

MARLBROOK TIP WORKING GROUP

2nd December 2014 17:40 – 19:43

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

Michael Adams (Lickey Community Group)
Paul Batchelor (Lickey Community Group)
Ron Brown
Baden Carlson (Lickey Hills Society)
Ann Doyle
Jill Harvey (Lickey & Blackwell Parish Council)
Roy Hughes (Lickey Community Group)
Sue Hughes (Lickey Community Group)
Bernard Mceldowney (Catshill & North Marlbrook Parish Council)

1. Apologies and Introductions

Apologies were received from Mr Charles Bateman and Mrs Margaret Owen. For the benefit of the residents in the public gallery the Chairman invited Members of the Working Group to introduce themselves.

Mr Hughes had asked the Chairman for an opportunity to speak before the meeting commenced and in doing so provided the Working Group and those residents present with information in respect of his complaint to the Local Government Ombudsman, together with a written summary and his comments (attached at appendix 1). A brief history was provided together with details of the outcome. Mr Hughes acknowledged that whilst he had not always seen eye to eye with the Council, the Group now had an opportunity to work together in order to achieve a satisfactory conclusion to this matter.

Councillor Taylor thanked Mr Hughes and said the Group appreciated and supported the view that the aim was now to move forward in order to reach a satisfactory conclusion for all concerned

Councillor Mallett raised concerns that Members of the Group had not been made aware of the Ombudsman's decision in favour of Mr Hughes and questioned when Council Officers were planning on passing on this information. From a Legal perspective the Group were informed that there were two types of reports from the Ombudsman, one which was required to be made public and the other which was not. The report in respect of Mr Hughes' complaint was of the second type and the

Council was not under any obligation to publish it. Although reports are now anonymised by the Ombudsman and some published on their own website, the Council has to be careful about making information available from which individuals can be identified and for this reason does not have a policy of publishing ombudsman reports. Due to timescales, officers were still in the process of looking at how to deal with any extra documents arising from Mr Hughes complaint that had not already been made available. One option being considered was to put further information on the Council's website but officers would need more time to complete this exercise.

Mr Hughes confirmed that he had spoken to a representative of the Ombudsman and who had confirmed that it was now Mr Hughes report and therefore he was able to deal with it as he wished and was happy for the information to be in the public domain.

It was acknowledged that due to everything which had happened in the past it was important for the residents and Council to work together to rebuild the trust which had been lost due to the mistakes that had been made. The appropriate actions needed to be taken in order to ensure that the same mistakes were not made again. Councillor Taylor confirmed that some of the lessons learned were already in place and the Planning Committee would ensure that in future any conditions which were put in place would be enforceable.

2. Notes from Meeting held on 22nd September 2014 and actions arising

The notes from the meeting had been amended by the Environment Agency (EA) and reissued, the Group requested that in future where amended notes were provided, that the amendments be highlighted for ease of reference. A spelling mistake was also highlighted at the bottom of page 2 of the notes.

The following updates were provided by Officers:

- The group was reminded that at the last meeting the Environment Agency reported that they had issued an enforcement notice requiring the land owner to appoint a new Panel Engineer. It was confirmed that the new Panel Engineer appointed by the site owner is Robert Mann. Robert Mann would now have to produce a new Panel Engineers Report to supersede the report issued in March 2013. The Council had also engaged a separate Panel Engineer to assist it in its understanding of the technical issues at the site.
- The action of contacting the Panel Engineer appointed by the land owner to discuss future plans for works at the site had been followed up, and a joint site visit involving the EA, officers, Robert Mann, the land owner and the Council's Panel Engineer had taken place.
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- The March 2013 Panel Engineer's report had used the term "restoration soils" and the Group had requested a clear definition of this. Officers had not been able to identify a standard definition and the Panel Engineer engaged by the

Council reported back that it was not a standard term he had come across previously. . It was however noted that the March 2013 report would be superseded by the report currently being prepared by Robert Mann. Therefore it would be prudent to wait and see what definition is used in that report. From the Council's point of view the use of a clear definition will be important and the focus moving forward will be to ensure that the definition used can be followed when the work is carried out.

Since the last meeting, as requested by the group, a letter regarding the over tipping had been sent to the Managing Director of Aecom. In relation to the earlier letter sent to the Geological Society by the Chief Executive in respect of Mr Smart, a reply had been received stating that the procedure to make a complaint only applied individuals and enclosing the procedure and code of conduct. A further response from the Chief Executive was ready to be sent to the Geological Society.. and the group would be kept updated in this regard.

