



Notes of a Public Meeting regarding Marlbrook Tip

Tuesday, 29th November 2011, at 7.00 p.m.

Held in the Trinity Centre, Lickey Parish Hall,
411 Old Birmingham Road, Lickey, B45 8ES

PRESENT: Councillor J. A. Ruck (Chairman, and Marlbrook Ward Member)
Councillor Dr. B. T. Cooper (Marlbrook Ward Member)
Councillor C. B. Taylor (Portfolio Holder for Planning, Core Strategy,
Regulatory Services and Strategic Housing)
Councillor R. Hollingworth (Leader of the Council)

Mr. K. P. Dicks (Chief Executive)
Mrs. R. Bamford (Head of Planning and Regeneration Services)
Mrs. C. L. Felton (Head of Legal, Equalities and Democratic Services,
and Monitoring Officer)
Mr. I. Mackay (Senior Planning Enforcement Officer)
Mr. N. Hood (Planning Enforcement Officer)
Mr. L. Essex (Environment Agency)

Councillor John Ruck [JR] opened the meeting and introduced the Members and officers present.

Presentation

Ruth Bamford [RB] stated that the meeting had been arranged specifically for the benefit of members of the local community, to review what has happened at the Marlbrook Tip and to seek to determine a way forward. She briefly outlined the site history from approximately 1964, including mention of the planning application B/2003/0378 (referring to the "Remediation of former landfill site and subsequent creation of golf course"), through to the present day. She added that, throughout this period, the Environment Agency had also been involved in matters relating to the Marlbrook Tip land, and asked Lyndon Essex [LE] to explain the activities undertaken by the Environment Agency in relation to the site.

<p>Action Point #1: RB to make details of the planning history of the Marlbrook Tip site available on the Council's website.</p>

LE addressed the meeting and outlined the history of the site from the perspective of the Environment Agency in respect of activities carried out at the site with the approval / knowledge of the Agency. However, it transpired that for a short period of time, Liberty Construction had been operating without the necessary permit in place

and therefore without formal authorisation. Although the company registered new exemptions and permits with the Environment Agency, tipping limits appeared to have been breached. Tipping ceased around spring / early summer 2011.

LE also stated that Environment Agency teams continued to monitor the site for potential hazards resulting from previous landfill issues; for example, ground water pollution, leaking gas, etc. He added that the ponds / reservoirs on the site had been, and continue to be, correctly registered under the Reservoirs Acts.

RB again addressed the meeting and explained that things can go wrong in planning matters which necessitates the need for a planning enforcement team. As complaints began to be received again in connection with the Marlbrook Tip a number of steps were taken and measures put in place:

- (i) Kevin Dicks [KD], Chief Executive, was made aware of the situation and RB became more directly involved in the issue;
- (ii) the Council sought better liaison with the Environment Agency;
- (iii) a study was undertaken by A. D. Horner Ltd. to measure how much extra material had been deposited on the land, over and above that permitted by the planning permission. The study's findings indicated that over 1,000,000 cubic metres of material more than that allowed by the planning permission had been deposited on the land.
- (iv) the Council commissioned an independent internal audit of the process issues;
- (v) issues relating to the Marlbrook Tip have now been picked by the Council's Overview and Scrutiny Board; and
- (vi) regular discussions are undertaken between Members and officers, together with liaison with Worcestershire County Council and the Environment Agency.

Action Point #2: RB to make the A. D. Horner Ltd. report available on the Council's website.

KD then outlined the details of the independent Internal Audit Report, carried out by Worcestershire County Council's Audit Team, the final report for which was anticipated to be published in the very near future. He gave a summary of the findings contained within the report (refer to the presentation slides, available on the website), and gave a brief overview of the Overview and Scrutiny process which was also investigating matters relating to Marlbrook Tip as part of the Planning Policy Task Group.

In terms of seeking to resolve the issues surrounding the Marlbrook Tip site, RB again addressed the meeting and stated that work her needed to concentrate on rectifying the situation, rather than investigating how the situation arose in the first place. Furthermore, she added that it would be in the public interest to use whatever planning options were available to begin the long process of eventually closing the matter. However, whilst the approach to be taken would seek to improve the current planning situation in the wider public interest, planning legislation does not allow the imposition of significant fines for breaches of planning control and, importantly, there is always a risk in this sort of case that the site owner could commence bankruptcy proceedings and consequently walk away from the site. It was felt that taking no action at this time was not an option.

RB informed the meeting that her preferred method of taking matters forward would be to seek a retrospective planning application from the site owner, which would then draw the necessary comments from statutory consultees (for example, Worcestershire County Council, the Environment Agency, etc.) to condition any planning permission which might subsequently be granted. This would result in the Council being able to monitor developments at the site and control how the situation may be improved.

