identified in the enclosed documents as contaminated land.

The Notice of Determination

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Included with the notice is a copy of the "Record of Determination". This sets out the evidence, reports and other information that the council has considered before making its decision. Complete copies of all the evidence and reports can be accessed by contacting the council at the above address.

The plan in the "Record of Determination" shows the area of land considered to be contaminated and you will see that this is made up of six blocks of domestic properties and gardens. The roadways, footpaths, verges and other open space linking these blocks is not included in the determination. This is because the likelihood of people coming into contact with contamination in the ground there is greatly reduced by the use of the land or hard surfacing.

Also attached to the notice is a plan showing the location and boundary of your home in relation to the land that has been determined. This is to clarify that the notice specifically relates to the property that you occupy. If you are a leaseholder or tenant a copy of this notice will be sent to the freeholder of the land or owner of the property. The council has also sent copies of the notice to those it considers may have a responsibility for cleaning up the contamination. A list of everyone who has been sent a copy is included with the notice.

How will the Notice of Determination Affect Your Property

By making the determination and issuing the notice the council is confirming that it believes things need to be done to prevent or reduce the chances of people coming into regular contact with the contamination. Legislation stipulates that responsibility for the cost of cleaning up contamination should rest with anyone who caused it to be there or who had a previous opportunity to deal with it but failed to do so. In this

instance as the Willenhall Town Gas Company and West Midlands Gas Board have long since ceased to exist. Therefore the Council believe that those who developed the site and built the houses should be held responsible.

What is the Three Month Consultation Period

Following service of the notice there is a minimum consultation period of three months. During this time discussions about what is to be done to clear up the contaminants can take place between those with an interest in the land and in particular between the Council and those it considers responsible for the cost. This period of consultation also gives an opportunity for those potentially liable to demonstrate why they feel they should not be accountable for the pollution in question. The three month period can of course be extended in situations where meaningful discussion is ongoing and there is a reasonable expectation that clean up of the determined area will be achieved. Where this is not the case the Council will need to consider implementing formal action to secure clean up.

Determination of the land upon which your home is situated as contaminated land can have legal and financial implications depending upon your particular circumstances. While the council will endeavour to provide all the assistance it can to answer questions that you have we would advise you to seek independent legal advice relevant to your own situation. You may also wish to discuss the situation with your mortgage provider or lessee, if you have one and your household insurers.

Contacting the Council

As the formal process commences we will endeavour to keep you updated and informed at each stage of the process. You should be aware that the whole process may take some time to complete. We appreciate that this may be a anxious time for you, but we would like to reassure you that you will be kept informed and that the Pollution Control Team will do their very best to provide you with support throughout the coming months.

Clearly there will be additional information that you require and questions that you wish to ask about the situation. Pollution Control will endeavour to help and can be contacted by telephone on 01922 653348 or by e-mail at pollutioncontrol@walsall.gov.uk



Walsall Council

Environmental Protection Act 1990, Section 78B(3)

NOTICE OF IDENTIFICATION OF CONTAMINATED LAND

**McLean Homes (Midlands) Ltd.
80 New Bond Street,
London.
W1S1SB**

- 1) TAKE NOTICE THAT Walsall Metropolitan Borough Council ("The Enforcing Authority") has identified under Section 78 B(1) of the Environmental Protection Act 1990 ("The 1990 Act") the land known as:

Kemble Close numbers 1-27 (all) WV12 4DQ

Brookthorpe Drive numbers 1-40 (all) WV12 4TX

Oakridge Drive numbers 1-25 (odds) WV12 4EN

Oakridge Drive numbers 27-47 (odds) WV12 4DJ

Oakridge Drive numbers 22-38 (evens) WV12 4DL

and more particularly described in Schedule 1 attached to this notice and shown on the plan attached in Schedule 2 ("the land") as contaminated in accordance with Section 78 A(2) of the 1990 Act.

