

MARLBROOK TIP WORKING GROUP

5th February 2015 17:30 – 19:50

- Present:** Councillor Kit Taylor (Chairman)
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)
Charles Bateman
Ron Brown
Baden Carlson (Lickey Hills Society)
Ann Doyle
Kathryn Crockett (Lickey & Blackwell Parish Council)
Roy Hughes (Lickey Community Group)
Sue Hughes (Lickey Community Group)
Bernard Mceldowney (Catshill & North Marlbrook Parish Council)
- Invitees:** Mark Cox Worcesterstershire Regulatory Services
Tony Deakin Reservoirs Team Manager, Environment Agency
Martin Quine Waste Team, Environment Agency
Helen Bayliss Waste Team, Environment Agency

1. Apologies and Introductions

Apologies were received from Councillors Brian Cooper and Luke Mallett. For the benefit of the residents in the public gallery the Chairman invited Members of the Working Group to introduce themselves.

Due to a prior engagement Councillor John Ruck left the meeting at 7.00 pm.

2. Notes from Meeting held on 2nd December 2014 and Matters Arising

The following updates were provided by Officers:

- It was confirmed that data from AECOM would be covered under item 6 of the agenda.
- It was confirmed that Robert Mann had been invited to attend a meeting of the Working Party and he had declined, stating that his role was limited to functions under the Reservoir Act and he was therefore unable to attend.

In respect of the breakdown of the cost to the Council, Kevin Dicks (KD) explained that whilst it was possible to provide a breakdown of major items of expense (and this had been done), it would be time consuming to provide a breakdown of the

officer time spent on the matter, particularly as it went back a number of years. KD believed that this would not be the best use of officer time and any information provided would not be accurate and therefore this would not be provided.

Some members of the Group questioned this and asked whether for example officers were receiving overtime for attending the meeting. It was confirmed that for senior officers attendance at such meetings was part of their role and for other officers they were able to claim the time under the Council's flexible working policy.

KD confirmed that on-going costs would be monitored in the future, for example for the costs of the independent panel engineer instructed by the council. It was questioned as to whether an attempt to recover those costs through legal proceedings should be made against AECOM. Sarah Sellers (SS) explained that this had been discussed on several occasions and as AECOM had no contractual obligation to the Council (their contract was with the site owner, Liberty Construction) and there were no grounds to make out a claim based on negligence it was not a matter which could be taken forward.

It was also questioned whether there could be a legal case under planning legislation and Ruth Bamford (RB) explained that, as previously discussed, it was possible for people who carried out work without planning permission, to apply for that permission retrospectively or alternatively for the Council to take enforcement action if necessary.

KD explained that, as requested he had written to AECOM expressing the group's dissatisfaction, but had not as yet had a response. There was discussion about whether AECOM should be asked to make a voluntary payment to the community to reflect the impact on the residents. It was felt that this would need to be considered from a legal point of view before being taken any further.

3. Update re Actions of the Environment Agency/Construction Engineers Report

Tony Deakin (TD) provided a summary of the current position. The Environment Agency (EA) had served notice (under section 8 of the Reservoir Act) on the land owner, who had to date being compliant with the requirements of that notice. The land owner had appointed a Construction Engineer, who had prepared a report, which was dated 27/01/15 and had been received by the EA. The EA had provided a redacted copy of his report to the Council and it would be available on the Council's website shortly. TD explained why some information within the report had to be redacted. The report included a total of 10 recommendations in the interest of safety, of which the unredacted ones were read out to the meeting (see appendix 1 item 6.4 of the report).

TD also explained that the period specified for completion of the recommendations was within one year of the date of the report (27/01/15) and to avoid risk of delay the work should commence within a fortnight of the date of it.

Members raised concerns that some of the recommendations would require planning permission and that this was not something which could be quickly given. RB informed the Group that pre-application discussions had commenced and that she had requested further information in order to understand better what the land owner

was trying to achieve and gave the Group the approximate time scales for a planning application.

TD informed the Group that there were a number of the recommendations in the latest report which the land owner could be getting on with prior to that permission being granted and whilst it was recommended that the work commence within 2 weeks of the report, the key point was the end date of 27/01/16.