RB stated that alternative methods of moving forward had been considered but none were felt to be as expedient as the above mentioned retrospective planning application. For example, a breach of condition notice would, among other issues, only apply to the current site owner; therefore, this would be ineffective in the event that the ownership of the land were to change. Furthermore, significant amounts of material would have to be removed from the site, thereby exacerbating the problems encountered with large vehicles accessing the site and the related issues on the local road network. Service instead of an enforcement notice would no doubt lead to a similarly disruptive effect on local roads and enable the site owner to appeal against any notice, thereby taking the final decision about the land away from the Council.

Finally, RB referred to other planning issues arising out of the site; such as an alleged residential use of part of the site, garden encroachment, missing or incorrect tipping reports, and any other breaches of planning control which need to be addressed.

Questions received in advance

Before taking questions from the meeting, JR referred to a number of questions which had been submitted in advance which were included as part of the presentation slides. However, he stated that this had now become a complicated matter, involving a large number of agencies. Whilst the Council may justifiably feel as if it has been 'hoodwinked', it was seeking to address the issues to resolve the situation. The fact that water is running clear as it comes away from the site, there is little cause for concern that the land itself is unstable.

The questions received in advance were as follows:-

1. Has the Tip, in its current condition, been surveyed and assessed by a fully qualified Panel engineer to confirm the current design is safe in all respects, but specifically with regards to flooding and land slip?

RB: No, a detailed report has not been submitted, and neither is one thought to be required at the minute. The Building Control Manager has stated that the land appears safe and, therefore, it is not an immediate issue. In fact, during the recent heavy rainfall (3rd November), a site visit ensured that the land was secure.

LE: As the reservoir is registered under the Reservoir Acts, the site owners are obliged to comply with Engineers' Reports.

2. Is the Tip Secure in terms of fences and gates?

RB: Yes, it is believed that the tip is secure. The fences and gates may be seen to imply that there is a need for protection, but this is not the case.

3. We are told that the flood alleviation system on the site, needs manual intervention in bad weather is this true? If true, why was an automatic system not installed?

LE: The reservoir *is* the flood alleviation system on the site whereby surplus water is held back and released gradually via a spillway, rather than by way of a manual system.

Nigel Hood [NH]: The flood alleviation system was designed by an engineer from Worcestershire Highways in order to ensure that there would be no need for manual intervention during periods of heavy rainfall. If, as reported, there was someone on site, the details will be sought from the County Council, the Environment Agency and / or the landowners.

Action Point #3: Iain Mackay [IM] / NH / RB to obtain details of person allegedly on site during 3rd November 2011 heavy rainfall.

4. People are living on the site is that part of the planning permission and does this give any future rights to residential use?

RB: There is a 'live' enforcement case currently on-going which will be dealt with separately from the major issues which have taken place at the Marlbrook Tip site. It appears as though no enforcement officer has yet visited the site to ascertain that validity of the assertion that somebody is living at the site without planning permission.

Action Point #4: Iain Mackay [IM] to investigate reports of any unauthorised residential use of the site.

5. Did Liberty Construction comply with the terms of the Planning Permission and get written authority from BDC prior to the removal of any trees, hedges or shrubs. Did BDC give in writing their requirements for the suitable replacement specimens?

RB: There is some evidence that the application which received planning permission was initially being complied with. However, time has gone on and this is something of a past issue now. Looking forward, the Council needs to revisit what needs to be done, draft appropriate conditions in consultation with partner agencies and consultees and establish a replacement planting scheme, something which will also enhance the stability of the land.

6. Will all the roads around the tip be repaired? Who will pay for the repair work?

RB: Some resurfacing work has already been undertaken to Alvechurch Highway. Worcestershire Highways will carry out any other resurfacing works as and when required to fit in with their schedule of repairs.

NH: Having spoken to Worcestershire Highways, there appears to be no contribution forthcoming from Liberty Construction.

(During the course of a response being given to this question, District and County Councillor Peter McDonald commented that there is an agreement in place whereby notice may be given to Worcestershire Highways of any work that may be required; for example, some sections of the Birmingham Road; and that the County Councillor for the area - Councillor Sheila Blagg - had confirmed this via County Councillor Anthony Blagg.)

Action Point #5: NH to obtain details of any road resurfacing agreement from Worcestershire Highways / County Councillors Blagg.

7. Will there be specific and enforceable time constraints on any future planning permission?

RB: This question had been answered during the course of the presentation when considering the next steps to resolve the issues at the Marlbrook Tip site.