- 2) Notice of the above is hereby given to you pursuant to Section 78 B(3) paragraph (d) of the 1990 Act in your capacity as a potential Class A appropriate person of the land.
- 3) A copy of the Record of Determination, which sets out the basis upon which the determination is made, is set out in **Appendix 1** to this notice. You have the right under the 1990 Act to have access to full reports that have been obtained by The Enforcing Authority in determining that the land is contaminated land, as defined under Section 78 A(2), of the 1990 Act. For access to these reports please contact the Officer whose details are listed below.
- 4) Should you wish to respond to this notice please do so before **8 July 2012** being 3 months from the date of this letter which is the start of the statutory consultation period as required under Section 78 H(3) of the 1990 Act. The test for exclusion from, and apportionment of, liability are set out in Appendix 2.

- 5) Should you or your legal advisers wish to contact The Enforcing Authority in relation to this notice, request further information or make any other enquiry relating to this notice, please contact: Pollution Control, Second Floor, Civic Centre, Darwall Street, Walsall, WS1 1DG, telephone 01922 653348, e-mail pollutioncontrol@walsall.gov.uk

The other persons notified that land situated off Kemble Close, Brookthorpe Drive and Oakridge Drive, Willenhall has been identified as contaminated land are listed below:

- i) The occupiers of No's 1 to 27 Kemble Close WV12 4 DQ
- ii) The Occupiers of No's 1 to 40 Brookthorpe Drive WV12 4 TX
- iii) The occupiers of No's 1 to 25 Oakridge Drive (odd No's) WV12 4EN
- iv) The Occupiers of No's 27 to 47 Oakridge Drive (odd No's) WV12 4 DJ
- v) The Occupiers of No's 22 to 38 Oakridge Drive (even No's) WV12 4DL
- vi) Free holders of land within the area identified as contaminated land who are not the residential occupiers of that land:

Chunpreet Singh Bains.
8 Edinburgh Road,
Walsall,
West Midlands.
WS5 3PQ

Bromford Carinthia Housing Association
1 Venture Court
Broadlands
Wolverhampton
West Midlands
WV10 6TB

Cyril Freedman Ltd
C/O Westbury
2nd Floor, 145 – 147 St John Street,
London.
EC1V 4PY

Triton Investments Ltd
C/O Westbury
2nd Floor, 145 – 147 St John Street,
London.
EC1V 4PY

**Shenstone Properties Limited
Minster Cottage
Minster Pool Walk
Lichfield
Staffordshire
WS13 6QT**

**St Giles Properties Ltd.
3 Mindrum Station Cottages,
Cornhill on Tweed,
Northumberland.
TD12 4QL**

vii) Other Appropriate Persons


**E. Fletcher Builders Ltd.
Bardon Hall,
Copt Oak Road,
Markerfield,
Leicestershire.
LE67 9PJ**

**McLean Homes (Midlands) Ltd.
80 New Bond Street,
London.
W1S 1SB**

viii) Appropriate Agency

**The Environment Agency
Sentinel House,
Wellington Crescent,
Fradley park,
Lichfield.
Ws13 8RR**

Dated:28 March 2012.....

Signed:  **John Roseblade**
**Portfolio Control Manager,
Walsall Metropolitan Borough Council,
Civic Centre, Darwall Street,
Walsall.
WS1 1DG**

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Schedule 1

In accordance with Part IIA of the Environmental Protection Act 1990 (as amended by the Environment Act 1995) Walsall Metropolitan Borough Council has determined that land enclosed within domestic curtilages at

Kemble Close	No's 1 – 27 (all)	WV 12 4DQ
Brookthorpe Drive	No's 1 – 40 (all)	WV 12 4TX
Oakridge Drive	No's 1 – 25 (odds)	WV12 4EN
Oakridge Drive	No's 27 – 47 (odds)	WV12 4DJ
Oakridge Drive	No's 22 – 38 (evens)	WV12 4DL

Schedule 2

Location Plan of Land at Kemble Close , Brookthorpe Drive and Oakridge Drive, Willenhall.

