

Marlbroke Tip Working Party
25th January 2019

BROMSGROVE DISTRICT COUNCIL

MEETING OF THE MARLBROOK TIP WORKING PARTY

25TH JANUARY 2019, AT 10.00 A.M.

**PLEASE SEE ATTACHED MINUTES AND QUESTIONS FROM THE
MEETING ON 25 JANUARY 2019**

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FRIDAY 25 JANUARY 2019 AT 10:00 A.M.

COMMITTEE ROOM, PARKSIDE

PRESENT: Councillors Richard Deeming, Brian Cooper

Michael Adams, Baden Carlson/Michael Brooke, Paul Batchelor, Charlie Bateman, Roy Hughes and Sue Hughes

EA Representatives: Tony Deakin, Martin Quine, Val Colman

Ruth Bamford, Head of Planning and Regeneration
Tracy Lovejoy, Planning Lawyer

Observers: Members of Public, Councillors Charlie Hotham, Helen Jones

16/19 **APOLOGIES AND INTRODUCTIONS**

Apologies for absence were received from Cllr Luke Mallett, Kit Taylor, Fiona Upchurch, Cllr Jill Harvey and introductions were made.

17/19 **UPDATE**

Tony Deakin from the Environment Agency (EA) provided an update on events since the last meeting. He advised that a site survey had been carried out, the findings shared and all costs recovered. Eddie McIntosh had been interviewed in July and cautioned as part of the process. In the summer a cost risk analysis was carried out and different scenarios were looked at. A site visit was made on the 7 December with a geotechnical engineer a reservoir panel. The report is still awaited. In the meantime it was advised that the reservoir was still safe and no immediate actions required.

Martin Quine visited the site on 7 December 2018 to inspect compliance with the Environment Permit. A low level of non-compliance was identified with one load accepted containing a small amount of metal and plastic physical contamination. It was asked for this waste to be removed.

Cllr Richard Deeming (Chairman) asked if there were any questions and the following responses/comments were noted:

- It was advised that there was an Environmental Permit allowing the acceptance of waste soil for restoration purposes. The restoration soils prevent damage to the clay cap from erosion and vegetation growth. Tony Deakin believed that the reason why waste was being brought on site at the moment was due to carrying out requirements in the Construction Engineers report.
- Discussions took place regarding the Environmental Permit and monitoring of the loads coming in. Martin Quine confirmed that the operator is required to provide a quarterly waste return informing the Environment Agency of how much waste they have accepted. This document is public register and can be provided to the working group. A request had also been made to the operator for copies of their waste transfer notes.
- Tony Deakin clarified that from the initial findings of the recent site visit, there had been no movement and the dam is in a stable condition to the point where intervention is not required at the moment but safety work still needed to be carried out.
- It was advised that 68,000 tonnes of waste permitted under the Environmental Permit, which is likely to equate to approximately 3.5k – 4k lorry movements to the site. How this figure was calculated was explained.
- The number of lorries tipping was queried and it was asked if a further topographical study could be carried out. Residents expressed concerns about this being too late and it was advised that was the case the engineer would sign off has not compliant.
- The decommissioning of the reservoir was discussed and Tony Deakin explained the cost risk analysis undertaken considered a number of alternative options.
- It was advised that the minimum depth of 300mm was dependant on reprofiling work that Liberty plan to carry out.

18/19

PLANNING UPDATE

Ruth Bamford advised that two notices had been served. Firstly, a Planning Contravention Notice that questioned what was going on and why and secondly, a Temporary Stop Notice for 28 days (served today 25.01.19 just before 9:00am) . Ruth Bamford explained why the notice was temporary and that the Planning Authority cannot advise what the stage next would be but it would involve liaisons with the site owner and EA. Ruth Bamford advised that she would be doing some monitoring and having discussions with legal colleagues. Cllr Brian Cooper asked why the EA observe tipping continuing without planning consent and the EA advised that they had been informed by Liberty Construction that all planning permissions had been obtained.

