

Ealing Council
Freedom of Information
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Date: 2nd November, 2022

Dear Ms. Angela Fonso

Re. An Open Letter to Cllr Peter Mason, Leader of Ealing Council

Thank you for your open letter and latest set of questions, dated 22nd of July 2022 and please accept my apology for the delay in the response. As your letter was issued to me in an open format, I am replying the same.

Implicit in your letters is the desire for the council to issue a statutory abatement notice to Berkeley Group. As we have discussed and corresponded over nearly six years, the council's ability to do so is extremely constrained by

- The powers we have to regulate polluting industry,
- The evidence threshold required to demonstrate public nuisance,
- The currently available best practicable methods used by polluting industries to mitigate their impact, and
- The likely cost burden on the taxpayer of embarking on costly legal action that would in the current circumstances, certainly fail.

You will be aware of our extensive correspondence on these issues, which can all be viewed on the Council's archive here [Southall Gasworks correspondence | Ealing Council](#).

Since being elected as the Leader of the Council, the following reasonable and practical actions have been taken in relation to the Southall Gas Works regeneration scheme:

- Additional independent air quality monitoring is now on site, with near real time reporting online.
- We have now published both the original legal opinion obtained by the council on enforcement action, as well as an updated legal opinion setting out the legal framework for statutory nuisance and the likely success of an abatement notice.
- Appointed a dedicated environmental health officer for Southall, who as well as responding to complaints regularly monitors and tracks nuisance within the Southall area.
- Commissioned independent soil testing of surface soil at the Gas Works regeneration site.

- Established a relationship with, and have promoted the use of the OdourCollect platform, with complaints being automatically referred to the EHO.
- Met with Centric Labs and discussed with them the challenge of local authorities relying on public health and regulatory methodology that are not yet written into environmental protection law as the basis on which the council takes enforcement action.
- Removed Berkeley Group from sponsoring council-controlled activity.
- Advocated for a Clear Air Act, to give local authorities the powers they need, tightening the responsibilities of the Environment Agency, embedding the WHO limits within air quality standards and legislation.
- Instigated an Air Quality Management Plan for the whole borough, with a focus on Southall to help reduce VOCs, PMs and odours.
- Instigated a large programme of air quality monitoring of schools and roads in support of the administration's active travel ambitions.

It remains clear that you and members of the community in Southall remain distressed over the impact of the soil remediation in Southall. I increasingly fear that there will be nothing the council can or would do that will satisfy you that we have done enough, despite having now exhausted our legal means. I am aware that you have at various stages engaged with environmental lawyers to establish your rights and the legal framework for action under environmental protection law. I continue to encourage you to do so, as any legal action taken by you and others as a private individual in a civil claim has a lower burden of evidence than the council as a public body. This is detailed in the now public legal advice obtained by the council, of which you will be aware.

Likewise, and as we have discussed, the only outcome the council could eventually achieve from a statutory abatement notice were it to be successful would be for Berkeley Group to improve their methods of mitigating their environmental impact, and only then would the courts be in a position to levy fines against them.

Our technical officers have addressed your new and additional points from your letter in order of the questions posed:

1. Why were no tubes installed along the boundary of the Green Quarter with the Grand Union canal?

The western edge of the site boundary borders an industrial estate. There are no immediate residential dwellings where sustained exposure that would require monitoring would take place.

However, given the location of the Blair Peach Primary school, a continuous monitoring station has been installed within the Green Quarter site boundary.

2. Why were VOCs omitted from automatic monitoring?

The construction industrywide best practice guidelines recommend use of Tenex tubes for monitoring of VOCs as an approved methodology. 'Automatic monitoring' is a term referring to a specific form of air quality monitoring, mainly of common air pollutants (not VOCs). It is recommended for use in the local air quality management (LAQM) Defra guidelines for measuring roadside pollutants from vehicles.

The LAQM Defra guidelines set out how to monitor and assess emissions from strategic transport road networks, which is unfortunately not relevant to emissions from developments.

Dr Lorna Anguilano, Senior Research Fellow at Brunel University found that lead and copper in soil samples taken close to the boundary of the Green Quarter along the canal were close to thresholds. Lorna will extend her research and analysis of soil and dust samples.

Action points

We request

- that the analysis of the passive monitoring is shared with us and publicly on the council's website and social media platforms.

As you will be aware from previous discussions a minimum monitoring period of 1-year is required to enable a 3rd party service provider to analyse passive monitoring VOC data. Therefore, we anticipate that the passive (VOC) monitoring data analysis should be publicly available through Council's website towards end of January/beginning of February 2023.