Area of land determined as contaminated is shown within the red dashed boundary lines. National Grid Reference: 397494 299488 (Centre of Site)

Land “Determined” as Contaminated Land is shown within the dashed boundary lines.



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The land determined as “Contaminated” is that land enclosed within domestic curtilages at Kemble Close, Brookthorpe Drive, and Oakridge Drive Willenhall.



Walsall Council

Environmental Protection Act 1990, section 78B

RECORD OF DETERMINATION THAT LAND SITUATED AT KEMBLE CLOSE, BROOKTHORPE DRIVE and OAKRIDGE DRIVE, WILLENHALL IS CONTAMINATED LAND.

In accordance with Part IIA of the Environmental Protection Act 1990 (as amended by the Environment Act 1995) Walsall Metropolitan Borough Council has determined that land enclosed within domestic curtilages at

Kemble Close	No's	1 – 27 (all)	WV12 4DQ
Brookthorpe Drive	No's	1 – 40 (all)	WV12 4TX
Oakridge Drive	No's	1 – 25 (odds)	WV12 4EN
Oakridge Drive	No's	27 – 47 (odds)	WV12 4DJ
Oakridge Drive	No's	22 – 38 (evens)	WV12 4DL

Willenhall as detailed above and indicated in the plan and description attached as Schedule 1 to this record.

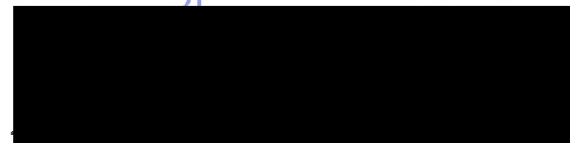
National Grid Reference: 397494 299488 (Centre of Site)

Is **Contaminated Land**, as defined by section 78 A(2) of the Environmental Protection Act 1990 (as amended by Environment Act 1995 Section 58), because,

Walsall Metropolitan Borough Council has identified the presence of a contamination source, pathway and receptor (the significant pollutant linkage) relative to the current use of the land. The Council is satisfied that a significant possibility of significant harm exists as a result of the identified pollutant linkage and that there are insufficient suitable mitigation measures in place to prevent such harm occurring.

A summary of the basis upon which this determination has been made is set out in Schedule 2 to this record.

Dated: 27th of March 2012.



Jamie Morris.
Executive Director Neighbourhood Services.
Civic Centre,
Darwall Street,
Walsall.
WS1 1DG



Schedule 1 to Record of Determination

Location Plan of Land at Kemble Close , Brookthorpe Drive and Oakridge Drive, Willenhall.

Land "Determined" as Contaminated Land is shown within the dashed boundary lines.



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The land determined as "Contaminated" is that land enclosed within domestic curtilages at Kemble Close, Brookthorpe Drive, and Oakridge Drive Willenhall.



Walsall Council

SCHEDULE 2 to Record of Determination

1. DESCRIPTION OF THE SIGNIFICANT POLLUTANT LINKAGE.

Pollutant:	Benzo[a]pyrene present in soils
Pathways:	Direct soil/dust ingestion. Outdoor dermal uptake from soil contact Outdoor dust inhalation.
Receptor:	Young female child (aged 1 – 6 years) potentially resident within the determined area.