Ruth Bamford explained that the control of the site falls under two sets of regimes. Firstly there is the reservoir legislation and then secondly planning. It could not be confirmed that the admission of tipping was declared under caution until further evidence collected. If Planning permission was in place site operating levels could be controlled. Submission of a planning application would include a topographical survey. It was discussed why the Temporary Stop Notice had not been served earlier and how the site engineer could not know that there was no planning permission. Martin Quine explained that local tests were required before the license/permit could be revoked. EA explained there are two processes for the site – a transfer waste to be submitted to EA if required and the submission of a 3 monthly report. Tracy Lovejoy advised that when the operator said he had planning permission he was referring to an old planning permission. The 2 regimes have to be pursued separately and in any planning appeal the safety of the reservoir would be taken into account. Ruth Bamford stated that if any enforcements action is appealed or queried she would like to be in a position in that the Council could win and secondly what was served this morning was not the only enforcement served since late last year i.e. planning intervention notice. The Temporary Stop Notice served today (25.01.19) is a tool for what the Council's next moves should be for the right decision made from a planning prospective. Liberty Construction representative advised that Liberty had taken on a waste consultant who will give an independent view including the legalities.

19/19

UPDATE FROM WORCESTERSHIRE REGULATORY SERVICES

18 months ago a gas test was performed and it was advised that there was nothing there.

Barbara Newman read out email from Mark Cox of WRS. The details of the email are on the questions and answers table which would be issued separately with the minutes.

20/19

ANY OTHER QUESTIONS

Cllr Charlie Hotham asked Ruth Bamford that if planning permission was granted would it be possible to include S106 as it moves forward. It is quite common for conditions for mitigation i.e. dust sprays. Until a planning application is seen the Council cannot state what mitigation would be needed.

It was asked if environmental protection would be involved as was it not seen as a statutory nuisance and it was expressed that WRS should be in attendance at the next meeting. Ruth Bamford explained the circumstances of this. Ruth Bamford also stressed that when any planning application is submitted it would be visible to everyone for comment. If a planning application is not received with the 28 days of the Temporary Stop Notice, Ruth Bamford stated that the next steps would be looked at. It was

questioned what happens if planning permission was not granted. EA stated the work is required to make the reservoir safe. Ruth Bamford said if not granted likely to go to appeal. Monitoring for safety would continue.

It was asked with 68k tonnes needed to go on and, bearing in mind previous tipping, was it assumed that 68k tonnes was the maximum based on 300mm. Ruth Bamford responded that the panel engineer under Reservoir Legislation had asked for this as a minimum and calculated tonnage. If the panel engineer asked for 300mm across the site the accuracy of the maths depended on whether the material was wet or dry, compressed or not. The topographical survey would confirm this. Therefore a hybrid approach could be taken regarding the monitoring of lorry movements and an interim topographical report. Tony Deakin to seek clarification from engineer as to why if only a quarter of the site is clay capped why the tipping is on the entire site.

The matter concerning other vehicles on the site i.e. boat on trailer was raised. Ruth Bamford advised that going forward an understanding would be achieved of what works were to be undertaken and the related machinery. Discussions took place regarding the planning process. It was advised that before a separate enforcement could be possibly issued the whole situation needed to be looked at in more detail.

Ruth Bamford stated that questions that had been submitted before the meeting had been listed separately on the table of questions and answers.

21.19

DATES OF FUTURE MEETINGS

It was agreed to hold the next meeting sometime in March. Environmental Health Officers attendance was requested.

Closed: 12:00

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MARLBROOK TIP QUESTIONS FOR MEETING ON 25 JANUARY 2019

Issue/Question	Response	Provider of Response
<p>Can we please discuss this statement made by Ruth Bamford in response to an email made to her complaining about the tipping -</p> <p>"What they are doing is not illegal. It does however require planning permission which has not been sought".</p>	<p>The planning system allows for retrospective applications. This means that it is not illegal to do something without planning permission. That said the current tipping without the benefit of planning permission means that, in planning terms, the tipping is not a lawful planning use. The site owner or a third party may or may not apply for planning permission to seek to regularise the use. If they don't apply for planning permission to regularise the use then the Council needs to decide whether or not to take enforcement action.</p>	<p>Ruth Bamford r.bamford@bromsgroveandredditch.gov.uk mobile: 07852437802</p>
<p>Cllr Deeming is reported as having said at a recent Lickey & Blackwell Parish Council meeting that "he had visited the site and that the landowner seems to be putting down hardcore which the District Council said was acceptable although it had not been applied for" Can Cllr Deeming explain how tipping without PP is deemed acceptable please?</p>	<p>The same response as above.</p>	<p>Ruth Bamford r.bamford@bromsgroveandredditch.gov.uk mobile: 07852437802RB</p>
<p>What is being done to stop the tipping without planning permission that started in mid October 2018?</p>	<p>A PCN has been served. This is a document that is used for collecting information from the site owner and it is a criminal offence to not give accurate information. A response to the PCN has been received. A Temporary Stop Notice has been issued.</p>	<p>Ruth Bamford r.bamford@bromsgroveandredditch.gov.uk mobile: 07852437802</p>