- PB raised the issue of methane etc on the site, which had been discussed at the previous meeting and whether Worcestershire Regulatory Services (WRS) had been contacted. It was confirmed that they had and would be attending the February meeting of the Group.
- In respect of HMRC KD confirmed that he had met with Mr Bateman and drafted a letter and had sought the support of Sajid Javid, MP in the hope that he could provided details of a senior contact at HMRC in order to have a follow up discussion. Mr Hughes had seen an early draft of the letter to MHRC and was concerned that this was factually incorrect, whilst Mr Hughes felt that this was the right thing to do the Group needed to be careful to ensure that they did not make any false allegations.

3. Marlbrook Tip Site Visit – 23rd October 2014

RB confirmed that she had carried out two site visits. Of these one was with an Enforcement Officer and 2 Members to inspect the compound off the Alvechurch Highway. The visit had been used to assess the buildings, plant and equipment on site and look at what was needed in order to carry out any future works and what was unnecessary and could be removed. Officers had taken the registration number of vehicles at the site during the visit. A letter had then been sent, which was the usual practice, asking for the removal of vehicles within a set timescale and if stating that if this was not done then the Council would consider its position. There were approximately 12 vehicles on site. At the first site visit the site owner was there but did not walk round with RB; for the second visit both the site owner and his daughter were in attendance.

In respect of other items on the site RB had asked the Panel Engineer appointed by the Council to look at these in order for her to understand better what they were and how they could be used for any future work that needed to be carried out on the site. She was awaiting a written response form him. She reiterated that if any enforcement was to be successful and it if we were to see the site cleared then it needed to be done properly. It was also inappropriate to discuss details of this within a public arena.

The following areas were discussed in detail:

- Why a Panel Engineer had been appointed by the Council and attended the site visit.
- The living accommodation and how it was being used. RB reiterated that if security officers were on site 24 hours a day, then the owner was obliged to provide them with suitable accommodation including washroom facilities, a cooking and seating area.
- There had been a sighting of a hot food takeaway van on the site, but RB confirmed that she had not seen this during her visits.
- Residents were concerned that the Council continued to appear to be defensive of the site owner and were not taking notice of or supporting the residents who had been affected.
- The original report had requested the site owner to clear the site but this still had not happened and no action had been taken against him.
- It was explained that, as previously stated, enforcement was a delicate area and the work which was being carried out behind the scenes was not appropriate to put in the public domain, but the Council acknowledged the frustrations that were felt by residents.
- The second Panel Engineer's report would now supersede the original report and contain a number of actions. The enforcement of this report would be down to the EA.
- Representatives of the EA (Fiona Upchurch) had attended one of the site visits as they were also keen to move the matter forward.
- Regarding the water management issue, it was confirmed that this needed to be properly channelled and would be included within the Panel Engineer's report. This would address any seepage. The Panel Engineer had not identified any immediate issues which warranted urgent action.
- The lack of information being provided to residents in between meetings and the request for a public inquiry to be held.
- WRS had been asked to interpret the data supplied by AECOM and this would be presented by WRS at the February meeting and whether this data should be made available as soon as it is received by the Council, without waiting until the next meeting. It was agreed that the receipt of the data would be chased up.
- Whether the culvert had collapsed and whether the camera inspection of this as previously requested had been carried out or chased up with the site owner. It was explained that this was at the request of the original Panel Engineer's report from 2013, and that this had now been superseded by the report which was currently being awaited from the new Panel Engineer. Again, the chasing up of the report and any work was not the responsibility of the Council and rested with the EA.
- The report from the new Panel Engineer could take up to 6 months, which would be end of March 2015. It was then likely that any work recommended within that report would require planning permission and this would then become the responsibility of the Council, including setting and monitoring any conditions.
- The Council had met with a senior representative of the EA (the regional manager) in September in order to raise awareness and concerns of all those involved. The Council was doing all it could to move the matter forward.

- Whether residents writing to both the EA and the MP would expedite the matter. RB confirmed that the Council was in weekly contact with the EA and was trying to form a good working relationship in order to move the matter forward.
- Any pressure from residents could be useful, but the EA were not responsible to the electorate as the Council was.
- If the Panel Engineer's report asked for more soil to be brought on site, residents' view was that it would be impossible for the Planning committee to refuse that planning permission. RB said it would be very difficult to consider such a point at this stage, until all the relevant facts were available. The Council will seek advice from the appropriate experts to understand any proposal and before taking any action.
- The long term plans for the site in order to make it safe and including any appropriate landscaping.
- Whether the Reservoirs Act regime covers all or part of the site. RB confirmed that this covered the whole of the site.