2. SUMMARY OF EVIDENCE UPON WHICH THE DETERMINATION IS BASED.

- 2.1. The determination has been made following review of reports compiled by a desktop study and five intrusive ground investigations of the area previously occupied by the Willenhall Town Gas Works. This ceased to operate in the late 1960's and was subsequently redeveloped for residential purposes in the early 1970's.
- 2.2. An initial intrusive ground investigation was designed and supervised by Faber Maunsell, consultants acting on behalf of the council, during February and March 2008. Samples were obtained from 37 locations within the area of the former gas works. The subsequent report **"A Contamination Assessment of the Former Willenhall Gas Works, Oakridge Drive, Willenhall"** dated June 2008 recommended additional intrusive investigation. Subsequently a further 40 locations were sampled during November 2008.
- 2.3. A report **"Phase II Contaminated Land Risk Assessment. Former Willenhall Gas Works"** was received in May 2009 and contained an assessment of the results incorporating the data from the June 2008 report. This report concludes that a part of the former gas works site (identified as Zone 7) should be determined as contaminated land and in addition recommended further investigation of garden areas in Brookthorpe Drive and Oakridge Drive (identified as Zone 4 and Zone 5. See plan in paragraph 4.6)
- 2.4. The May 2009 report recognised that not all of the exploratory hole locations in Zone 7 were within private gardens and that approximately only 15% of private properties within the zone have been sampled. It was however concluded that as most sample locations within the zone reported elevated levels of BaP this indicated widespread contamination and additional sampling was unlikely to show the absence of contamination.

- 2.5. The recommended additional investigation for Zones 4 and 5 was undertaken in February 2010 when a further 44 trial pits were dug and 50 samples sent for analysis. A report **"Contaminated Land Assessment – Former Willenhall Gas Works, Oakridge Drive, Walsall"** incorporating the information from the analysis of samples from all of the intrusive investigations was finalised in **August 2010**.
- 2.6. This report concludes that benzo[a]pyrene (BaP) is widespread in the investigation areas (Zone 4 and Zone 5) and in many instances significantly exceeds a site specific Health Criteria Value (HCV) of 1.02 milligrams per kilogram (mg/kg). This criteria for BaP in domestic gardens with plant uptake was derived by using the Contaminated Land Exposure Assessment Model Version 1.04 (CLEA v1.04). The report expressed concerns that insufficient data had been collected for a portion of Zone 5 (now identified as Zone 5b) and recommended additional investigation. This was completed and a **"Revised Contaminated Land Assessment Former Willenhall Gasworks, Oakridge Drive, Walsall"** was issued in **May 2011** incorporating the additional Zone 5b investigation work. Uncertainties about risks to health from exposure to soils in Zone 5b remained leading to additional sampling being undertaken in May 2011.
- 2.7. Results from these investigations were included in a report, **"Consolidated Contaminated Land Risk Assessment – Former Willenhall Gasworks, Oakridge Drive, Walsall"** (July 2011), that addressed risks associated with Zone 4, Zone 5, Zone 5b and Zone 8 concluding that Zone 5b and Zone 8 do not meet the criteria to be considered as contaminated land but Zone 5 and Zone 4 should be determined as contaminated.

3. DESCRIPTION OF POTENTIALLY CONTAMINATIVE ACTIVITY AT THE FORMER WILLENHLL TOWN GAS WORKS.

- 3.1. The manufacture, storage and distribution of gas from coal. Associated activities included railway operations, coke storage and distribution, ash disposal and waste treatment. These operations took place from approximately 1902 until the late 1960's. The site was subsequently decommissioned, demolished and redeveloped for housing in the early 1970's.

4. SUMMARY OF THE RELEVANT ASSESSMENT OF THE EVIDENCE.

- 4.1. The area of the former gas works identified in the plan attached to the record of determination has been determined as being Contaminated land in accordance with Section 78A(2a) of the Environmental Protection Act 1990, because:

"there is a significant possibility of significant harm being caused" to human health when having regard to the pollutant linkages described in Section 1 of this document.

