

Worcestershire Internal Audit Shared Service



Bromsgrove
District Council
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(Final) Internal Audit Report

Ad hoc investigation: Marlbrook Tip

16th December 2011

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1. Introduction

In February 2011 the possibility that there had been a failure to comply with a planning permission condition for the development of the Marlbrook Tip site was brought to the attention of the Head of Planning and Regeneration.

After undertaking an initial review, the Head of Planning and Regeneration commissioned the external consultants, A D Horner Limited, to compare the current topographical land levels to the planning approval. A written summary of findings, dated 9th June 2011, provided by A D Horner Limited concluded that over tipping on the site has occurred.

As a result of the above, the Worcestershire Internal Audit Share Service was requested to perform a 'lessons learnt' investigation in relation to Marlbrook Tip. This investigation has been undertaken between September and November 2011.

2. Audit Scope and Objectives

The objective for the investigation, as requested by the Head of Planning and Regeneration, was to establish how over tipping has happened so that Bromsgrove District Council can prevent it from occurring in the future.

In addition to discussions with the Head of Planning and Regeneration and Enforcement Officers, Internal Audit has reviewed the files maintained by the Planning Team in relation to the site. Documents that have been subject to review include:

- Planning application and permission;
- Planning Committee agenda and minutes for when permission was approved;
- AECOM Ltd (that is, Faber Maunsell) quarterly reports;
- Report provided by A D Horner Limited;
- Minutes of the Marlbrook Tip Monitoring Group;
- E-mails and letters from and responses to various interested stakeholders;
- Review of site visits; and
- Letters from and responses to complainants.

The purpose of reviewing these documents has been to identify the controls in operation and ascertain where controls have not operated effectively.

It should be noted that the Internal Audit investigation has concentrated solely on the over tipping of imported materials and that other conditions included within the permission, for example, in relation to water management and monitoring of landfill gas levels, have been excluded.

3. Background

Under the provisions of the Town and Country Planning Act 1990, planning permission is required for the carrying out of any development on land. Within Bromsgrove District Council, the processing of planning applications, subsequent monitoring of approved developments and the investigation of breaches of planning control is carried out by officers within the Council's Planning and Regeneration Service. It should be noted that the service was named Planning and Environment until April 2010.

Marlbrook Tip was a former landfill site with a history of planning permission going back to 2003. The planning application which was considered in 2005 was as a result of the applicant being served notice by the Environment Agency under the powers contained in Section 10(b) of the Reservoirs Act 1975 to carry out remedial works across the whole site to prevent a circular slip from occurring. The applicant required planning approval to carry out these works as part of the remediation of the site and subsequent creation of a golf course and associated facilities.

A report was considered at the Planning Committee held on 10th October 2005 with the then Head of Planning and Environment being instructed to report back with conditions. Subsequently, at the Planning Committee held on 7th November 2005 twelve conditions were proposed for consideration. The committee approved the twelve conditions as set out in the report and granted delegated powers to the Head of Planning and Environment to “fully draft and finalise these conditions, together with any other necessary conditions of a lesser nature in consultation with the Monitoring Group referred to in condition 12 of the conditions”.

4. Controls

Internal Audit's review has identified the following key controls:

- Planning Committee approval;
- Enforcement Action which includes monitoring of adherence with planning conditions; and
- Complaints by 3rd parties.

5. Control Failures

The table below records each of the above controls and provides details of where controls have not operated effectively based on Internal Audit's investigation.