4. Managing Actions and queries

Councillor Taylor advised that following the last meeting of the Group there had been a number of questions/queries which had been emailed in to the RB. It was questioned whether this was the best use of RB's time and that it may be more useful to have a central email address where these queries and actions were collated and assessed as to whether they required urgent attention. Councillor Taylor said he had regular meetings with both KD and RB and was happy to collate queries and discuss at those meetings if necessary, rather than the "round robins" which were currently being circulated. Other members highlighted that these had originally been sent as a way of keeping everyone informed but acknowledged that this was not necessarily the best use of RB's time, but it would be useful to be kept informed of action that was being taken.

The use of a template to provide Members with regular updates in between meetings was discussed as there was a significant time lapse between meetings and it was important that everyone was kept up to date and that actions were addressed as soon as possible.

The following areas were also discussed:

- The quantity of documents and information which had been provided to the Ombudsman and the man hours spent collating that information.
- A clear understanding of actions going forward in order for the Group to be more efficient.
- A way of communicating for those who were unable to attend a meeting in order for them to have a clear understanding of what had been done at the previous meeting.

One of the questions which had been raised concerned the cost to the Council of the work that had been undertaken so far to rectify the situation, for example the cost of expert reports, officer time and expenses for the expert witnesses. A figure of £45k had been provided with a brief breakdown. However, members were doubtful that

this was accurate. Councillor Taylor agreed that the financial team would be contacted with a view to providing a more detailed summary. It was important that the Council showed a willingness to be transparent in identifying what the Marlbrook Tip site had cost the residents of the District.

Following the discussion it was agreed that Councillor Taylor should be emailed with any queries and he would then discuss with KD/RB and send an acknowledgment where necessary.

5. Questions received since the last meeting

A number of questions had been received, the majority of which had been responded to either prior or during the meeting. In respect of wildlife on the site RB confirmed that a survey had previously been carried out by Worcestershire Wildlife which had confirmed that whilst there was the potential for newts to be on the site there currently were none and there was a specific bird which although there had been evidence of passing over the site had not been seen actually on it.

6. Questions – general

The following questions were raised and responses given:

- Why the Council had engaged a Panel Engineer? RB explained that this was due to the technicality of the role and in order for the Council to be able to understand better the report of the Panel Engineer (Robert Mann) engaged by the site owner and also to liaise with that Panel Engineer. The Council's Panel Engineer was James Penman and he had accompanied RB to the site visit which Mr Mann had also attended
- There was confusion over the responsibility of each party involved in the site and it was discussed whether it was possible to put some sort of table showing that on the website. RB explained that whilst various bodies were involved, ultimately enforcement action could only be taken by the EA. Details of what action was required by the site owner would be in the Report prepared by Mr Mann, no other action will be taken until that report is available. Currently there was not a role as such for the Council ; this may change if a planning application was to be brought forward following the completion of the Panel Engineer's report.
- RB provided a short summary of the background history for a number of residents present in the public gallery who had not previously attended any of the public meetings, highlighting that there was detailed information available on the Council's website together with copies of the notes from both public meetings and previous meetings of the Group.
- The need for a further Panel Engineer's report and the continued delays which had occurred together with who was able to move things forward. People were disheartened as numerous reports had been produced in the past requiring action, yet none had been taken or enforcement implemented. RB explained that it was now the EA who were responsible for what

happened next and for taking any enforcement action if the site owner did not comply with the requirements of the report.

- The option or possibility of putting the site back to how it was and the cost of doing this. There was a variety of views on this, including whether it was practical. From an aesthetic point of view some people felt that it should be returned to it's original outlook as it had changed the natural landscape beyond recognition.
- The reliability of the Panel Engineer and how they were chosen. RB explained that it was a very prestigious position, with only 40 appointed throughout the country; the Panel Engineer appointed by the land owner would have had to have been chosen from the current approved panel members.

7. Items for future meetings

It was agreed that members of the Group would have an opportunity to go away and think about further items for future meetings following the areas discussed this evening. These should again then be emailed to Councillor Taylor who met regularly with both the Chief Executive and Head of Planning. AD also suggested that if Officers and Councillors already had ideas for future items a list of these would be helpful.

8. Meeting Dates 2015

5th February 2015

23rd April 2015

29th June 2015

10th September 2015

11th November 2015

ACTIONS:

- 1. WRS to be chased up with regard to the data being analysed from AECOM.**
- 2. RB/SS to invite the Panel Engineer, Robert Mann to the next meeting of the Group to respond to questions.**
- 3. Finance Team to be requested to provide a detailed breakdown of the costs to the Council of the work undertaken to date in respect of the Marlbrook Tip site.**
- 4. Councillor Taylor to co-ordinate the receipt of queries and items for future meetings and discuss as appropriate with KD/RB and acknowledge where necessary.**

Councillor Taylor thanked everyone for attending and reiterated that the Council was as frustrated as everyone else with the situation and hoped that all concerned could now work together to bring the matter to a satisfactory conclusion at long last.