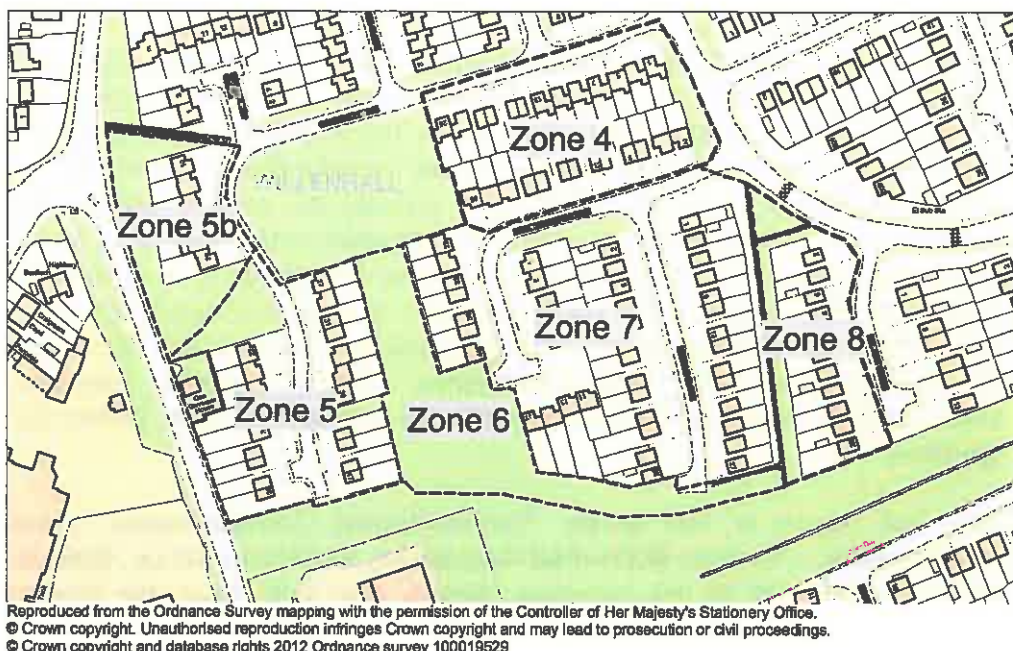
- 4.2. In declaring the site as "Contaminated Land" an assessment has been made of all available information including the results from intrusive investigations carried out in accordance with the statutory guidance.

- 4.3. The determination has been made using information from five rounds of intrusive site investigations designed and carried out by Faber Maunsell (now AECOM) on behalf of Walsall Metropolitan Borough Council and the recommendations made within reports on the findings. Faber Maunsell have carried out a review of the results of the investigations, identified plausible pollutant linkages and undertaken a site specific risk assessment to inform the decision on whether all or part of the investigation areas should be determined as contaminated land. While the detail of the investigations is contained within individual reports relating to the works each successive report has had regard to the findings of previous investigation and incorporates the information into its conclusions and recommendations. These reports conclude that unacceptable levels of benzo[a]pyrene are present in soils within domestic gardens.
- 4.4. The last report in the series **"Consolidated Contaminated Land Risk Assessment – Former Willenhall Gasworks, Oakridge Drive, Walsall"** (July 2011) has regard to the previous reports and it is upon the findings and recommendations of this report and **"Phase II Contaminated Land Risk Assessment Former Willenhall Gasworks"** (May 2009 for Zone 7) that Walsall MBC has made the decision to determine the specified land as contaminated land.
- 4.5. The reports identify that concentrations of benzo[a]pyrene in 51% of samples recovered from the determination areas were found to exceed the Health Criteria Value (HCV) of 1.02 milligrammes per kilogram (mg/kg) derived by Faber Maunsell using the Contaminated Land Exposure Assessment (CLEA) v1.04 model.
- 4.6. Walsall MBC recognises that exceedence of a HCV or screening value does not equate to an unacceptable level of risk as defined by the Environmental Protection Act 1990 Part IIA. In concluding that significant possibility of significant harm is being caused consideration has been given to the extent of exceedence of the HCV, the depth below the surface from which the sample was obtained and the likelihood of occupiers or users of the land being exposed to that contamination. The table below is extracted from the report **"Consolidated Contaminated Land Risk Assessment – Former Willenhall Gasworks Oakridge Drive Walsall"** (July 2011) (page 21) and illustrates the extent by which the levels of benzo[a]pyrene exceed the site specific health criteria value in Zone 4, Zone 5 and Zone 7 that make up the area to be determined. Zone 5b and Zone 8 have not been considered to be contaminated as the quantity and extent of samples exceeding the site specific health criteria is much reduced and in the case of Zone 6 the land use is open space rather than enclosed private gardens thus reducing the potential for exposure due to the use of the land.

