

DP 568/03 - 07



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

**WRITTEN ASSEMBLY QUESTION
TABLED ON 27 JANUARY 2004
FOR ANSWER BY THE MINISTER FOR HEALTH AND SOCIAL SERVICES
ON 3 FEBRUARY 2004**

Mike German (South Wales West); Would the Minister publish the letter she sent to the leader of Newport County Borough Council on 15 November 2001 regarding issues raised by the Children's Commissioner on plans to build a primary school on the Glebelands site. (WAQ31773)

Jane Hutt:

I have asked officials to consider whether the information you have requested can be made available to you in a way that is consistent with the provisions of the National Assembly's Code of Practice on Public Access to Information and the Code of Practice on the Provision of Information to Assembly Members.

I will write to you when I have received further advice on this matter.

Drafted By: David Middleton CFD

Cleared By: C J Burdett



Jane Hutt AM

Gweinidog y Cynulliad · Assembly Minister
Cynulliad Cenedlaethol Cymru
The National Assembly for Wales

Your ref: HGJ/DG/AP & HGJ/CJH
Our ref: EH/02274/01 & JH/03413/01

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Cllr Sir Harry Jones CBE
Newport County Borough Council
Civic Centre
Newport
NP20 4UR

15 November 2001

Dear Sir Harry,

Thank you for your letters of 24 September and 16 October, addressed to Edwina Hart, about the Durham Road Schools PFI project. I am replying as I deal with correspondence relating to the Children's Commissioner on issues that span more than one ministerial portfolio.

Since you wrote, we have discussed the issue by 'phone. My officials are arranging a briefing for you on the Small Area Health Statistics Unit (SAHSU) Landfill Study, similar to that provided for the Commissioner on 5 October. In the meantime, I attach a note of the briefing meeting held for Peter Clarke.

On 16 October, a second briefing meeting was held for Peter Clarke on the planning policy framework and responsibilities. I shall arrange for you to have a copy of the note of this meeting as soon as it is finalised.

I should emphasise that both of these briefings were in general terms; neither related specifically to the position in Newport. Any conclusions reached as a result of these briefings are, of course, entirely a matter for Peter Clarke.

As you know, the Children's Commissioner has been established as an independent statutory office. I am sure your authority will wish to respond to Peter Clarke's views. In the final analysis the Commissioner's advice does not have the capacity to override any decision which your authority might wish to make. In coming to a decision, however, I know you will wish to explore the issues that he has raised. I hope that this is helpful.

Yours,

**MEETING WITH MR PETER CLARKE, THE CHILDRENS COMMISSIONER
TO DISCUSS THE SMALL AREA HEALTH STATISTICS UNIT (SAHSU)
LANDFILL STUDY: FRIDAY 5 OCTOBER 2001**

Present: Mr Peter Clarke
Mr Chris Burdett
Dr Jane Ludlow
Mr David Worthington
Mrs Christine Peat
Mr Stephen Wall

1. Mrs Christine Peat explained that the Minister for Health and Social Services had asked officials to brief Mr Clarke on the SAHSU landfill Study in advance of the wider briefing session that had been arranged for 16 October 2001. Mr Clarke explained the background to his request.

2. Mrs Peat reported that the epidemiological study was commissioned by the Department of Health following a request by the former Welsh Office because of the health concerns raised around the Nant-y-Gwyddon landfill site. It looked at health data in populations around operating landfill sites.

3. Dr Ludlow explained that there were two main ways in which children's health might be affected by environmental factors: by infectious agents and by chemical agents. During the development of the baby in the womb, it is recognised chemicals can affect the foetus [as can a lack of appropriate chemicals, for example folic acid]. Dr Ludlow added that, during childhood exposure to chemicals could be acute i.e. by way of an accident or more long term. On long term exposure we often have little knowledge of health effects and this is further complicated by differing lifestyles of people, which expose children to some harmful agents in the home, e.g. passive smoking. Dr Ludlow explained that Dr Pat Troop, the Deputy Chief Medical Officer for England, when the SAHSU report was published advised pregnant mothers to follow routine healthy living advice and to attend ante-natal classes. She had said there was no need for people to move house because of nearness to a landfill site.