Key Controls	Internal Audit Findings
<p><u>Approval</u></p> <p>The Planning Committee granted permission in pursuance of the Town and Country Planning Act 1990 on 7th November 2005 subject to conditions and additional notes.</p>	<p>Review has verified that:</p> <ul style="list-style-type: none"> - Permission was granted as the applicant required planning approval to carry out remedial works having been served notice by the Environment Agency under the powers contained in Section 10(b) of the Reservoirs Act 1975. - A total of 24 conditions and, approximately, 12 additional notes were attached to the planning approval. <p>Accordingly, in order to minimise the risk that a breach of planning would occur, effective monitoring of adherence with the permission conditions was imperative. However, Internal Audit has been unable to find any evidence to support that the Planning Committee were made aware of the significant resource that would be needed to robustly monitor compliance with the conditions.</p>
<p><u>Enforcement action</u></p> <p>Monitoring of approved developments and the investigation of breaches of planning control is carried out by officers within the Council's Planning and Regeneration Service. As recorded in section 2.3 of the Planning</p>	<p>During the course of the investigation Internal Audit has ascertained that:</p> <ul style="list-style-type: none"> - From review of the various documents held on file, it appears that the Council have had inadequate resources to provide the level of proactive enforcement monitoring that was required to effectively monitor

Key Controls	Internal Audit Findings
<p>Enforcement Policy dated January 2011: “The main objectives of the planning enforcement process are:</p> <ul style="list-style-type: none"> - to remedy undesirable effects of unauthorised development; and - to bring unauthorised activity under control to ensure the credibility of the planning system is not undermined”. 	<p>compliance with planning conditions.</p> <ul style="list-style-type: none"> - During 2006 and 2007 there is evidence held on file to support that extremely limited monitoring of the development was undertaken. This was in relation to ensuring that conditions in relation to weekend opening hours were complied with and loads going onto the site were monitored with the results being checked against the records maintained by the site owner. Relevant documents record that no anomalies were identified; however, the level of monitoring is perceived as insufficient to have provided a reasonable level of assurance of compliance with conditions. - Officers do not appear to have recognised the cumulative effects of separate events. For example, complaints were received on a regular basis in relation to activity at the site, not all Faber Maunsell quarterly reports have been provided and the site owner repeatedly deferred the completion date for the importation of material. When these factors are combined the likelihood that conditions were not being complied with increased. <p>Taking each of the above into consideration, the lack of proactive enforcement action resulted in an increased risk of non adherence with planning conditions.</p> <p>With the benefit of hindsight and from a control perspective the following additional controls should have been considered:</p> <ul style="list-style-type: none"> - Allowing for the perceived lack of resource, on a regular basis (for example, quarterly) an Enforcement Officer could have visited the site with the original contour maps that were supplied with the planning application to take a look at the ground levels. Although this would have been unempirical evidence it would have provided an indication as to

Key Controls	Internal Audit Findings
	<p>whether more formal monitoring should have been implemented.</p> <ul style="list-style-type: none"> - This development has been unusual for the Council and, therefore, the control environment would have been strengthened if responsibility for enforcement action had been assigned to a named officer who would be a single point of contact. For example, this officer could hold responsibility for monitoring of progress reports and escalation of issues and concerns.
<p><u>Enforcement action - monitoring of adherence with planning conditions</u></p> <p>This report concentrates on the role of the Monitoring Group and on the volume of material that was allowed in the permission.</p> <p>1. One of the additional notes within the permission was the applicant was invited to participate in a monitoring group. This Group, known as the Marlbrook Tip Monitoring Group, was to meet at least every two calendar months and consisted of representatives of the:</p> <ul style="list-style-type: none"> - applicant; - Lickey and Blackwell Parish Council; - Worcestershire County Council Highways Partnership; - Bromsgrove District Council; and - Ward Councillors. 	<p>Review has verified that:</p> <ul style="list-style-type: none"> - The Marlbrook Tip Monitoring Group was an informal Group that had no decision making powers with the balance of the Group being weighted towards interested stakeholders. - The Minutes from the Group meetings do not include actions. Without recording actions to be taken, owner, date for completion and status (that is, whether on-going or completed) there is a lack of clear accountability. - Reliance for monitoring the site was mainly placed on the information contained within the Faber Maunsell quarterly reports.

