

Paul Mobbs,  
Mobbs' Environmental Investigations,  
3 Grosvenor Road,  
Banbury OX16 8HN, England  
Tel./fax 01295 261864  
Email: [mobbsey@gn.apc.org](mailto:mobbsey@gn.apc.org)  
[www.gn.apc.org/pmhp/mobbsey/meir.html](http://www.gn.apc.org/pmhp/mobbsey/meir.html)

# **Waste disposal on Allsopps Hill Quarry, Rowley Regis, Warley, West Midlands**

Report prepared for

**Mr. F.A. Hadley**

**June 1996**

## **Contents**

1. Introduction and summary	2	
2. Landfilling in Allsopps Hill Quarry	5	
3. Golf course development on Allsopps Hill		11
4. Conclusions and recommendations	17	

# 1. Introduction and summary

This report has been produced on behalf of Mr. F.A. Hadley, of 'Hillcrest', Fairview Close, Rowley Regis, to highlight issues of public safety and environmental pollution in relation to the former Allsopps Hill landfill site and the effects of recent development on this site.

Mr. Hadley's concern regarding the site began early in 1995 when waste was being tipped on top of the old landfill site. This continued for some weeks, and due to the dry weather the tipping operations began to cause a nuisance because of the dust generated.

This issue was raised with the local waste regulation authority - at that time Sandwell Metropolitan Borough Council. In response they issued a waste licensing exemption for the operations on the site, but at no time did they take action to abate the nuisance caused by the operations on the site.

Towards the Autumn of 1995 it was clear that the scale of tipping operations was greater than that permitted by the waste licensing exemption - and we brought this to the attention of the waste regulation officers. We also raised the matter of planning consent for development on the site since no permission had been sought for the importation of waste onto the site, and the conditions of an existing planning consent for the construction of a golf course had not been complied with since no landscaping proposal had been submitted for approval.

Towards the end of 1995 tipping ceased, and we were informed by one of the waste regulation officers that the Authority were considering legal action - but Sandwell Metropolitan Borough Council then used this fact as a convenient defence to avoid producing evidence of their work to regulate activities on the site. According to what we were told, there was no detailed file, containing inspection reports or complaints from the public, relating to the operations at this site - only the waste licensing exemption. To date, no enforcement action has been taken by any regulatory body.

On 31st January 1996, we went to see the planning file for the site at Sandwell's Planning Department. On the file were a number of letters demonstrating the failure of the Authority to properly enforce planning controls on the site. We requested photocopies of these letters, but were refused. When we tried to discuss the legal basis for this refusal with the officer concerned - who was also the officer responsible for the regulation of this site - we were insolently told to go away.

On the 5th February, I made a complaint to the Chief Executive of Sandwell Metropolitan Borough Council with regard to the officer and the failure to provide information. Although the Chief Executive agreed that the officer had acted improperly, he refused to rule there and then about the availability of the letters. He stated that he would ask for a legal opinion, and reply at a later date. Thus far we have had no reply on this matter from the Chief Executive, and when viewing the planning file a few weeks later all the letters we requested copies of had been removed from the planning file.

Shortly after our complaint a new planning application was submitted for the development on the site, at the request of the Planning Department. For the original application granted on the site, a baseline height survey had been carried out. For the new application, another height survey was submitted but it was radically different from the first - it took the new baseline height as the levels of the waste tipped during 1995. The application then requested

permission for the importation of even more waste materials.

I produced an objection on behalf of Mr. Hadley, and spoke at the meeting of Sandwell Metropolitan Borough Council's Planning Committee. However the points I made with regard to the effects of waste deposit on this site, were ignored. The chair of the committee, in his summing up, even noted that *'to inspect the state of the landfill gas collection system would damage it, and would therefore be unacceptable'* - a completely preposterous conclusion.

The committee approved the new planning permission, but with the condition that steps be taken to safeguard the landfill gas collection system. This is however a completely impossible condition to apply. As waste has already been tipped, it will be impossible to ensure that the gas collection system has not already been adversely affect unless the whole site is excavated. Or if studies take place after future tipping, is there any evidence to show that the damage was cause by the tipping during 1995, or the tipping that may take place in future. Furthermore, because of the difference between the two baseline height surveys, the material that has already been deposited on this site still has no planning permission.