4. Dr Ludlow said that the SAHSU Study looked at certain cancers as well as congenital anomalies but that nothing of concern was found on the cancers studied. Dr Ludlow said the study looked at more than 9,000 sites and undertook a "before and after" analysis on about 5,000 of these sites. She reported that post coding for the landfill sites may not have given an accurate picture of the location of some very large sites and that some of the licensing data may not have been an accurate proxy for when the site had started to be used. Some sites were operating before licensed and others did not start operating until well after the licence date. Dr Ludlow explained that the congenital anomalies data before 1997 was poor. Dr Ludlow emphasised however that this was a very large study and that such data problems did not mean that the study findings should not be considered important and relevant.

5. Dr Ludlow reported that the study found the following key outcomes on congenital anomalies :-

- the rate of congenital anomalies in populations living within 2km of all landfills is one per cent more than expected
- the rate of congenital anomalies in populations living within 2km of landfill sites containing hazardous waste is seven per cent more than expected

6. Dr Ludlow emphasised that it was important to acknowledge the fact that 80 % of people live within 2 kms of a landfill site. Dr Ludlow explained that the study could not prove a causal link between landfill sites and ill health and that in the absence of scientific knowledge we were unable to confirm that there is no risk to health from landfill sites. Mrs Peat explained that one of the Government's expert advisory committees, the Committee on Toxicology had reviewed the study in July and reported that it is inappropriate to draw firm conclusions from the work. A copy of the Committee's advice was given to Mr Clarke.

7. Mr David Worthington pointed out that many houses are built on former landfill sites and that children living in such houses would be exposed for much longer periods to any threat that may exist. Mr Peter Clarke questioned whether the planning legislation was equally applied to building houses and schools on such sites. He had heard claims that it is possible to build schools on sites that were not accepted for housing. It was agreed that this was a question for the next briefing meeting.

8. Mr David Worthington said that Methane gas is a problem that we are aware of which emanates from landfill sites. Building regulations have been amended to take account of this danger and to ensure that there is no build up of methane gas in new buildings.

9. Mr Worthington reported that a site could have received a variety of different wastes and there is no certainty that a remediation programme can address all of the hazards that may exist on a site. Bore holes cannot possibly identify all material which has been buried on a site.

10. Mr Peter Clarke mentioned that one of the schools was being built on a former gas works site and asked whether waste from this industrial process was hazardous. Mr Worthington explained that waste from Gas works was 'bad'. Mr Clarke questioned to what extent the site would be disturbed by the Council laying a concrete float for the school foundations. Mr Worthington said that this would be unlikely to create any greater risk at the site.

11. Mr Peter Clarke was grateful for the briefing and acknowledged the position that on the basis of scientific evidence it was not possible to confirm that landfill sites caused ill health or indeed that they were safe. He said that he would consider the position but felt that he may need to issue a statement next week.

PHPD1

October 2001

Briefing Meeting for the Children's Commissioner on Building schools on former Landfill Sites: Tuesday 16 October 10.30

Present: Dr Ruth Hall (Chair)
Mr Peter Clarke, Children's Commissioner
Mr Howard Davies, Environment Agency
Mr Richard Hughes, Public Health Protection Division
Ms Kay Powell, Planning Division
Mr Chris Burdett, Children and Families Division
Dr Jane Ludlow, Senior Medical Officer
Mr David Worthington, Deputy Chief Environmental Health Adviser
Mrs Christine Peat, Public Health Protection Division 1
Mr Michael Jones, Schools Management Division
Mr Robert Templar, Environmental Protection Division
Mr Stephen Wall, Public Health Protection Division 1

Introduction

1. The Chief Medical Officer welcomed the Children's Commissioner and said she was sorry to have missed the previous briefing on the Small Area Health Statistics Unit (SAHSU) Landfill study but was glad that it was helpful. Dr Hall explained that officials were delivering this technical briefing as a service to the Children's Commissioner to assist him in understanding the national policy framework and the role of the Environment Agency in the planning process. Dr Hall explained that because the Assembly may need to take a view on detailed planning applications or appeals at a later date, officials would not be able to discuss the merits of any specific site. The Chief Medical Officer stressed that the National Assembly for Wales was not seeking to influence the opinion of the Children's Commissioner in any way but was simply informing him of the relevant processes and responsibilities.

