

MARLBROOK TIP WORKING GROUP – First Meeting

12th August 2014, 17:30 – 18:52

Present: Councillor Kit Taylor (Chairman)
Councillor Brian Cooper
Councillor Luke Mallett
Councillor John Ruck
Kevin Dicks, Chief Executive
Ruth Banford, Head of Planning and Regeneration
Sarah Sellers, Principal Solicitor

Jill Harvey - (Lickey & Blackwell PC)
Carole Burden - (Lickey Hills Society)
Michael Adams
Paul Batchelor
Charlie Bateman
Ron Brown
Roy Hughes
Sue Hughes

Officers: Pauline Ross, Democratic Services Officer

NOTE: As agreed at the meeting held on 24th July 2014, the representatives from the community to be included in the working group would consist of representatives from the two parish councils, together with the eight residents listed as present at the meeting (which included a representative of the Lickey Hills Society).

The working group members from Bromsgrove District Council to consist of Councillors Kit Taylor (Chairman), Brian Cooper, Luke Mallett and John Ruck. Kevin Dicks (Chief Executive), Ruth Bamford (Head of Planning & Regeneration) and a representative from the Council's Legal Team. This gave a total of 7.

MEETING NOTES:

Apologies were received on behalf of Ann Doyle.

The Chairman opened the meeting and welcomed everyone and brief introductions were made. The Chairman highlighted that meetings would be open and transparent and notes from the meetings would be made available. He would welcome the press and public to attend any future meetings.

1. Terms of Reference

Members of the group were reminded of the origins of the suggestion for a working group which arose from a motion to full Council on 26th February 2014. Officers advised that one of the preliminary tasks would be for the group to discuss terms of

reference and agree top priorities. There followed a detailed discussion on a wide range of issues affecting the tip, which are summarised below:

Charlie Bateman (CB) raised the question of whether the Council could still move forward without HMRC approval. Questions had been raised by the local MP, who had written to HMRC regarding the Landfill Tax paid by Liberty Construction Limited. HMRC had responded and explained that they could not disclose information that contained a high level of confidentiality but were looking to take action to deal with this matter accordingly. The Principal Solicitor highlighted that Landfill Tax consideration was not a matter for the Council. If HMRC decided to take appropriate action and if requested to co-operate, the Council would co-operate. Michael Adams (MA) had researched the HMRC website and questioned if the land owner was exempt from Landfill Tax, as outdoor sporting facilities were tax exempt, and the site was initially earmarked as a golf course.

JR raised the issue of the role of Faber Maunsell in monitoring the amount of material brought onto the site and this led to discussion about the arrangements for them to provide data to the Council under the planning permission for the golf course. On the issue of whether the Council could sue Faber Maunsell for providing inaccurate data, the Principal Solicitor reiterated that the Council held no direct contractual relationship with Faber Maunsell, the contract was between the land owner and Faber Maunsell. Faber Maunsell provided the figures to the land owner who in turn provided the figures to the Council.

In relation to the works now proposed by the Panel Engineer's report, CB also questioned how log recording would be carried out and how the weight of the restoration soils would be calculated once work commenced. The HMRC guidelines in respect of Landfill Tax used a volume to weight conversion factor, where the cubic capacity of a vehicle was known, to calculate the amount of tax due per tonne.

On the issue of the amount of over-tipped material, RB responded to MA and informed the group that she had challenged the landowner on the basis of the figures detailed in the A. D. Horner Limited report, which had been commissioned by the Council. No further information in response to this challenge had been received and the land owner had not denied the figures from the A D Horner Report.

Discussion took place on the current pollution monitoring of the site. Roy Hughes (RH) and Sue Hughes (SH) asked if methane tests were regularly being carried out and if Faber Maunsell was responsible for compiling the information / figures. The Principal Solicitor and RB confirmed that Worcestershire Regulatory Services (WRS) was responsible for pollution monitoring of the site and tolerances. It was agreed that Mr. M. Cox, Senior Practitioner, Air Quality/Contaminated Land, WRS be invited to a future meeting of the group.