It is clear from my experience of dealing with other waste sites across the UK that there is a serious danger of landfill gas migration from this site. The site is still actively gassing, and gas is extracted for burning in the adjacent landfill site. There is no landfill liner system to prevent or reduce the seepage of gas off site, and there is housing and other development bordering the site on three sides, roughly 50-75 metres from the edge of the landfill. What's more, during periods of rain, gas has been seen bubbling up through puddles in the road.

There is also the matter of the monitoring of the closed landfill. We were informed by the officer at Sandwell Council, and by a representative of the Environment Agency, that the file on the closed landfill was not available to the public, and that the authority had no obligation to monitor the site (we are requesting this in writing). However, we were told that there is minimal information in the file, and in any case there is no information on leachate from the landfill. Another serious concern is that no one seems to have ultimate responsibility for the maintenance of the gas control system on the site. The former landfill site operators - Tarmac Econowaste - have passed the responsibility on to a subsidiary company, but neither of these two companies now own the land. The current landowner, and developer of the golf course, insisted to me that he had nothing to do with landfill gas collection, and would not take responsibility for it. Finally, officers at Sandwell have admitted that they do not know who is responsible for actually maintaining the gas collection system, but they are trying to establish an 'agreement' about whom it should be.

While an active landfill this site accepted a wide variety of wastes, including toxic wastes from the local chemicals and metals industries. Furthermore, from our research at the Coal Authority's offices, there are large scale mineworkings beneath the quarry. There is a serious risk of pollution migrating from this site, particularly if it enters the mineworkings. The fact that the base of the Allsopps Hill Quarry is around 200 metres above Ordnance datum (AOD), and that away from the Rowley Hills parts of Dudley and Oldbury are between 130 and 150 metres AOD, there is the potential for leachate from this landfill to erupt from the surface of these lower lying areas away from the site, possible through the old coal workings.

It is clear from my observation of the actions of Sandwell Metropolitan Borough Council's

Planning Department, the Waste Regulation Department (now part of the Environment Agency), and the general attitude of the Authority's officers with regard to the control of this site and the potential for the pollution it represents, that the site is "out of control". There is no clear understanding of how the site is stabilising, and the implications this has for landfill gas migration and leachate seepage. In relation to the golf course development, it is clear that the effects of the development on the landfill and the landfill gas collection system have not been properly considered. It is also clear that for some time the authority took no action to bring the activities on the site under control, and in the end the request for a new planning consent was merely to regularise development which is unacceptable to the local people.

There should be a detailed inquiry into how Sandwell Metropolitan Borough Council organises its development control and environmental departments, not only in relation to this site, but also to the many other sites across the Borough where there is ample evidence of pollution and of breaches of planning control being carried on without any concern being shown by the Authority.

## 2. Landfilling in Allsopps Hill Quarry

Allsopps Hill was quarried for hard rock for a number of years, before finally being filled with a mixture of domestic and industrial wastes during the 1980s. The site was finally capped, and the whole site was 'restored' with quarry spoil as a poor quality top soil. At a later date the landfill gas collection system was added, and comprises a series of gas wells with a shallow network of pipes connecting them to the gas pumps.

A hard dolerite 'sill' caps the tops of the hills in the area, and Allsopps Hill is one of a number of quarries in the Rowley Hills which have been quarried for many years. To the north of Turner's Hill (the local hill) lies Darby's Hill. This site was quarried in the 1960s, and was filled during the 1970s and early 1980s with domestic and industrial wastes. After Darby's Hill, Allsopps Hill became the next site for extraction. Following the closure of Allsopps Hill, the main activity has moved over the road to the Hailstone and Edwin Richards Quarries - these again are now being filled with waste. As a result of my investigations, we have concerns about the validity of the planning permission for the Edwin Richards Quarry site, the failure to observe the necessity to produce an environmental statement before the decision to fill the quarry was taken in 1989, the safety of the site given the manner in which it is being filled, and the risk to groundwater from leachate leaking into the mineworkings which are present beneath the site.