Key Controls	Internal Audit Findings
<p>The Group received progress reports, supplied by Faber Maunsell (AECOM Ltd), and were to resolve site and access issues arising from the development.</p> <p>2. Volume of material: planning permission restricted the volume of material to 373,369 cubic metres to be brought onto the site between the commencement and substantial completion of the development.</p>	<ul style="list-style-type: none"> - Queries in relation to the non submission of Faber Maunsell progress reports and the authenticity of the figures have been recorded in the Minutes; however, it is unclear how these concerns were escalated to the Council. That is, Internal Audit has been unable to find any evidence to support that Minutes were circulated to senior management. Accordingly, other than raising individual complaints it appears that the Group relied on the representatives from the Council to escalate their concerns. Until recently these representatives were not senior management and, therefore, there was an in-built risk that issues and concerns may not have been appropriately escalated and addressed. - It is acknowledged that concerns have been raised by the Group based on the perception that Faber Maunsell reports were based on information supplied by the site owner; however, there is no evidence whatsoever to suggest that Faber Maunsell have compromised their independence. - Meetings have not been held at the frequency required by the planning approval; however, this is not perceived as a key issue. <p>Taking the above into consideration and from a control perspective, there was an in-built risk that the Group would not be in a position to provide proactive monitoring which would have complemented the control environment.</p> <p>There was the likelihood of control failure based on the fact that expense prohibited the site from having a weighbridge. Accordingly, from a risk perspective, whatever method of measuring imported material was chosen it would probably not have been sufficiently accurate.</p> <p>As stated above, reliance for monitoring the volume of material imported was placed on the information contained within the Faber Maunsell reports. The</p>

Key Controls	Internal Audit Findings
	<p>fact that not all Faber Maunsell reports have been provided to either the Council or the Monitoring Group does not alter the widely held understanding that over tipping has occurred.</p> <p>However, there is a substantial difference in relation to the exact volume of excess material that has been tipped with the external consultant's report suggesting considerably more material being imported than the figure stated by the site owner. Regardless of this difference in volume of imported material, the next step is for senior management to decide the best way forward that meets the requirements of the Environment Agency under the powers contained in Section 10(b) of the Reservoirs Act 1975 and local residents.</p>
<p><u>Complaints by 3rd parties</u></p> <p>A Customer First Strategy was originally approved in March 2006. Since then the Council has had complaints handling arrangements in place which include management and operational responsibilities to provide a clearly defined framework.</p> <p>Additionally, monitoring mechanisms are in operation in relation to the collection, analysis and reporting of complaints data.</p>	<p>During the course of the investigation Internal Audit has reviewed more than 20 items of correspondence, both letters and e-mails, dated from February 2006 to August 2011, which have expressed concerns and are retained on the Marlbrook Tip files. Accordingly, these may be perceived as complaints.</p> <p>In discussion, the Customer First Officer has advised Internal Audit that there are a total of 9 complaints on the Customer Feedback database in relation to Marlbrook Tip. The difference between the number of items held on file and the number on the database suggests that correspondence has been treated as service requests rather than complaints.</p> <p>Quarterly reports in relation to the number and types of complaints are produced for senior management and, therefore, if all correspondence from interested stakeholders in relation to Marlbrook Tip had been input onto the database the concerns expressed may have been included within reports, escalated to senior management and addressed.</p>

Key Controls	Internal Audit Findings
	<p>It is acknowledged that the Head of Planning and Regeneration is aware of this issue and is working with the Customer First Officer to address.</p> <p>Additionally, Internal Audit's review has identified the following which may have contributed to misunderstandings and resulted in complaints:</p> <ul style="list-style-type: none"> - The 2006 planning permission superseded an earlier permission. - A Section 106 Agreement was attached to the previous permission which limited the number of vehicles delivering materials to the site. - When this permission was superseded the Section 106 Agreement did not apply to the new permission and, therefore, the emphasis changed from being based on the number of vehicles to the volume of imported material. <p>With the benefit of hindsight, the control environment would have been improved if the Council had provided updates to residents. For example, in relation to the change in permission and when the date of completion of importation of material was deferred. That is, proactively handled communications rather than reacting to complaints.</p>

6. Audit Opinion and Executive Summary

Based on the information which has been made available to Internal Audit, weaknesses in the design and / or application of controls in relation to the Marlbrook Tip site have been identified.