The following areas were discussed in light of the update provided:

- TD confirmed that the volume of soil to meet the recommendation for 300 mm to be placed on the site would be for the construction engineer and the owner to address. The term used in the report of a minimum of 300mm of restoration soil is used to allow for undulations in the surface.
- With regard to the re-contouring the Construction Engineer had not been in favour of any re-shaping works as he did not want the clay cap to be disturbed. Concerns were raised as to how it would be ensured that further damage was not done to the clay capping by the new works.
- With regard to concerns as to what would happen if the works were not completed by 27/01/16, TD explained that changes to legislation have been introduced to tighten up on the ability of the EA ensure that landowners comply with requirements. The EA would be able to step in under emergency powers, if there was a safety issue, and carry out the work and re-charge any costs to the land owner. This could also be the case for non-compliance if necessary. However, that is not an issue for now and any decisions would be made at a later date if the works had not been completed in the compliance period.
- TD confirmed that the recommendation for the culvert to be checked by a camera on the March 2013 panel engineers report was to find out whether there might be a problem and it was not assumed that there is a problem. That report has been superseded and the new safety recommendations pick up the need for the land owner to carry out certain works.
- TD confirmed that in terms of the timing of the works, he had asked the Construction Engineer for a programme of works. The EA would monitor the timetable. Examples of reasons for a delay to the programme would include adverse weather.
- If there were delays, as already stated the EA has emergency powers were the reservoir to be at risk of failing. If the 10 safety measures in the new report are implemented then the reservoir will be signed off as having met all the safety requirements.
- The potential outcome if the work was not carried out and the owner walked away from the project completely.

- The Working Group questioned whether the Engineer had identified any potential long term risks such as flooding or landslip even if no work was carried out. TD confirmed that there is no indication that there would be safety issues if the works were not completed in the next 12 months

In respect of bringing further soil onto the site, members were concerned as to how this would be monitored and RB confirmed that this would be part of the planning application and would need to be addressed through conditions being applied to the application. The use of Section 106 monies to contribute towards the cost of monitoring was also discussed.

Martin Quine (MQ) confirmed that the land owner had a permit for soil and if any changes were made then this would have to be considered through an amended waste recovery plan being submitted to the EA. MQ gave Details and examples of where the soil could possibly come from and the economics involved. It was highlighted that the recommendation was for a minimum of 300mm to go back on the site and therefore in some places this could mean more and it would be within the remit of the Engineer to comment on whether any re-contouring work should be carried out. Concerns were then raised as to whether the land owner would be asked to remove the soil, if the wrong sort was brought on to site. The EA confirmed they had requested a definition of restoration soil from the Engineer.

The Engineer will be responsible for monitoring the site and it was up to the owner to fulfil the requirements of the report. The Engineer has to sign off the final certificate when the recommendations have been completed to his satisfaction. This led the Group to question how the Engineer could monitor the site when he was based in Edinburgh and raised various other points about the monitoring. TD agreed to request further information from the Engineer on the points raised.

Mr Hughes questioned the flood level at a particular point and TD referred to point 6.3.2 of the report which gave an estimated upper overflow level and a maximum potential depth during a severe storm, together with an estimated maximum capacity of the reservoir. TD confirmed the reservoir was compliant with the Reservoir Act, as it was under construction. Members questioned whether the site was in fact a reservoir and it was confirmed that it had been registered by Worcestershire County Council (WCC) as such following the collapse of the culvert.

4. Update re HMRC and letters to Geological Society/AECOM

KD informed the Group that he had met, together with Mr Bateman, had met an HMRC expert to better understand the landfill tax position. It was clear that all was in order in respect of this, but the HMRC representative confirmed that he would refer the matter to his colleagues who dealt with Corporation Tax and VAT.

KD had written to the Geological Society and raised concerns around Mr Smart's report and the quality of monitoring and had provided detailed evidence supporting the on-going investigation. He will chase this up and in doing so ask what the process is for conducting a hearing and whether external witnesses were permissible as it may be useful for some of the members of the Group to be involved in this.

As reported under item 2 KD has written to AECOM but to date had not received a response.

5. Update re presence of cars/plant and machinery on the site

RB reminded the Group that any enforcement notice would need to be passed to the land owner before she was able to share its content with them. However, she was able to confirm that she was in active discussions with the Council's Barrister and some vehicles had been removed from the site. When the planning application was received she would clarify what equipment was needed in order to implement the works detailed in the Engineer's report.

RB confirmed that she had a list and plan of the equipment on site, but currently it was not appropriate to go into further detail as discussions with the Barrister were on going.

6. Pollution Monitoring update from Mark Cox WRS

Mark Cox (MC) Senior Practitioner Pollution at Worcestershire Regulatory Services (WRS) explained his team provides advice to the Planning Team and carry out the role of reviewing the gas monitoring information from AECOM. He had been reviewing the data for a number of years.

