

MARLBROOK TIP WORKING GROUP – First Meeting

22nd September 2014 17:30 – 19:25

Present: Councillor Brian Cooper
Councillor Luke Mallett
Councillor John Ruck
Ruth Bamford, Head of Planning and Regeneration
Sarah Sellers, Principal Solicitor

Michael Adams (Lickey Community Group)
Paul Batchelor (Lickey Community Group)
Charlie Bateman
Ron Brown
Michael Brooke (Lickey Hills Society)
Ann Doyle
Jill Harvey (Lickey & Blackwell PC)
Roy Hughes (Lickey Community Group)
Sue Hughes (Lickey Community Group)

Environment Agency:

Roger Lewis – Reservoirs Team
Fiona Upchurch – Reservoirs Team
Martin Quine – Waste Team
Helen Bayliss – Waste Team

1. Apologies and Introductions

Apologies were received from the Chairman Councillor Kit Taylor, Gill Lungley from Catshill and North Marlbrook Parish Council and from Kevin Dicks (Chief Executive). In the absence of Cllr Kit Taylor the group were in agreement to the meeting being chaired by Ruth Bamford (RB).

2. Notes from Meeting held on 12th August 2014

The notes from the last meeting were agreed subject to the following clarification:-

Please can the notes in future include the community organisations which some of the group members represent.

In relation to the letter that was sent to the Geological Society, the notes from the last meeting did not pick up that the group had also wanted the Managing Director of Faber Maunsell (now Aecom) to be notified as well. It was agreed this would be picked up in the actions list.

A further action still to be picked up was clarification from the Panel Engineer of definition of “restoration soils”.

3. Draft Terms of Reference

The copy of the terms of reference that was circulated with the agenda was agreed.

4. Update from the Environment Agency

Roger Lewis (RL) from the Reservoirs Team based in Exeter spoke to the meeting to summarise the history of the reservoir on the site and explain the current actions of the EA in relation to the reservoir.

With regard to the history of the reservoir, it has been considered to be a reservoir since 1980 when it was formed by the collapse of a culvert, and was registered as a reservoir by Worcestershire County Council who had responsibility for that function at the time. Since then it has been treated by the EA as a reservoir although this year they had doubts over whether it was properly registered and the EA took legal advice from Counsel on this. Although in most cases an “accidental impoundment” event would not lead to a body of water being classed as a reservoir, in this case Counsel have advised that it is a reservoir. This links to the fact that it has been deliberately designed as a reservoir.

Previously at this site there have been inspection reports from the Panel Engineer. The records show that in the last 5 years the dam walls at Marlbrook have been raised. However, these changes have never been signed off. Counsel for the EA has therefore advised that a new Panel Engineers report is required but that this should be a “construction report” which is different to the inspection reports which have been carried out previously.

Under a construction report a construction engineer will take on responsibility for the site. Their role will be to review the site and supervise work at the site in order to ensure that the reservoir is operating safely.

RL went on to explain that an enforcement notice¹ has been served on the land owner requiring the appointment of a construction engineer. The land owner has 28 days from the date of the notice to make the appointment. The construction engineer who is appointed will then review the site and produce a new report. In the event that no such engineer is appointed the EA has reserve powers to make its own appointment. However, it was felt unlikely that using reserve powers to make an appointment would be needed as in the experience of the EA land owners are more likely to make the appointment themselves. The construction engineer must be suitably qualified and a member of the All Reservoirs Panel. Any report produced must take into account planning and permitting issues.

In responding to questions from members of the group RL covered the following points:-

¹ Under section 8 of the Reservoirs Act 1975

- That the reservoir is now definitely classed as a reservoir albeit that it was not originally designed as one. In its current form it meets the definition of a reservoir in that deliberate action has been taken to store water for flood alleviation/ to prevent water flowing down stream.
- The EA had doubts regarding the technical specifications of the reservoir including its capacity under the last Panel Engineers report. This is why they now want to clarify the situation and get the reservoir properly certified by the completion of a construction engineers report.
- The reservoir was a reservoir before the over tipping occurred (although technically it would at that stage have been classed as a reservoir “under construction”).
- There are other physical features at the site that it is believed may act as part of the reservoir if there was a flood event. These include Alvechurch Highway and Marlbrook Lane which could act as a spillway. The March 2013 Panel Engineers Report will be superseded by the new construction report. The new report will be completed by the construction engineer to be appointed by the land owner. There are three stages to be completed; the initial report, followed by a preliminary certificate and then a final certificate. The report would be expected at the earliest within about 3 months. The whole process for the dam to be certified would take a minimum of three years.
- There is more responsibility placed on a construction engineer under section 8 of the Act as opposed to an inspection engineer under section 10. The construction engineer must supervise the site on an on-going basis and be responsible for what happens there.
- The land owner has until 20th October 2014 to appoint the construction engineer.