8. Why didn't Faber Maunsell continuously monitor the site and ensure conditions of Planning Permission were being adhered to? And why did they agree each wagon would only carry 7 Cubic metres?

LE: Faber Maunsell, Liberty Construction's appointed consultants referred to a vehicle tip load capacity of 7 cubic metres in their specification. However, this was far too low compared to the actual vehicle tip load capacity of somewhere in the region of 13 cubic metres, which explains why there is over tipping on the site..

IM: With the exception of two monitoring reports, Faber Maunsell did provide the information requested of them. However, it has been admitted that the 7 cubic metre specification was inadequate and, in any event, there should have been weighbridge facilities. Essentially, Faber Maunsell did what they had been asked to do but the problems arose from the fact that what they had been asked to do was flawed. In addition, when independently monitoring the material being deposited on the site, the Marlbrook Tip Monitoring Group had been set up on an informal basis, and had no real responsibility.

Mr. Roy Hughes

Mr. Roy Hughes [RH], a local resident whose property adjoins the site, then addressed the meeting and explained the problems he and other local residents had

experienced in connection with the Marlbrook Tip site. Among the points he raised were:-

- who, ultimately, is responsible - Liberty Construction, Faber Maunsell or the Council?
- appreciation and acknowledgement where it's due for RB's involvement in stopping the tipping operations and meeting to discuss matters on previous occasions;
- figures quoted in a letter from KD, penned by RB, in respect of the monitoring activities of Faber Maunsell;
- the questions raised by the Council over the validity of the findings in the independent site survey carried out by A. D. Horner Ltd.
- his own monitoring activities of vehicles carrying out tipping activities at the site, having seen 97 vehicle movements in the space of four hours on one occasion, and the lack of definitive figures in this respect from the Council;
- the activities of the enforcement officers of the Council and the resources made available to them to monitor activities on the land.

In response, RB confirmed she had previously met with Mr. and Mrs. Hughes to discuss their concerns, and to seek to reply to their questions. In connection with RH's comments, she stated that details concerning Faber Maunsell had already been explained during the presentation but that, in the event, they merely did as requested and that perhaps it was the way the request was worded that was wrong. Furthermore, she stated that the findings in the A. D. Horner Ltd. report could be open to misinterpretation but they do prove what is already known; that is, that there has been a large amount of over-tipping.

RH went on to seek assurances concerning the security of the site, an issue echoed by Mr. Ron Brown (also of the Marlbrook Tip Monitoring Group) following fire and sabotage to machines, which also destroyed many of the records, and expressed a lack of confidence in the monitoring records submitted. Finally, he commented that a retrospective planning application would mean that consideration would have to be given to the proposals as if nothing had been carried out on or to the land, yet the tipping had already resulted in deposited material which was already much too high. In response, the Chairman stated that the meeting needs to focus on methods of moving forward in terms of the planning aspects on the site.

Further questions

- The position with the Marlbrook Tip site is where it is and things have gone wrong. Does the Council feel any sort of embarrassment and contrition over the failures connected with the management of the land and is an apology forthcoming?

JR responding by saying that the situation has been rather chaotic and that there's no excuse for the lack of monitoring taking place at the site. However, the general consensus appears to be on finding a solution to the problems at the Marlbrook Tip site and to sort out the planning / development issues. The Council does wish, therefore, to apologise to the local residents for the way the situation developed.

KD: Apologies have been given in person where appropriate which one of the reasons why the independent Internal Audit Report into the activities at the site was commissioned in the first place.

- Many local residents are concerned about the security issues in connection with the site, especially where 'travellers' may gain unauthorised access to the land. Can the landowner be requested to secure the site to prevent 'travellers' moving in?

JR: We can ask.

RB: From recollection, the planning permission did not require the installation of high security fences. However, the Council shares residents' concerns over unauthorised residential activities taking place on the site.

- The grant of planning permission imposed 24 conditions which seemingly were never followed, and it is far too late to adhere to them at this stage. If an enforcement notice had been served at an earlier stage, the landowner would have been obliged to comply at that stage.

JR: This has not been denied but the situation is what it is now. The Council has to pick up the pieces and determine a way forward to resolve the issues, with the resources available to it.

- The Faber Maunsell reports indicated that there was only a small proportion of the authorised amount of top soil deposited on the land. Where is the rest of the top soil coming from so as to finish construction of the proposed golf course?

RB: Other permissions relating to the site allow for the provision of top soil on the site, but there is already a substantial amount already present. The addition of any further top soil would have to be subject to a condition on any possible future (retrospective) planning permission in conjunction with any re-arrangement of the land. All of these possibilities will need to be considered.