So far we have not been able to view the file on Allsopps Hill held by Sandwell Metropolitan Borough Council. On the day we visited, we were told that the file could not be found. When later that day we talked to the officer concerned, Mr. Richard Norton, we were told that the file was locked in his desk and in any case there was no requirement to show the file to members of the public. Verbally he confirmed that there was little on the file, and that no detailed landfill gas or leachate monitoring had been undertaken.

The effect of toxic leachate leaving the Allsopps Hill site is difficult to ascertain. The diagram on the following page is compiled from records held by the Coal Authority - which Mr. Hadley and I obtained last year. The dark line is the outline of the existing 'merged' Edwin Richard quarry - currently being filled by Greenways. On the right of the diagram (top of the page) the Allsopps Hill quarry is shown. As can be seen coal has been worked below the quarry - which if records are accurate will be between 50 and 70 metres below the base of the original quarry floor prior to landfilling.

In terms of the toxic leachate there are three possible options...

- *The leachate has not moved off site* - this is unlikely given the fissured nature of the dolerite sill which is quarried in the area.
- *Leachate is moving laterally off site* - this is possible. The existing Greenways landfill and the Allsopps Hill quarry are in 'continuity' - they both occupy the same rock strata. Landfill gas has been detected outside the liner at the



Greenways site, and it may be that this gas has leaked from the Allsopps Hill site. If this is so it would also indicate a lateral migration route for leachate.

- *Leachate has moved into the mineworkings* - This is the 'worst case scenario'. In dolerite rock, moving by fissure flow, leachate could travel at around  $5 \times 10^{-7} \text{ ms}^{-1}$  (about 30 metres per year). But if there were collapsed mineworkings in the area, leachate could move at much higher speeds - 1000 to 3000 metres per year - and unlike the movement through the uncut rock the flow through mineworkings would be subject to much less dilution. If leachate from Allsopps Hill has entered the local mineworkings, because of the interconnections between different workings of the coals seams, there is the potential for pollution over a wide area. The only issue is where the pollution will emerge.

As someone who specialises in waste management issues, my major concern about the development of the golf course on the site is the effect that piling tonnes of spoil on top of the landfill will have. Essentially, adding weight to the top of a landfill is like squeezing a tea bag - it will cause the flow regime in the landfill to change for a short period while the pressure 'head' adjusts. During this period leachate could be ejected at a much higher rate. The increasing mass of waste bearing down on the landfill may also cause problems with the landfill gas extraction system at the quarry while the waste settles to compensate for the added weight. It could also physically crush the landfill gas collection system.

The big question mark surrounding the effect of any leakage - both of landfill gas and of leachate - is what went into the Allsopps Hill landfill. Allsopps Hill operated under the Control of Pollution Act (CoPA) 1974 (in place until the tightening of the regulations under the Environmental Protection Act in 1990). CoPA controls were essentially 'public health' related in that they were mainly concerned with dust, smell, noise and vermin. There was not a lot of consideration of the effects of landfilling hazardous or biodegradable substances. Hence the sort of records and audit-trails we have in place today are not available to tell us what went in.

The existence of large and active chemical and metals industries in the area means that it is highly likely that there are large quantities of hazardous material in Allsopps Hill, when compared to a national average. How much comes out as landfill leachate or as contamination within the landfill gas depends on the composition of the other waste in the site, and its 'buffering capacity'.

Without any meaningful sampling of the landfill gas looking for the 4-6% (by volume) of toxic gases, or analyses of the leachate within the quarry which consider all organic and inorganic leachate components, it is not possible to give a fuller picture of what the final effect of the Allsopps Hill Quarry might be.

Some of the local residents report that during the time the site was being filled, there was some activity at weekends and out-of-hours when "drums" of material were brought in and quickly buried. There are photographs, and some residents are trying to find copies of them. If some sort of 'uncontrolled' dumping did take place on this site, this increases the risk of pollution even more. As an example, pollution of the groundwater beneath the Harwell Laboratory in Oxfordshire with solvents - it is estimated no more than 50-100 tonnes - has polluted public water supplies in the village of Blewbury five miles away (for a period of two years, the water works were actually closed because pollution levels were too high, and a pipeline had to be laid to bring in new supplies). Allsopps Hill could have a polluting potential much greater than the landfills at the Harwell Laboratory.