Table 5.1 Summary of B(a)P concentrations in Zones 4 to 8

	Zone 4	Zone 5	Zone 5b	Zone 6	Zone 7	Zone 8
No. Samples	33	32	19	17	16	21
Min Value (mg/kg)	0.15	0.09	0.09	0.1	0.5	0.5
Max Value (mg/kg)	48	24	10.24	320	220	1.8
No. Samples below LOD*	12	12	4	2	1	13
No. Samples Above GAC (1.02mg/kg)	15	13	4	14	14	8

*The accredited laboratory limit of detection varied between 0.09mg/kg and 1.0mg/kg
Consolidated Contaminated Land Risk Assessment – Former Willenhall Gasworks, Oakridge Drive, Walsall (July 2011) (Page 21)



- 4.7. Consideration has also been given to the discussions and uncertainties surrounding what may be considered to be a safe level of benzo[a]pyrene in soils. The calculated HCV/screening value for the site is 1.02 mg/kg (Faber Maunsell). Review of the exceedence shows that many of the samples from within the top 1 metre of soil exceed the screening value by an order of magnitude (greater than 10.2 mg/kg) and in some cases by two orders of magnitude (greater than 102 mg/kg).
- 4.8. Statistical analysis of the benzo[a]pyrene concentrations in the samples using the techniques provided in the Chartered Institute of Environmental Health Guidance on Comparing Soil Contamination Data with Critical Concentration (May 2008) shows that the true mean concentration of benzo[a]pyrene in the soils is significantly above the screening value of 1.02 mg/kg that has been used as the critical concentration and consequently there is a significant possibility of significant harm to the receptors. Using the 95th percentile of the average of the concentrations confirms that for all zones the value is at least three times the critical concentration used. Full details are contained within the site investigation reports.
- 4.9. Walsall MBC has also considered the extent of surface cover and treatment of soft landscaped areas together with the potential for soils disturbance leading to the potential for inhalation, ingestion of or dermal contact with contamination from soils and concluded that the prevailing conditions do not constitute acceptable control measures or allow management of situations to control or prevent exposure and associated risks to human health.
- 4.10. Having regard to the above factors Walsall MBC has concluded that the extent and concentrations of benzo[a]pyrene in near surface soils and the presence of credible exposure pathways indicates that significant possibility of significant harm exists in relation to human health and therefore the areas of land specified should be determined as contaminated land.



Walsall Council

Legal Services

Your Ref: DG1/WIM.020-0011
Our Ref: SBM/NES02.04
Date: 23rd February 2015
Contact: S. Bennett-Matthews
Tel: 01922 654835
Fax: 01922 638267

Caroline Almond,
Squire Sanders (UK) LLP,
DX 708610,
BIRMINGHAM 17.

BY EMAIL AND DX

Dear Caroline,

ENVIRONMENTAL PROTECTION ACT 1990: PART II SECTION 78B(3) IDENTIFICATION AND DETERMINATION OF CONTAMINATED LAND AT STONEGATE HOUSING ESTATE, WALSALL

The Council has given careful consideration to all the representations it has received from the various Potential Appropriate Persons. In addition since the land was identified as being contaminated the Department for Environment, Food and Rural Affairs (DEFRA) published new technical guidance on soil contamination (last March)¹. This represented a significant change from the previous guidance in relation to screening levels. In light of the representations received and the new Guidance the Council has reviewed the technical data used in its determination of zones 4, 5 and 7 as contaminated land. For ease of reference these areas are indicated on the attached plan.