- The Marlbrook Tip Monitoring Group turned out to be powerless and ineffective, even though it may have been established informally. Could notice of their findings not have been taken at an earlier stage?

KD: The limitations of the Marlbrook Tip Monitoring Group were referred to during the presentation and these were noted in the independent Internal Audit Report. However, it is appreciated that the Monitoring Group was established with good intentions to oversee developments at the site.

- The site is not what it is supposed to be and the levels of the land need to be altered. Is it possible to move tipped material around and would it be possible to get Liberty Construction to do this? Has Liberty Construction complied with construction regulations and are Worcestershire Regulatory Services involved with the environmental health aspects of the site?

RB: At this stage, if Liberty Construction were to submit a retrospective planning application, it is difficult to predict exactly how it will propose to

complete development of the site to the satisfaction of all concerned. However, the Council and its partner agencies and consultees (such as the Environment Agency, the County Council, Worcestershire Regulatory Services [Environmental Health], etc.) will work with the applicant to determine what conditions are necessary, and this will involve comprehensive pre-application discussion in order to develop a submission which "ticks all of the boxes." This is why input is also needed from local residents in order to highlight key areas of concern. If an application was submitted, a further public meeting would be arranged to bring it to the attention of the local community.

JR: Ideally, conditions placed upon any retrospective planning permission would enable the Council to specify more clearly exactly what needs to be done.

- If the site is developed as a nine-hole golf course, the land levels now appear to be too high, with the result that golf balls could present a potential hazard over various types of land - highway, garden, residential, etc.

JR: This is something that would be investigated and land levels modified by condition if considered required / desirable.

- Can any flooding, as experienced at times during 2007, 2008 and 2009, be guaranteed not to happen again or, at least, to the same sort of extent, even though during the heavy rainfall on 3rd November 2011, some gardens were subject to further flooding?

LE: Concerns about flooding have already been allayed earlier in the meeting, with further action to be investigated concerning manual intervention of surplus water retention/release.

NH: There are plans to sweep out all of the stream in the location near to and around the residents who were left unaffected by the previous flood alleviation works. Further investigations will be made following the 3rd November downpour in the near future.

<p>Action Point #6: NH to investigate (i) proposed works to sweep out the stream to the rear of properties in Cottage Lane, Marlbrook; and (ii) alleged flooding problems following 3rd November 2011 heavy rain.</p>
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Concern was also expressed about the flood alleviation works only being adequate recently because there had been no substantial rain and the ponds/reservoir on the Marlbrook Tip site would therefore be relatively empty. Residents are not convinced that, during a prolonged spell of moderate/heavy rain, the flood alleviation works would actually work sufficiently well.

RB: The 3rd November rain was considered to be a "1 in 30 year event" which the flood alleviation works should be adequate to cope with. However, this will be investigated and any findings reported back.

Action Point #7: RB to investigate the adequacy of flood alleviation works to relieve flooding problems on land to the rear of 261 - 319 Old Birmingham Road, Lickey.
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- The Council seems to assume that no-one wants the excess tipped material removed from the site but there are some members of the local community who would exactly like to see this happen. Is it not possible for the Council to insist that the ground is impractical for use as a golf course?

RB: The land at the moment is so far removed from the permission it was originally granted and what could realistically be regarded as valid. The golf course issue is currently secondary to matters relating to the over-tipping (that is, the safety of the land, flooding problems and the contravention of planning laws). The security and safety issues need to be addressed first before anything can be done with the height levels of the land. Once these are addressed, further consultations will take place concerning the excess material deposited on the land.

- How long is the whole process going to take, from where we are now to a complete resolution to the problems? Local people have devoted a lot of time and effort to the various issues arising from the operations on the site and we feel that this should be formally recognised.

RB: A retrospective planning application was *expected* to have been forthcoming by September 2011. However, there are a lot of issues to be dealt with and consultees to provide specialist advice even before the application can be finalised. As soon as a planning application, another public meeting will be arranged in order to get the input of the local community.

JR: The Council is currently in consultation with the County Council as to which authority should deal with, and make a decision on, any application as and when it may be received. The input of the local community is going to be essential to the future developments which take place in connection with the site and what has been done so far (for example, the Marlbrook Tip Monitoring Group) is a valuable addition to the work undertaken so far, and what needs to be done in future.

In conclusion, Councillor Dr. Brian Cooper thanks the members of the local community for their attendance, along with the presence of the officers of the Council.

It was noted that a further meeting be arranged either upon receipt of a retrospective planning application from Liberty Construction relating to the Marlbrook Tip site, or for a date to be confirmed in March 2012, whichever was the sooner.

The meeting closed at 9.05 hrs.