The area of mineworkings beneath the Allsopps Hill Quarry shown on the map earlier also happens to be where, according to local residents, the 'sump' of the quarry was. There are also reports from local residents of there being a large pond of water in the quarry, in the same position, during the time that waste tipping was taking place. If this area does represent the point to where the water in the quarry drains, it could be that there is a 'head' of leachate in the base of the quarry which could accelerate leachate seepage.

The landfill gas collection system, when it was installed after the restoration of the site, can only be expected to have a limited effect on the migration of gas - particularly given the depth of the site. It would be sensible in such a situation to run the gas extraction system alongside a monitoring regime that would regularly monitor the boundaries of the site to ensure that gas is not leaking out. No such system is operated at the present time.

The gas being 'sucked' by pumps from this site is currently burnt in the turbine at Greenways landfill in the Edwin Richard Quarry adjacent to the site. The same plant also takes the landfill gas removed from Darby's Hill. The burning of the landfill gases in itself presents some risks of pollution, particularly as the exhaust from the turbine is at roof level (this will give very poor dispersion/dilution of combustion gases, and the burning of gas oil with the landfill gas may be the cause of some of the odours which local residents experience). At present, Sandwell Metropolitan Borough Council's environmental services division seems to have very little concern about the emissions from this plant. This is due mainly to the fact that the plant is not a 'prescribed process' under Part I of the Environmental Protection Act 1990, and so they assume they have no powers to deal with any emissions from it.

The effect of piling large quantities of spoil on top of the landfill site and the gas collection system will be threefold...

- There is the potential for the collection pipes to be crushed. It is also possible that some of the gas wells, some of which lie 2-3 metres below the new level of the tipped spoil, will be unable to be checked to ensure that they are still functioning efficiently.
- The waste in a landfill site does not present an 'isotropic' (equal in all directions) media through which landfill gas can migrate. Lateral migration can be faster than vertical migration. Adding more weight to the waste mass will increase the tendency to 'anisotropic' migration rates, and may lead to gas preferentially moving to the fringes of the site where it can migrate through the soil and through fractures in the rock.
- The physical presence of a large waste mass deposited on the surface of the site will prevent gas migrating from the surface of the landfill, and more gas may be expelled from the fringes of the site.

From my consideration of the reports on the recent planning application which went to the planning committee, and from discussing the matter with officers on the site visit prior to the meeting, the above concerns regarding the landfill gas collection system have not been adequately considered. It is assumed that any problems will be taken care of by the persons responsible for the maintenance of the landfill gas collection system, but at the moment neither the landowner, nor it seems Greenways, will take responsibility for the gas control measures on this site.

Allsopps Hill Quarry will need to have the gas control system maintained for at least the next thirty or so years - after this the control measures will depend upon the level of 'stabilisation'

achieved in the waste mass. The polluting effects of the gas burning may therefore be prolonged, as will the effects/risk of gas migration into nearby houses and industrial buildings. If gas is migrating from the site, there is a serious risk to the health of local residents, both from the 'toxic' constituents of the landfill gas and from the risk of gas build up and explosion.

During my visit to the site recently, where I met local residents, I was informed that during rainy weather, when puddles developed in the road and on the pavement, gas could be seen bubbling up from between the kerbstones. Since then this has been checked and shown to be true. If migration is taking place at these levels, it is almost certain that any underground voids (such as utility access holes) or the cellars/underfloor spaces in nearby houses may be filling with landfill gas.

Evidence also came to light on my visit that there was a 'tunnel' which used to run from the Allsopps Hill Quarry into the Edwin Richard Quarry through which stone was brought on a narrow-gauge tramway. This tunnel, according to local accounts, was not filled. If this is the case it could represent a pathway by which landfill gas could quickly migrate from the site.

It is clear to me that the Allsopps Hill hill landfill site presents a serious pollution risk to the area. There are three key factors...

- There is no lining system in the base of the landfill;
- Toxic materials were deposited in the site, and there is the possibility that other wastes were deposited in the site without the knowledge of the relevant regulatory authority;
- The geology of the area consists of fractured and faulted igneous and sedimentary rocks, and there are large areas of mineworking beneath the site through which pollution could migrate quickly.