- that Ricardo should test soil samples along the canal for comparative purposes with Lorna's study and the analysis of the topsoil on the site of the Green Quarter.

It is not considered appropriate to test soil samples along the canal as chemical makeup of such samples could be elevated due to historical activities in the past, such as loading and unloading of barges with coal, pollutant migration and settlement of residual soil contaminants associated with such activities.

Even if we were to do so, because of this, the Council would not be able to clearly link any potential elevated levels of copper and lead directly with the activity now taking place at the Gas Works, and it would not serve to assist in any attempt to issue a statutory abatement notice.

The original planning application of 2009 required the developer to only remediate the soil contained within the boundary of their site, and not of any surrounding land adjoining it.

It's unclear how Dr Lorna Anguilano's study of soil sampling that suggests soil contamination (of lead, copper) can be attributed to the construction activities at the Green Quarter.

However, in response to your previous requests for independent soil sampling of the topsoil imported for use at the Green Quarter, the Council found soil sampling results from such tests to be compliant with the relevant standard.

- Passive monitoring tubes are installed along the canal
Please refer to response to Question 1 given above.
- AQ monitoring is installed within schools close to the Green Quarter and within homes along the boundary of the site

Please refer to response to Question 2 given above. Essentially, if emissions from developments under construction are monitored and assessed against the relevant standard/limit values at the site boundary, as is the case at the Green Quarter, additional monitoring of air quality beyond the site boundary would not support enforcement action.

However, monitoring of air quality in/around schools is more necessitated by transport emissions, primarily due to peak time congestion caused in part at least by school pick-ups and drop offs.

You may be aware that Ealing Council was successful in bidding for Defra funding in 2021 and therefore, it has embarked on a 5-year project to monitor and improve air quality in and around schools, through behavioral change and engagement with the communities. This project supports the administration's pledges to increase the number of schools streets programmes within the Borough, as well as to encourage active travel.

In time, air quality monitoring data from schools will be available via the air quality monitoring website.

- Monthly reports for Ealing Green Quarter North sensor, Ealing Green Quarter South sensor in addition to the existing reporting for the Ealing Green Quarter sensor

Data from Ealing Green Quarter North and South sensors requires ratification through a collocation process. Unfortunately, therefore, it's neither feasible nor practical to publish monthly data from these sensors, without following procedures duly outlined in the Local Air Quality Management (LAQM) Technical Guidelines by Defra.

The Council would not be able to act on unratified data that were published monthly. It is very likely in this instance that any court would find that the Council were not following the LAQM Technical Guidelines by Defra.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'P. Mason', written in a cursive style.

Cllr. Peter Mason
Leader of Ealing Council



22nd July 2022

An Open Letter to Cllr Peter Mason, Leader of Ealing Council

Dear Cllr Mason

As a result of CASH's air pollution webinar, several action points for moving forward have been identified.

Tim Webb, our advisor on airborne pollutants concluded that the air quality monitors designed to monitor ambient air pollution are 'not fit for purpose' as VOCs from the Green Quarter aren't monitored & none are sited where people live, sleep & work to determine exposure levels. The sensors predominantly measure vehicle emissions within the construction site and two of them seem to be shielded by a hedge and hoarding and are liable to understate the ambient or background outdoor pollution levels.

We know from previous communication that passive monitoring is taking place. The questions that we request a response from Ealing Council and Ricardo are;

1. Why were no tubes installed along the boundary of the Green Quarter with the Grand Union canal?
2. Why were VOCs omitted from automatic monitoring?

Dr Lorna Anguilano, Senior Research Fellow at Brunel University found that lead and copper in soil samples taken close to the boundary of the Green Quarter along the canal were close to thresholds. Lorna will extend her research and analysis of soil and dust samples.

Action points

We request

- that the analysis of the passive monitoring is shared with us and publicly on the council's website and social media platforms.
- that Ricardo should test soil samples along the canal for comparative purposes with Lorna's study and the analysis of the topsoil on the site of the Green Quarter.
- Passive monitoring tubes are installed along the canal
- AQ monitoring is installed within schools close to the Green Quarter and within homes along the boundary of the site
- Monthly reports for Ealing Green Quarter North sensor, Ealing Green Quarter South sensor in addition to the existing reporting for the Ealing Green Quarter sensor

I encourage you to listen to the Zoom recording of the Air Pollution is a Health Emergency in Southall webinar and look forward to receiving your response to this letter.

https://youtu.be/HrbIHG9Z_Q8

Yours sincerely
Angela Fonso