2. Kay Powell said that the planning issues fell broadly into 3 areas, the policy context, the development control system and other general points and gave the following brief:-

The Policy Context

2.1 The National Assembly for Wales sets out the policy context in guidance to local authorities and others and this is currently under review [Planning Guidance (Wales) Planning Policy and draft Planning Policy Wales are on the Assembly web site www.wales.gov.uk]. Planning policy puts an emphasis on building on brownfield sites and contaminated land as a means for recycling land back into productive use. In England, the Government had set targets for the amount of housing that should be built on such land but in Wales the National Assembly had not followed this approach as the amount of brownfield land varies

across Wales. The prime statutory responsibility for the planning system (development plans and development control) rests with local authorities.

Development Control

- 2.2 Since 1992, local planning authorities have had to apply for planning permission for their own developments in the same way others seek planning permission. As part of this process, they need to provide sufficient background information, post site notices and hold a consultation exercise seeking comments from the Environment Agency. Applications are then submitted to the Authority's Planning Committee to consider. The papers are made publicly available 3 days before the Planning Committee Meeting.
 - 2.3 The granting of an outline planning permission establishes the principle of a development but no action can be taken at the site until the reserved matters have been dealt with. Of the 30,000 planning applications dealt with annually in Wales only about a dozen are "called-in" for decision by the Assembly. Those called-in must meet certain published criteria for example they are of more than local importance and have a major impact beyond the local authority's boundaries.
 - 2.4 The local authority must take propriety issues very seriously and the planning process must be considered as a separate role from other local authority functions. There are controls in place within local authorities to safeguard the local planning authority's position in this respect. The National Assembly for Wales Planning Division is working on an Agreement with the Welsh Local Government Association which will explain those separate roles.
 - 2.5 There are a number of routes to complain if someone feels aggrieved by a planning consent including judicial review, complaint to the monitoring officer and the Ombudsman.
 - 2.6 The planning system has altered little in concept in the last 50 years. DTLR is working on Planning Green Paper on which the National Assembly for Wales will be consulted. It is not certain to what extent this might change the existing process.
3. The Children's Commissioner questioned what the general framework for planning covered and whether the policy guidance might differ between England and Wales. He also inquired about locational criteria for schools. Kay Powell explained that subordinate legislation sets out the category of developments that require planning permission. The policy guidance is of a more general nature and sets the scene for development plans and development control. Kay Powell confirmed that there could be different policy guidance for Wales. She said that local authorities interpret national policy in relation to local circumstances.

Locational criteria for schools included availability of sufficient land, road access, relationship to housing areas, and co-location (e.g. with other schools or community facilities).

Contaminated Land

4. Dr Hall invited Robert Templar to comment on the Contaminated Land issues. He reported that under the Environmental Protection Act 1990 Part 2A any land being built upon or proposed for development must be suitable for the purpose. From 1 July 2001 subordinate legislation requires that suitable and appropriate investigations should be undertaken for developments on contaminated land. Robert Templar emphasised that these were all issues for the local planning authority to consider, not the National Assembly for Wales.

Role of the Environment Agency

5. Mr Howard Davies explained that land is usually remediated through the planning process as there is normally a financial incentive to proceed with the development and remediation is enforced by setting planning conditions. He said that the Environment Agency is a statutory consultee on planning applications principally because of its responsibility with regard to the protection of the water environment, including rivers, streams and groundwater.

6. Under Part 2A of the Contaminated Land regime, the Local Authority is the main regulator and has powers to serve notices on individuals and organisations to secure remediation. The Environment Agency provides environmental information and is also the regulator for a second category of sites called "Special Sites". The term in no way reflects the severity of the contamination, rather they are sites that the Agency has particular skills and experience in, examples of "Special Sites" include petroleum refineries and Ministry of Defence land. The regulations require the Local Authority to consider whether a site is Contaminated Land in its current use, any requirement for a planning application to change the use of the land excludes the application of the regime and the Local Authority must use planning conditions to secure remediation.