There should be a thorough review of how leachate is moving from the site, and whether the 'dilute and disperse' nature of the site is being compromised by the presence of mineworking in the area. Given the similarity between Allsopps Hill and Darby's Hill, it may be wise to undertake similar work on that site too.

There is also a serious risk of landfill gas migration. As noted above, there is no lining system. The effectiveness of the landfill gas collection system must also be called into question because of...

- The effects of dumping large quantities of waste spoil on top of the site;
- The effectiveness of using a small number of gas extraction wells in such a deep site (in practice some sort of 'multi-level' extraction system is needed to ensure that the negative pressure from the extraction pumps is evenly balanced vertically and horizontally throughout the waste mass);
- The lack of any detailed monitoring of the system's performance to ensure that gas is being removed from across the site, and that all gas collection wells are working at full efficiency without clogging;
- The failure to install a perimeter collection system - be it active or passive - to prevent the migration of gas off site.

The safety of the site in respect of landfill gas control needs urgent review as this presents the most immediate risk to the public. The landowner, the users of the gas, and Sandwell

Metropolitan Borough Council should be made to draw up a long-term management plan for landfill gas not only on this site, but on the other sites such as Darby's Hill which were/are operated in a similar fashion.

### 3. Golf course development on Allsopps Hill

Planning permission was granted for an 18 hole golf course on Allsopps Hill, with accompanied landscaping, in 1990. As part of the conditions for the permission, the final plan for landscaping, along with proposed levels, should have been submitted for approval to the local planning authority. Although the restored site could quite easily have been remodelled to produce a golf course, from the beginning of 1995 spoil and construction waste was tipped on the site - without any landscaping plan having been approved.

Tipping continued, and on 7th April a letter was sent to Richard Norton, Waste Regulation Officer at Sandwell Metropolitan Borough Council's Environmental Services division, questioning the legal basis of the tipping, and whether it was licensed. There then followed an exchange of correspondence on this issue, and despite the fact that the waste tipping was exceeding the limits permitted under waste licensing exemptions, tipping did not stop until the end of 1995.

Planning permission is required for earthworks/landscaping, where such works fall within the meaning of section 55 of the Town and Country Planning Act 1990 (as amended) (the '1990 Act'), and is not permitted development under the General Permitted Development Order (GPDO) 1995.

The requirement to obtain planning permission for the deposit of waste is not explicit - paragraph 1A of section 55 of the 1990 Act refers to various operations, and activities on land, "*normally carried out by a builder*". However, in this case, due to the use of waste materials to construct the golf course the development falls within paragraph 3(b) of section 55 of the 1990 Act...

*"the deposit of refuse or waste materials on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose, if -*

- (i) the superficial area of the deposit is extended, or*
- (ii) the height of the deposit is extended and exceeds the level of the land adjoining the site."*

The 1990 planning permission refers to the construction of a golf course and landscaping. This poses the question as to whether the deposit of waste would be encompassed within such a permission. In any case the conditions of the 1990 permission were not met because no landscaping scheme was issued.

The worked site was restored by the operator - Tarmac Econowaste - when landfilling finally ceased on the site. The height of the land was at that point roughly consistent with the original landform. The tipping carried out by the operator of the site has raised the height of the site well above that of the original landform - it is not simply a matter of 'landscaping' works. Therefore it is likely that permission should have been sought additionally for the deposit of waste as it falls within section 55(3)(b) of the 1990 Act. Currently, no such permission exists.

The Town and Country Planning Act 1990 which enables planning law, and Part II of the Environmental Protection Act 1990 which enables waste licensing law, operate completely independently. However, there is a requirement within the waste licensing system that planning permission must exist for the development before a waste license can be granted. As

noted above, it is a debatable matter whether the large scale deposit of waste is permitted on the site since it falls within section 55(3)(b) of the 1990 Act. If this is the case, then any waste license or licensing exemption granted is void.