AECOM had been providing the data on behalf of the applicant and MC had found some inconsistencies. Where inconsistencies had arisen he had gone back to AECOM for explanations. Some of these areas had been addressed. However, he had remained unhappy with others. MC informed Members that the land owner had been co-operative and worked with them to address the issues raised. The work WRS carried out was in relation to Condition 15 of the planning permission issued in 2006.

MC explained that in order to understand some of the inconsistencies in the data the Council had now engaged external consultants to carry out monitoring on behalf of the Council. This would run alongside the AECOM monitoring and then the Council would analyse the two sets of results.

Mr Batchelor raised the issue of leachates and who was responsible for them and MC responded that whilst he had seen some information in respect of leachates the condition only referred to gas monitoring. He explained that there had been a lengthy involvement with the site. It had been tipped on since the 1940s and part of the monitoring was to understand what gas was in there. The cost of the additional monitoring to the Council was approximately £7,800.

RB confirmed that there was no condition which referred to leachates. MQ informed the Group that if there was a leachate breakout then the EA would look at it, but it was not something which would be monitored continuously. It was more a case of keeping an eye out for any break outs which would then be addressed if identified. Mr Batchelor believed that it was originally monitored in the same way as the gas by Faber Maunsell and questioned that if it had been monitored then it should still be monitored now.

Mr Hughes raised the issue of inaccurate or missing information previously in respect of AECOM (who had been employed by the land owner) and MC confirmed that the reports went direct to the Planning Department and these were reviewed by

WRS on their behalf. Currently AECOM were co-operating and the Council had employed the consultant simply to ensure that the information being provided was accurate and to clarify some areas which AECOM had not been able to provide a satisfactory response to.

7. Process for Planning Application – Ruth Bamford

This had been covered under item 3. Members of the Working Group questioned the process in respect of checking progress on site and ensuring that the work was in line with that set out in the planning permission. RB said there was not the capacity of staff to monitor progress on all sites where planning permission had been given. Councillor Taylor went on to say that councillors regularly receive calls from residents about new works in progress and that these were then reported to the Planning Department who would investigate the matter further. RB assured Members of the Group that this site would be actively monitored.

8. Questions received since last meeting

Mr Hughes questioned the whereabouts of the planning log, as he had requested sight of this on numerous occasions, but to date it had not been produced, as he understood this should be retained for future reference.

Councillor Taylor explained that unfortunately it was unlikely that this would be traced, those enforcement officers who had initially dealt with the matter were no longer with the Council and despite all efforts it had not been located. He assured members that this would not happen in the future and that lessons had been learnt from mistakes made previously.

9. Items for future meetings

The Working Group requested updates on all areas discussed for the next meeting which was due to be held on 23rd April 2015.

Members discussed again the areas which they would like TD to pick up with the Construction Engineer including how he anticipated being able to monitor the work whilst his base was in Edinburgh. TD reiterated the role of the Construction Engineer and the standards and ethics which he must abide by in order to maintain his appointment. The Construction Engineer would therefore not sign off the works until they had been completed satisfactorily.

ACTIONS:

- 1. KD to send a follow up letter to AECOM with a set timescale within which they should respond.**
- 2. The Environment Agency (TD) to contact the Engineer the requesting the following:**
 - (i) a definition of restoration soils**
 - (ii) How he would anticipate being able to monitor the site i.e. number of potential site visits.**
 - (iii) Whether the site visits would be planned or unannounced.**

- (iv) What he would monitor and how he will ensure that what is required is carried out.
 - (v) The capacity of the reservoir.
- 3. The Environment Agency (MQ) to investigate the disposal of domestic waste (from the living accommodation) and assess whether any further action was necessary and provide feedback to the next meeting.

Appendix 1

Recommendations in the Interest of Safety

- Re-grade the upstream slopes of the embankment around the shores of the reservoir pool to the specified maximum slope of 1 Vertical in 4 Horizontal.
- Complete restoration soils over the upstream slopes of the embankment around the shores of the reservoir area to a minimum 300mm depth and include a growth medium to establish suitable grass cover.
- Re-profile the erosion channels on the left shore of the reservoir pool and extend the restoration soil layer specified to the areas draining from the site to the channels and the reservoir shores, in conjunction with re-profiling of the steep parts of the upstream face.
- Complete the restoration soils over the unrestored areas of the site to a minimum 300mm depth and include a growth medium to establish suitable grass cover.
- Provide a data logger in piezometer M4A record water/leachate levels as advised in the stability assessment report and directed below, and provide survey monitoring points on completion of the restoration soils.
- Repair the polymer lining of the drainage channels where disrupted, or replace it with a suitable alternative.
- Modify the flood studies to take account of the altered impounding height and related surface area and volume.