7. Howard Davies explained that the local authority's environmental protection department has responsibility for the protection of human health. He reported that a new set of clean up criteria was being developed for the protection of human health by DEFRA and the Department of Health. He added that the Environment Agency can only provide practical guidance on clean up levels and values for the protection of the water environment when consulted on planning applications. Human health issues are the responsibility of the Environmental Health Department at the Local Authority. On sites that generate gas, the Environment Agency would provide factual information and make general recommendations that investigations should be carried out and control measures installed if required. However the checking of the design of these measures and

ensuring their installation comes under Building Control to regulate, not the Agency.

Discussion

8. The Children's Commissioner questioned whether there was anyone who would take an overview to ensure that work such as the SAHSU landfill study is considered in the planning process. He also questioned how we could accept that the levels of remediation are acceptable when we do not know what the effects on children might be. Dr Hall explained that there is a body of knowledge available on the effects that chemicals have on people in acute conditions but one of the problems was identifying the chemicals that were on individual sites. Howard Davies reported that the standards for remediation were evolving as scientific knowledge developed. He explained that for any remediation plan you first need to work up a catalogue of events, review the evidence and then take samples. Any remediation work needs to be balanced between the level of confidence, the uncertainties and the cost of remediation.

9. David Worthington explained that environmental protection departments in local authorities have a close working relationship with health authorities. He said that environmental health officers would be consulted on planning applications. Local authorities could also engage the services of the Chemical Incident Management Support Unit for advice on public health risks. They also had access to the most up-to-date databases to assist them in making comments on planning applications.

10. Dr Ludlow reported that health authorities do not have independent staff to undertake sampling themselves. She commented that studies of industrial exposures mostly related to adults; in terms of children the information was less precise. Dr Ludlow reported that there was now a good recording system in place for congenital anomalies. Dr Ludlow reminded those present about the campaign for lead free petrol because of concerns about harmful effects of cumulative lead poisoning on children's development. The effects of exposure to lead on children had been easier to measure but the effects of low level exposure to a cocktail of chemicals were not known. This created uncertainties when setting standards for remediation.

11. Howard Davies reported that guidelines were being developed on 10 contaminants initially and this would be followed by a further 42 chemicals but that this is against a total of millions of chemicals. He added that a decision to build a school on a brownfield site is not necessarily a wrong one but the way in which the proposal and risks are communicated to the local population is very important. David Worthington emphasised that we are not aware of any specific risks that exist. Dr Hall said that there was a need to convey the complex scientific issues into a clear message so people could see for themselves the effects on their lives.

12. The Children's Commissioner explained that he was interested to know whether there was any National Assembly for Wales involvement in the planning cycle that would provide an independent view. Kay Powell explained that planning applications were issues for local decision unless they were called-in by the National assembly for Wales. Richard Hughes reiterated that there were a separation of functions within local authorities that allowed for independence between planning and other departments and the Government's role was about setting the framework and developing guidance. Richard Hughes added that an independent expert committee, the Committee on Toxicity reviewed the SAHSU Landfill Study.

13. In response to question, Howard Davies explained that the Environment Agency advised against building houses with gardens on former landfill sites. This is essentially because there would be a loss of control on what people might do in their gardens, e.g. through excavations etc. The Children's Commissioner said that schools would need nature areas and gardens and wondered how this might be accommodated on former landfill sites. Howard Davies mentioned that raised beds with liners might be used as areas for growing plants and vegetables and that pits could be dug for tree planting. This would need to be built in as a condition in the design process. Howard Davies said that other developments such as flats would be more acceptable as venting systems to disperse gas emissions can be more easily monitored and maintained. Dr Ludlow questioned who would be responsible for ensuring that venting systems in schools would be properly maintained and controlled. Howard Davies reported that they would be monitored as part of the Building Controls regime as part of the deeds of development. David Worthington commented that it might be better to use Health and Safety legislation to monitor venting systems in schools.

14. The Chief Medical Officer concluded that this is a very complicated issue but hoped that the technical briefing was helpful to inform the Children's Commissioner of the planning framework, the role of the Environment Agency and the support mechanisms in place. Dr Hall reiterated that the action and decision making process on planning applications is essentially taken at a local level.

15. The Children's Commissioner said that he would now issue a statement on whether the proposals were a good idea or not. He would follow this up by commenting more generally on the planning framework including the consultation process.