Planning Policy Guidance no.23 (PPG23), "*Planning and Pollution Control*" (July 1994), clearly outlines the relevant 'material considerations' within the planning system when waste applications are being dealt with. However, the grant of planning permission does not confer any consent or exemption for the deposit of waste. Planning Policy Guidance no.1, "*General Policy and Principles*" (March 1992), clearly defines the relationship between planning and 'other legislation'. When considering planning applications, the local planning authority cannot confer nor seek to define issues which are the responsibility of other authorities.

In practice this means that, even when the county planning authority and the county waste regulation committee have the same membership, the decision on planning permission cannot permit the deposit of waste. Such permission can only be given in response to a waste licensing application - although PPG23 does note that the planning application and the waste licensing application may be processed in parallel.

In considering the deposit of waste on land, dependent upon the size of the deposit, there are two options for licensing...

- the granting of a waste licensing exemption - if the type of waste and scale of deposit falls within the exemptions granted in the Waste Management Licensing Regulations 1994 (SI. 1994, no.1056);
- the granting of a waste license under Part II of the Environmental Protection Act 1990 where the deposit does not fall within one of the exemptions in the 1994 Regulations.

If the deposit does not fall within one of the categories of licensing exemptions, or a waste license is not obtained before the deposit of materials takes place, then this would constitute a breach of section 33 of the Environmental Protection Act 1990, and the responsible person would be liable to prosecution.

Under the terms of the waste licensing exemptions, there is a limit to the amount of waste that may be deposited. After this, waste deposit must cease, or a full waste license must be applied for. In this case, Richard Norton initially quoted a limit of 20,000m<sup>3</sup> of waste per hectare - which corresponds to an average waste depth of 2 metres per hectare. On this site it is clear to us that the deposited waste has exceeded this figure, but as yet no action has been taken. In September 1995, Richard Norton told us that legal action was being considered, but since then there have been no further developments.

At a later date, the licensing exemption was changed. The original exemption was granted for 'land restoration' which has a limit of 20,000m<sup>3</sup> per hectare. In September 1995 the exemption was reissued for 'construction', which has no limit. But again, the necessary planning consent to "extend the height of the deposit" was not sought.

Where land is being 'restored' by the tipping of controlled waste, Regulation 17 of the Waste Licensing Regulations 1994 ('1994 regulations') may provide an exemption to licensing, should this activity fall within the criteria specified in schedule 3. Paragraph 19(2) of Schedule 3 of the 1994 Regulations provides an exemption for the deposit of demolition/construction wastes to be used in building operations, such as recreational

facilities, where these materials are suitable for this purpose. This paragraph is further defined in the explanatory Circular to the 1994 Regulations, "*Environmental Protection Act Part II: Waste Management Licensing*" (DoE Circular 11/94, 19th April, 1994). Paragraphs 5.152 to 5.159 relate to construction and demolition wastes, and outline the permitted exemptions from waste licensing. But paragraph 5.159 may pose a problem to the construction of earthworks/landscaping features. In describing the valid uses of demolition/construction waste for landscaping/recreational facilities it notes...

*"This definition [of relevant work] excludes the construction of heaps or mounds of waste on land, unless they are in connection with these types of projects".*

How exactly the construction of a golf course relates to making 'mounds' of construction waste, given that no landscaping plan had been approved for the site under the 1990 planning permission, is not clear. The current landform on the site, resulting from the tipping during 1995, is in our opinion totally unsuitable for the creation for a golf course. It is in essence a mound of earth more akin to those built for the construction of dry ski slopes rather than golf courses. We therefore question whether, on the basis of the 'relevant works' permitted under the regulations, the current style of waste deposit is permitted.

There is also the issue as to whether the construction of the golf course represents simple construction (as in the revised licensing exemption), or land reclamation (as stated in the original licensing exemption). Since the site had already been restored by the previous landfill operator, it is difficult to accept that further large scale waste tipping was ever necessary in order to make the site suitable for a golf course. If the land does not need to have waste tipped in order to restore it, then an exemption cannot lawfully be granted for further tipping.

For the purposes of land reclamation the controls, specified in paragraph 9 of Schedule 3 of the 1994 Regulations, are similar to those in Paragraph 19 with the exception that...