The Marlbrook Tip site is complex with successive planning permissions and significant stakeholder interest. Based on the history of the site, this was a high risk development with increased likelihood that there would be a failure to comply with all of the planning permission conditions that were included to control the development.

As this investigation was undertaken as a 'lessons learnt' exercise we have included recommendations that management should consider in order to strengthen the control environment. These include:

- Improving information to Members;
- Ensuring that monitoring arrangements are robust with clear accountability; and
- Utilising complaints as a tool to aid management decision making and improving service delivery.

The recommendations identified during the investigation have been prioritised according to their significance / severity in the table below. The definitions for high, medium and low priority are set out in the "Definition of Priority of Recommendations" table in Appendix A.

Priority	Number of Recommendations
High	2
Medium	3
Low	0

7. Recommendations

The issues identified during the investigation have been set out in the table below along with the related risks, recommendations, management responses and action plan. The issues identified have been prioritised according to their significance / severity. The definitions for high, medium and low priority are set out in the “Definition of Priority of Recommendations” table in Appendix A.

Ref.	Priority	Finding / Lesson Learnt	Risk	Recommendation
1	H	<p><u>Planning Approval</u></p> <p>Internal Audit has been unable to find any evidence to support that the Planning Committee were made aware of the significant resource that would be needed to robustly monitor compliance with the permission conditions.</p>	Breach of planning control.	<p>We recommend that, where a planning application may result in the approval including a significant number of conditions, that the Planning Committee is made aware of:</p> <ul style="list-style-type: none"> - the resources needed to effectively monitor compliance; - whether there are suitably qualified and / or experienced officers within the Council; and - if not, what outsourcing arrangements would be required.
Management Response and Action Plan				
		<p>It is not unusual for applications to contain a significant number of conditions and, for the most part, these do not present any difficulties from an enforcement point of view as long as they meet the tests of Circular 11/95 (<i>The Use of Conditions in Planning Permissions</i>). This states that conditions should be:</p> <ul style="list-style-type: none"> a) necessary; b) relevant to Planning; c) relevant to the development to be permitted; d) enforceable; 		

Ref.	Priority	Management Response and Action Plan (continued)
1	H	<p>e) precise, and f) reasonable in all other respects.</p> <p>The particular difficulty arising from the conditions attached to the Marlbrook Tip application relates not so much to the number of conditions (although there is a significant number) but the onus placed on the Local Planning Authority to monitor and enforce them. It would appear that in this case, resource implications, associated with the ongoing monitoring, may have been considered in that Condition 2 of the permission required the applicant to keep a log book to be kept which recorded date, time of arrival, load weight, etc. It was no doubt considered that this would be sufficient from a monitoring point of view although experience since has shown this was not the case.</p> <p>There also appeared to be significant reliance upon the role of the Monitoring Group. However, it should be noted that the requirement for the applicant to participate in this was only contained in a note attached to the Planning Permission. Such notes are for information/guidance only and are not enforceable.</p> <p>Notwithstanding this, it is accepted that any future permissions which contain conditions, which could give rise to significant resource implications, should be brought to the attention of the Planning Committee.</p> <p>Responsible Manager: Development Control Manager: Operations</p> <p>Implementation date: January 2012</p>

Ref.	Priority	Finding / Lesson Learnt	Risk	Recommendation
2	H	<p><u>Monitoring Arrangements</u></p> <p>It has been ascertained through discussion and review of relevant files that monitoring of the development has been undertaken by Enforcement Officers and via the Marlbrook Tip Monitoring Group.</p> <p>In relation to:</p> <ul style="list-style-type: none"> - Enforcement action: see finding 3 below. - Marlbrook Tip Monitoring Group: this was an informal Group that had no decision making powers. 	Breach of planning control.	We recommended that for any future similar developments and in order to provide clear accountability monitoring should be undertaken by officers and / or a group with suitable experience and expertise and the authority to make decisions.
Management Response and Action Plan				
<p>This recommendation overlaps with recommendation 1 above in that adequate resources need to be made available to carry out monitoring of conditions, either internally by Council Officers or by outsourcing. It is considered that establishing a Monitoring Group, similar to the one associated with Marlbrook Tip, should not be repeated as the Group has no decision making powers and only the Council can decide whether to take enforcement action.</p> <p>Responsible Manager: Development Control Manager: Operations</p> <p>Implementation date: January 2012</p>				