The Council's assessment of the impact of Defra's new technical guidance on the determination of zones 4, 5 and 7 is that a value of 5mg/kg for benzo(a) pyrene (known as "B(a)P) does not now represent an unacceptable risk to human health. Accordingly, there has been an increase in the threshold value at which B(a)P levels are considered to be an unacceptable risk to human health.

The increase in threshold levels has several implications in relation to the Council's determination of parts of the Stonegate Estate as contaminated land and these are summarised as follows:

¹ SP1010: Development of Category 4 Screening Levels for Assessment of Land Affected by Contamination – Policy Companion Document. March 2014

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1. Zone 5

The determination of the site as contaminated land was initially based on soil sample results collected from various parts of the Stonegate Estate. The calculation of the statistical data obtained from the results was compared with the calculations of screening levels derived in accordance with Defra Guidance which was current at that time.

As the new revised Defra Guidance has increased the screening level for B(a)P, the soil concentration levels of the contaminant in some properties within Zone 5 are now unlikely to meet the level of contamination required for statutory intervention. The mean concentration for Zone 5 is 4.16 mg/kg of benzo(a)pyrene which is below the figure of 5 mg/kg screening value advised by DEFRA and therefore is not considered to be an unacceptable risk to human health. However, data from some properties within Zone 5 do show elevated contamination levels above the new Defra Guidance screening value and therefore the levels of B(a)P within the soil samples taken from these properties remain a potential risk to human health. (Examples, HP110 – 24 mg/kg B(a)P @ 0.3 metres; HP109 – 17 mg/kg B(a)P @ 0.4 metres; WS20 – 7.8 mg/kg B(a)P @ 0.5 metres).

Due to the variation in soil contamination levels for individual properties across Zone 5, the Council does not propose at this stage to withdraw the Notice of Determination for any properties within this area. Instead, the Council proposes to undertake further soil sampling in Zone 5 in order to obtain additional indicative data before deciding whether to proceed with the service of a Remediation Notice requiring remediation works to be carried out on this part of the development.

2. Zone 4 and 7

In Zone 4 and 7 sample mean soil concentration levels is 9.16 mg/kg and 38 mg/kg benzo(a)pyrene respectively and these values still significantly exceed the screening value of 5 mg/kg advised by DEFRA. Further the Council is of the view that due to the similarity in the nature of the ground conditions between Zone 4 and 7, both zones should be combined as one averaging area, to give a sample means concentration level of 20.7 mg/kg. This gives a more representative value overall, given that the ground conditions of the two zones are so similar.

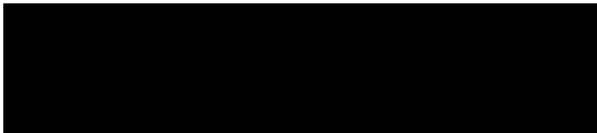
The new Defra Guidance does not give an indication of concentration levels of B(a)P in the soil which are considered to represent an unacceptable risk to human health. It merely provides that levels under 5 mg/kg screening value are *not* considered to be an unacceptable risk to human health. The new guidance makes it clear that the level at which the risk *is* unacceptable is a matter for the Regulator to decide. Having regard to the new technical data and the sample mean soil concentration levels in zones 4 and 7 the Council remains of the opinion that the level of contamination is sufficient to categorise the land as contaminated.

In the circumstances, the Council as Regulator intends to proceed with the service of the Remediation Notice in relation to Zones 4 and 7 which will require appropriate remediation works to be carried out.

These Remediation Notices will be served in the very near future on those parties the Council believes have liability taking into account the representations made.

I will contact you shortly.