- The land must have the material tipped on it in order to render it usable - it cannot be carried out on greenfield sites or land that is already fit for development;
- Spreading must be carried out in accordance with planning permission;
- There is an absolute loading limit of 20,000 m<sup>3</sup> per hectare - beyond this figure the exemption is invalid and a waste license must be applied for.

To resolve whether Paragraphs 9 or 19 apply, the exact definition of what this proposal is, be it land reclamation or recreational facility, needs to be specified in order that the exemption/licensing of the waste deposit can properly take place. It is clear to us that the site did not need any large scale tipping of waste in order to restore it to a condition where it would be suitable for use as a golf course. In fact, the site seems less suited to a golf course today than it was before tipping started.

Earlier in 1996, a new planning application was submitted for the site - again for a golf course and landscaping. This, as we see it, would correspond to the principle within the town planning system that where development has taken place without planning permission then a retrospective planning permission should be sought. Only then, if the planning permission is turned down, should enforcement action be taken to remove/demolish that development built without proper planning consent.

In terms of planning law, the point I outlined earlier was whether or not the planning permission should permit the deposit of waste. We believe that if the developer specifically wishes to import waste in order to make up the ground - to the point where such development falls within section 55 (3)(b) of the 1990 Act - then permission for waste deposit must be sought.

The original planning permission for this site included a map of the site levels before any development work had taken place. This is the baseline survey which all subsequent tipping must be assessed by. However, the new application contains a new levels map which takes the tipped levels of the site as the baseline, and then all subsequent landscaping is projected from this new - higher - level.

The sketch diagram on the following page gives the levels on the various maps...

- The number at the top of the box is the height of the site on the original 1990 baseline survey;
- The middle number is the height on the new 1996 baseline survey;
- The bottom number is the height the site will be restored to under the new planning permission.

All heights in in metres, above Ordnance datum (AOD).

The new application also includes an extension to the original site - noted on the map by the dashed lines. This too, it appears, will be tipped with waste.

It is clear from the new application that not only is the site operator seeking to regularise the unlawful tipping of waste on the site to date by including it as part of the baseline survey under the new application, but permission is being sought to tip further quantities of waste on this site.

At the Sandwell Metropolitan Borough Council Planning Committee meeting where the application was determined, it is my view that the officers of the Authority failed in their duty to advise the members of the committee correctly on the issues involved.

One of the points I raised was that an investigation must be carried out to assess the impact of existing waste tipping on landfill gas migration and the landfill gas collection system. In response to this the chair of the committee summed up by stating, 'to inspect the state of the landfill gas collection system would damage it, and therefore would be unacceptable'. This is an obvious error - over the lifetime of landfill gas extraction systems pipes have to be replaced, and new landfill gas collection wells must be drilled as the old ones clog with silt. To satisfy the concerns of objectors, the final permission included a clause relating to the protection of the landfill gas collection system. But in my opinion this is impossible to do once waste deposit has already taken place, and no steps are proposed to inspect the status of the system following the deposit of further waste.

In the first instance it will be necessary to raise the height of the gas collection wells as they currently sit 2-3 metres below the current level of the fill. The practical problem is who will

pay for this work. As noted earlier, no one wishes to take responsibility for the gas collection system, and so it is not clear who will carry out the work - although Sandwell Metropolitan Borough Council's officers are trying to come to some sort of agreement between the landowner and developer of the golf course, and the users of the landfill gas.

Finally, there is the issue of what happens about the 2-4 metres of waste already tipped on the site. The new planning permission takes its baseline as the height of the tipped waste, and consents further tipping. The old planning permission did not consent the tipping of waste, and no landscaping scheme was ever submitted to establish new levels for the site. As such, I would regard this 2-4 metres 'sandwich' of waste fill between the original height of the site, and the new baseline height for tipping, as not having planning consent. This raises the question of who is responsible for this material that does not have planning consent, and if it is subsequently shown that the tipping has caused problems with landfill gas migration and collection, who will pay for the works to put matters right?

To summarise, this site is in a practical sense a landfill/landraising site - in fact on the site visit the son of the landowner referred to it as 'the landfill'. We do not believe that the works carried out to date on this site are of a nature and scale concurrent with the development of a golf course.