In relation to how the involvement of the construction engineer links to the restoration of the site RB commented as follows:-

- That as stated before the Council has no plans to remove material from the tip. There were common features of both the Council’s plans for the site and those of the Panel Engineer in his report dated March 2013. However, the Council had not been able to proceed with its plan as the proper enforcing authority is the EA.
- The EA is now taking the necessary steps to start action. This has involved work around the definition of the reservoir and this in turn has led to the advice that a construction report is needed. The notice issued by the EA will now require the land owner to appoint the construction engineer.
- The new report will supersede the old one so therefore technically the land owner cannot use the old report as reason to bring on material. In any event he would need planning permission to do so and at this point in time there would be no justification for granting permission. Although the land owner had sought pre-application advice in light of the service of the notice by the

EA the Council's position would be that there is nothing in place to underpin a planning application.

With regard to concern over the length of time the process is taking, RL confirmed that there are no features of the site that the EA are aware of or that have been reported to them by the Panel Engineer that indicate the need to act urgently. The EA do have urgent powers but there is no evidence that these need to be utilised for this site.

It was noted that it was not clear whether the survey of the culvert as required by the March 2013 Panel Engineers report had been undertaken. RL responded that this is an issue which would be taken up by the newly appointed construction engineer. Other members of the group noted that the culvert seemed to be working without any problems.

With regard to the potential involvement of other land owners, RL confirmed that 3 others had been identified but not formally approached yet pending further clarification. In particular to assist with this issue the 2013 report had asked the land owner to provide a topographical survey.

RL confirmed that the EA regarded the requirement for a construction report as a more onerous measure on the land owner because where a construction report is required the ability of the land owner to cause delay by asking for a series of inspection reports is removed. It should also be noted that the construction engineer would have greater responsibility for the site from a professional point of view.

RB confirming that the Council intends to write to the newly appointed construction engineer, once the Council have been informed by the EA of who it is. Officers will be asking the new construction engineer to consider re-visiting the ideas that the Council had wanted to include in an enforcement notice. In particular those aspects where the Council's experts (Halcrow) had formulated proposals that allowed for the importation of less material on to the site.

Martin Quine from the Local Area Waste Team then gave an overview of the position regarding permitting and responded to questions. The information covered included the following:-

- In 2011 Eddie McIntosh (EM) made an application for a standard permit and in support of this provided a Waste Recovery Plan. Under the legislation in force at the time this then would have enabled him to bring on up to 50,000 tons of material. However, the legislation then changed and reduced this previous limit down to 10,000. In any event this permit has not been used, and would now be regarded as out of date as it related to the planning application for a golf course. The golf course has never been built and the maximum limit for importation of material under that permission has been exceeded.

- If EM wanted to re-start activity at the site he could now apply for a permit but would need to submit a new and up to date Waste Recovery Plan. The documents needed in support of such an application would include a valid panel engineers report and planning documents as well. On the planning side, a planning application would be needed for the construction engineers report to be implemented. Therefore there are links between the construction engineers report, the permit system and the planning system. It is not the case that a permit would be granted automatically or without proper checks being carried out to establish the works needed are genuine and are supported by planning permission.
- Generally the site itself is categorised as “low risk” for waste issues and would be visited once or twice a year. This risk assessment is based on risk and type of activity and there is scope for changes in activity to lead to more frequent visits.
- With regard to what is tipped, the owner has to complete a waste return. However, under the applicable legislation this is not strictly enforced leading to a regime with a degree of “operator trust”. At visits the tonnage would be checked. Other controls over and above this would fall to be imposed under planning conditions.
- Dust and emission would be covered in a management plan.

RB thanked the staff from the EA for attending on behalf of the group.

5. Sharing Contact Details (Mr Bateman)

In response to a request from Charlie Bateman that the group be able to circulate information to each other, the members of the group agreed to their email addresses being circulated.

6. Actions

- In light of the latest developments regarding the appointment of a construction engineer, that the council engage with the construction engineer as far as it is able to. Specific actions that the group would wish officers to explore are:-
 1. Speaking to the construction engineer and if possible meeting with him to discuss whether he is prepared to include in the next report the ideas for remediation of the site that the Council originally received advice on from Halcrow.
 2. Inviting the construction engineer to attend a meeting of the working group.
- Carried over from first meeting:-
 1. Check definition of restoration soils.
 2. Send copy of letter to Geological Society to the Managing Director of Faber Maunsell (Aecom).

7. Items for future meetings

- RB to report back on issues regarding the site compound. Members of the group expressing concern about the amount of structures/ vehicles on site given that no activity is currently meant to be taking place at the tip.
- Update from WRS on pollution monitoring.
- Kevin Dicks to respond to calls from the group for the Council to intervene in the issue of whether the land owner defrauded HMRC by allegedly not paying landfill taxes.

8. Date of Next Meeting

To be confirmed for mid November.