

ENVIRONMENTAL PROTECTION ACT 1990

First contaminated land case comes to court

Why read this

It shows how the environmental responsibility was transferred from the person who allowed the fly tipping to the subsequent owner who developed the site.

The Story

Some clay pits, like many others were filled in an uncontrolled manner. Circular Facilities (London) Limited, then bought and developed the site with housing. Some time later emissions of carbon dioxide and methane were found on site. This posed a risk to the residents and Sevenoaks Council served a remediation notice on Circular Facilities, landowner at the time of development, the Council then undertook the remediation works.

The Case

Circular Facilities (London) Limited v Sevenoaks District Council, an appeal under Section 78L of the Environmental Protection Act 1990, was heard at the Magistrates Court. Circular Facilities appealed against a remediation notice on the following grounds:

- 1 The council had wrongly decided that Circular Facilities was the "appropriate person" liable for undertaking the remediation works.
- 2 The original owner of the site was the "appropriate person" and
- 3 The notice had become redundant because the remediation works were already complete and the Court could not make an order seeking compliance.

The evidence considered included the fact that a report referring to the presence of black organic matter and gases was available on the planning register and must have been available to Circular Facilities when it purchased the property. The judge found that the company ought to have been aware of the risks and could have commissioned their own report and taken measures to remove the risk when developing the site.

The Decision

Circular Facilities' failure to deal with the escape of gas was equivalent to permitting its presence, therefore Circular Facilities was the appropriate person in Section 78 of the Act.

It was right to exclude the previous landowner as Circular Facilities had introduced the pathways (the housing) and the receptors (the occupants), thus creating a linkage.

Due to the risk the Council had acted while the notice was suspended pending appeal, as foreseen by the Act and guidance, the notice had not become redundant.

The Outcome

After appeal a retrial was ordered at which point the parties settled out of court.

The Moral

Ignore environmental issues at your peril. The above are, of course, just "edited highlights", designed solely to create awareness and are not for guidance. If you would like to discuss either the issues raised or a specific project please contact me, Peter George on 077 6523 2995 or pdg@gosolve.co.uk