Given the original condition of the site, we believe that it was not correct for the local waste regulation authority to grant the waste licensing exemption since it was not necessary to import large quantities of waste to restore the site - the site has already been restored by the previous operator. In any case, on examination of the original site levels, and the current levels of tipped waste, it is clear that the waste tipping exceeds the limits permitted by the original waste licensing exemption.

The new planning permission ignores the waste already tipped on the site, and seeks to permit the tipping of more waste. However, the application still does not address itself to the deposit of waste in terms of section 55 (3)(b) of the 1990 Act.

In our view it is also clear that the waste licensing exemptions were erroneously issued to the site operator. It has been stated to us by representatives of Sandwell Metropolitan Borough Council and the Environment Agency that, by matter of right, waste licensing exemptions must be issued. Legally this is not the case since any part of the waste deposit that does not fall within the relevant part of the Schedule 3 of the 1994 Regulations must be a contravention of the law. As such, we question whether it is necessary to grant an exemption to raise the height of land by 2-9 metres, when in its original state it would have been suitable for development of a golf course. Circular 11/94 makes it clear that an exemption does not have to be granted for every use of waste for the construction of recreational facilities - only where that deposit can be classed as 'relevant' to the particular recreational use.

## 4. Conclusions and recommendations

Since beginning to work for Mr. Hadley nearly two years ago I have become very concerned about the attitude of the officers of Sandwell Metropolitan Borough Council in relation to the protection of public health, protection of the environment from pollution, and the satisfactory discharge of their legal obligations of planning, waste and pollution control.

The situation at Allsopps Hill is an example - albeit one of the worst - across the area where it can be demonstrated that environmental problems exist, which are the responsibility of Sandwell Metropolitan Borough Council, but no action has been taken.

Of all the problems in the Borough, Allsopps Hill is perhaps the most pressing because of the risk of landfill gas and leachate migration, and its immediate potential to damage public health - either by the toxic effect of the substances emanating from the landfill, or because of the potential of buildings exploding should there be a sufficient build up of gas. This risk was demonstrated practically a number of years ago when a house at Loscoe in Derbyshire exploded due to the buildup of landfill gas.

What Mr. Hadley and myself require is..

- A thorough examination of the process of events on this site, to assess how much has been tipped, and how much of the waste was tipped unlawfully. If any waste material has been dumped unlawfully we would expect action to be taken by the Environment Agency (which took over control of waste regulation in Sandwell on April 1st) to seek either the prosecution of the persons responsible, or the removal of the waste.
- The question of the planning basis of waste tipping must be fully investigated, and any planning consent that is necessary must be properly considered before the new planning permission is progressed further.
- No further planning consents should be granted on this site until the question of any legal/enforcement action has been resolved, and an agreed solution has been reached. The solution to the current problem may in itself require planning permission, and such matters need to be resolved at the appropriate time.
- Steps should be taken immediately to establish the extent of landfill gas seepage off this site. If it is found that gas is moving off the site then steps must be taken immediately to get a new landfill gas control regime installed on the site.
- There should be a thorough investigation as to what materials were tipped into Allsopps Hill landfill. This investigation should request any information from local people - on a confidential basis if necessary - to establish if 'unregulated' tipping took place.
- Boreholes for the monitoring of groundwater should be drilled to establish the levels and composition of leachate in the site. Investigations then need to be run in cooperation with the Environment Agency to establish if leachate is moving off site in excessive quantities, and more especially to determine if leachate has found its way into the mineworkings that underlie this area.
- There should be an investigation of the way Sandwell Metropolitan Borough Council

interprets the law as to the public access to public registers and other information. In relation to Local Authority Air Pollution Control under Part I of the Environmental Protection Act 1990, we have letters from Sandwell Metropolitan Borough Council officers denying access to information which is explicitly listed as information available within the public register. Likewise with the landfill issues in this area, information has been consistently refused, or officers have denied that they have any duty to supply it.

It is clear that this site has been, for more than a year, 'out of control' in terms of planning and waste law. It is essential that the Environment Agency and Sandwell Metropolitan Borough Council take immediate steps to bring the site back under control. If neither are willing, then the Department of the Environment, and the Secretary of State for the Environment should intervene, and if necessary direct that these works take place.

**Paul Mobbs, June 1996**