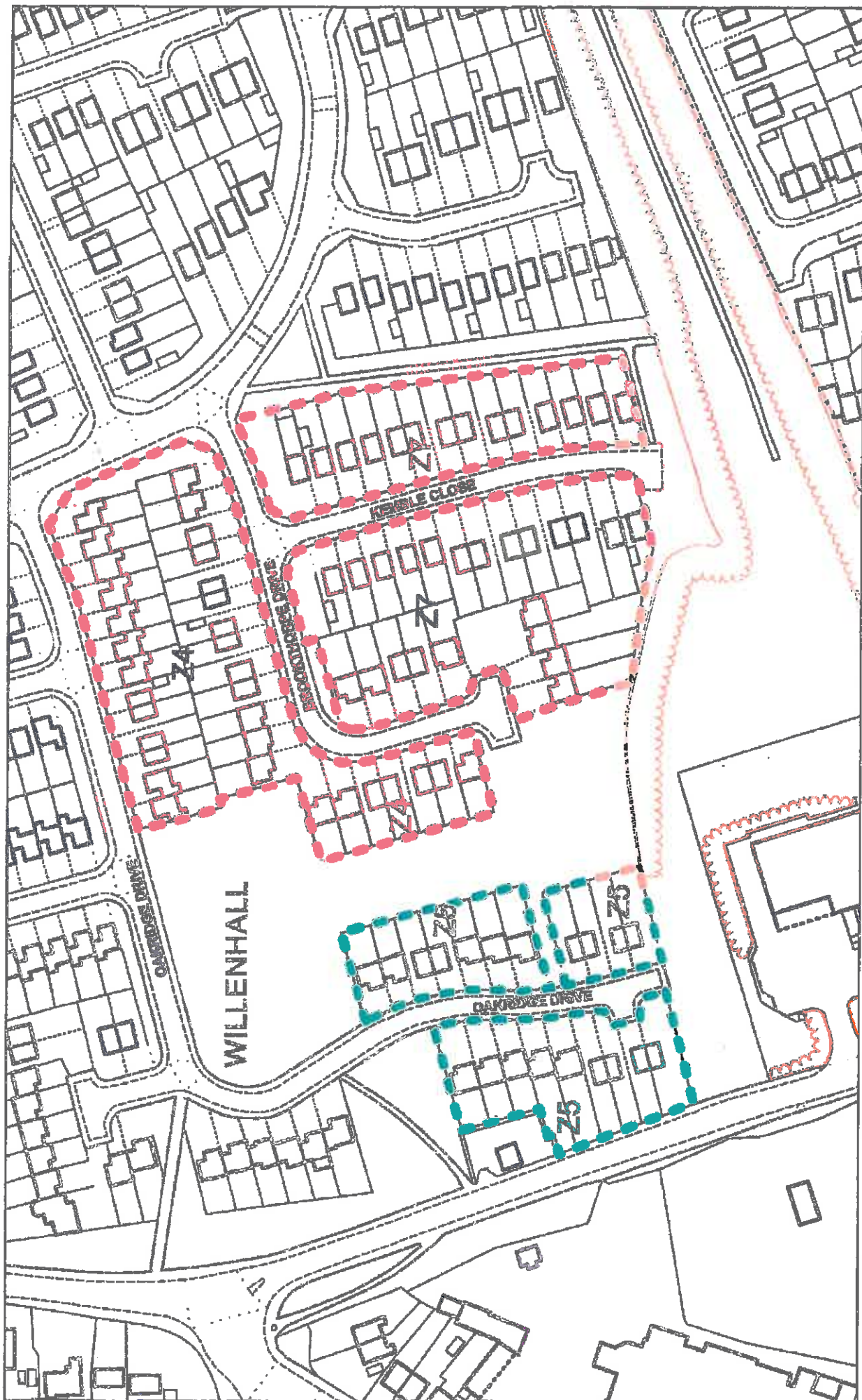
Yours sincerely,



Sharon Bennett-Matthews
Planning Solicitor
For Head of Legal and Democratic Services

Enc.

Plan



Willenhall Town Gas Works
Stonegate Estate
Indication of Zone Locations

Information for the purpose of this map is based on the latest available data and is subject to change. The map is not a legal document and should not be used for legal purposes. The map is for information only and should not be used for legal purposes.