Issue/Question	Response	Provider of Response
How are the lorries visiting the site being logged, if at all, and monitored for both quantity of material and type of material?	There is no site monitoring by Planning Services. Officers have done site visits from time to time.	Ruth Bamford r.bamford@bromsgroveandredditch.gov.uk mobile: 07852437802
If a log of the illegal tipping being kept, has anyone seen it?	There is no site monitoring by Planning Services. Officers have done site visits from time to time.	Ruth Bamford r.bamford@bromsgroveandredditch.gov.uk mobile: 07852437802
Will any enforcement action require the site owners to remove the material tipped without PP?	The Council would never comment in advance of an enforcement notice being served on any site.	Ruth Bamford r.bamford@bromsgroveandredditch.gov.uk mobile: 07852437802
There appears to be a mobile burger van back on the site. Will the owner be asked to remove this as before?	At time of writing this was not on the site. The current focus of Planning Services is unauthorised importations of material and working with the Environment Agency and site owners to address the situation.	Simon Jones s.jones@bromsgroveandredditch.gov.uk Telephone No Direct Line: 01527 548211
Was consideration given to using some of the million cubic metres of illegally tipped material rather than importing more (illegal?) material to the site?	The previously over tipped material cannot be used to meet the requirements of the Panel Engineer/EA. The requirement from EA relates to the time period after the tipping that exceeded the planning permission on the site	Ruth Bamford r.bamford@bromsgroveandredditch.gov.uk mobile: 07852437802
Health and safety if the reservoir collapses	The reservoir is classified as a "High Risk" reservoir. One that if it were to fail, lives could be put at risk. However, from our latest site inspection (carried out on 7 December 2018) our reservoir panel engineer confirmed that the reservoir was currently in a safe and stable condition with no immediate safety actions required.	Tony Deakin tony.deakin@environment-agency.gov.uk

Issue/Question	Response	Provider of Response
<p>Please confirm and provide evidence of how the Council has complied with the Ombudsman's requirements on the Council to actively monitor the Tip's activities regarding tipping, overtipping, lorry movements etc. and please confirm how the Council has to date enforced the EA's requirement on the Tip's owner to apply for planning consent for and build out the protective capping layer. We note the deadline for the Tip's owner to apply for such planning consent has now passed. Is the Tip's owner relying on any other consents or licences for the current tipping activity without the protective capping layer?</p>	<p>The Ombudsman report related to a previous planning permission for the import or materials and the creation of a golf course.</p> <p>As above, no council can make anyone apply for planning permission.</p> <p>The Council cannot comment on the views of the site owner. It is the view of the LPA that planning permission is required to bring on material to the site.</p>	<p>Ruth Bamford r.bamford@bromsgroveandredditch.gov.uk mobile: 07852437802</p>

Issue/Question	Response	Provider of Response
<p>Why has it become a requirement for any land / building plot sales within 500m of the Marlbrook Tip site to be subject to compression gas testing; and does this or will this extend to existing residential, commercial properties and the Lickey School premises.</p>	<p>This is not a requirement that WRS would require. However, any solicitor acting on behalf of a client during the conveyancing process is required to ensure that contamination issues are addressed to a satisfactory state. As a consequence any solicitor may insist that further clarity is sought on whether any property in the vicinity of Marlbrook tip is obtained. This may include gas testing. It is a matter for the prospective buyer, purchaser and solicitor to determine what information is required and what information is sufficient to make a judgement on any level of risk posed.</p> <p>WRS would recommend that BDC Planning Officers ensure any applicant of a new development or building or extension proposed within 250m of Marlbrook tip demonstrate that the potential risk from landfill gas can be addressed appropriately. This may be verified installation of gas protection measures or by demonstrating that there is no requirement for this, which may include gas monitoring.</p>	<p>Mark Cox Mark.Cox@worsregservices.gov.uk Tel No: 01562 738023</p>

Issue/Question	Response	Provider of Response
<p>Would such requirement for gas compression testing have been necessary had the overtipping not taken place?</p>	<p>WRS are not responsible for the requirement referred to above and so cannot answer the question with certainty. However, solicitors have always had the duty of undertaking appropriate searches during conveyancing and in practice some have done these checks for potential contamination for many decades. As the site is a former landfill site, which was capable of producing landfill gas since the first days of waste tipping on the site, the potential for contamination has been an issue since that time.</p>	<p>Mark Cox Mark.Cox@worsregservices.gov.uk Tel No: 01562 738023</p>

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