Further discussion followed on the need to fully understand what constituted 300mm of restoration soils and whether this referred to soil that was loose, compacted, wet or dry. The group agreed that officers should seek clarification from the Panel Engineer with regard to the definition of restoration soils to be used on the site and if, as requested by the EA the culvert had been checked to avoid the possibility of the culvert collapsing.

Several questions were raised around how the group could ensure that there was no further 'over tipping' when the 300mm of restoration soils required by the Panel Engineer are brought on to the site. The same company Faber Maunsell (now known as AECOM) were still heavily involved. RB highlighted that it was the land owner's choice as to who he appointed. But it would be the responsibility of the Panel Engineer / Panel Engineer's appointed supervisor to monitor the 300mm restoration soils on site. It was agreed that Kevin Dicks (KD) and the Deputy Leader would write to the professional governing body for Faber Maunsell, the Institute of Structural Engineering with regard to the concerns raised by the group with incorrect information (in 11 of the reports) submitted to the Council by Faber Maunsell..

RB reiterated (as explained at the public meeting on 10th February 2014) that the Council had in the first instance pursued taking enforcement action against the land owner. The Council had sought assistance on technical issues from Halcrow and legal advice from Counsel. However, as the work progressed it became apparent that there was a potential conflict with the work of the Panel Engineer. The Council had discussed matters with the Panel Engineer but his report could not be deviated from and ultimately Counsel advised that the Panel Engineer's enforcement regime would take precedence over the Council's enforcement powers under the planning regime.

2. Input from the Environment Agency (EA)

Several concerns were then raised with regard to the lack of response from the EA to the issues raised both by residents and Ruth Bamford (RB). As detailed at the meeting held on 24th July, (chaired by Councillor Cooper and when the residents membership of the Group was discussed):-

The role of the Environment Agency (who had attended the last public meeting and at that point accepted responsibility) was discussed in some detail as it was understood that they were now considering whether or not the 'Tip' was their responsibility and the Council was asking for clarification on this.

SH had written to Fiona Upchurch from the EA seeking clarification on the reservoir on the site and whether the EA could say that it is a reservoir (under the relevant legislation). SH had been informed by Worcestershire County Council (WCC) that all of their records had been forwarded to the EA. Had the EA measured the height/width/depth of the reservoir, who was responsible for pumping it? SH had not received a response from Fiona Upchurch. RB confirmed that she had not received a response from the EA after writing to seek clarification on their role and the status of the reservoir. It was agreed that a senior representative from the EA would be invited to attend the group's meeting in September 2014. Further concerns were raised that the EA had given the landowner 12 months to complete the work required. What was happening as it was now August? RB highlighted that any enforcement action to be taken by the EA would become public information once enforcement had commenced.

RB responded to SH in respect of future tipping of the 300mm of restoration soils and potential damage to the road surface from the constant flow of weighted lorries. RB informed the group that any planning application received would be dealt with

under planning legislation. Planners would look into conditions and what mitigation steps would be required.

With reference to on-going enforcement action MA asked “If the EA wash their hands of it, would it come back the Council”. KD and RB agreed that it would. MA also raised the question “If the EA come back and say it’s not a reservoir, would any planning application then be referred to WCC?” RB responded and informed the group that it would come back to Bromsgrove District Council (BDC), as BDC had determined the last application. KD stressed that if it came back to BDC, following on from lessons learnt, BDC would need to minimise the risk of any possible further over-tipping.

The Chairman thanked everyone for their valuable input and suggested that if they had any further queries or concerns to contact him direct.

3. Date of next meeting

Mid / Late September, confirmed date to be set dependant on confirmation from the EA of their availability to attend.

It was agreed that Monitoring / Compliance / Funding would be a standard agenda item at every meeting.

Action Points from the meeting:-

- Officers to produce Terms of Reference for the Working Group to be considered at the next meeting.
- Kevin Dicks (Chief Executive) and the Deputy Leader to write to the professional body, the Institute of Structural Engineering, expressing the groups concerns over the incorrect figures received by the Council from Faber Maunsell.
- A senior representative from the Environment Agency to be invited to attend the Working Group’s meeting in September 2014.
- Officers to seek clarification from the Panel Engineer with regard to the definition of restoration soils to be used on the site and if the culvert had been checked, as instructed by the EA.
- WRS to provide an update on pollution monitoring and to attend a future meeting of the working group.