Ref.	Priority	Finding / Lesson Learnt	Risk	Recommendation
3	M	<p><u>Enforcement Action</u></p> <p>Through discussion and review of relevant files Internal Audit has identified that various officers have been involved in the enforcement action of the Marlbrook Tip site.</p>	Breach of planning control.	<p>We recommend that where a development is considered unusual (for example, due to size, longevity) responsibility for enforcement action is allocated to a named officer in order to provide a single point of contact.</p> <p>It is acknowledged that officers leave the Council's employment or may not be available for whatsoever reason; however, in such instances handover of responsibilities should take place.</p>
Management Response and Action Plan				
<p>Recommendation accepted: A named Officer to act as a single point of contact in complicated cases would be beneficial.</p> <p>Responsible Manager: Development Control Manager: Operations</p> <p>Implementation date: March 2012</p>				

Ref.	Priority	Finding / Lesson Learnt	Risk	Recommendation
4	M	<p><u>Complaint Handling</u></p> <p>During the course of the investigation Internal Audit has identified a difference between the number of complaints that have been included within the Council's Customer Feedback database and the number of items of correspondence held on file that may be perceived as complaints.</p> <p>It is acknowledged that the Head of Planning and Regeneration is aware of this issue and is working with the Customer First Officer to address.</p>	Ineffective use of database which may result in poor customer service.	We recommend that officers are provided with training to recognise a complaint and ensure that these are handled utilising the Customer Feedback database.
Management Response and Action Plan				
<p>Recommendation accepted: The Head of Service is already looking into how complaints are dealt with. It is important to distinguish between a complaint against the service as opposed to a breach of planning complaint which requires investigation.</p> <p>Responsible Manager: Head of Planning and Regeneration</p> <p>Implementation date: March 2012</p>				

Ref.	Priority	Finding / Lesson Learnt	Risk	Recommendation
5	M	<p><u>Communications</u></p> <p>With the benefit of hindsight Internal Audit has identified factors which may have contributed to misunderstandings and resulted in complaints. These include not informing residents of:</p> <ul style="list-style-type: none"> - the change in permission, particularly the change in emphasis from the number of vehicles delivering to the site to the volume of imported material; and - when the date of completion of importation of material was deferred. 	<p>Ineffective use of communications which may result in poor customer service.</p>	<p>We recommend that the Council gives consideration to providing updates to residents.</p> <p>It is acknowledged that such communications have a cost; however, this may be outweighed by the reduction in complaints.</p>
Management Response and Action Plan				
<p>Recommendation accepted in principle but it should be noted that how the Service communicates with residents, etc is also being looked at as part of Planning Transformation.</p> <p>Responsible Manager: Head of Planning and Regeneration</p> <p>Implementation date: June 2012</p>				

APPENDIX A

Definition of Priority of Recommendations

Priority	Definition
H	<p>Control weakness that has or is likely to have a significant impact upon the achievement of key system, function or process objectives.</p> <p>Immediate implementation of the agreed recommendation is essential in order to provide satisfactory control of the serious risk(s) the system is exposed to.</p>
M	<p>Control weakness that has or is likely to have a medium impact upon the achievement of key system, function or process objectives.</p> <p>Implementation of the agreed recommendation within 3 to 6 months is important in order to provide satisfactory control of the risk(s) the system is exposed to.</p>
L	<p>Control weakness that has a low impact upon the achievement of key system, function or process objectives.</p> <p>Implementation of the agreed recommendation is desirable as it will improve overall control within the system.</p>