Public Meeting regarding Marlbrook Tip

29th November 2011

Bromsgrove District Council
www.bromsgrove.gov.uk

Introductions - Councillors

- Councillor John Ruck – Ward Member for Marlbrook (Chair this evening)
- Councillor Dr Brian Cooper – Ward Member for Marlbrook
- Councillor Roger Hollingworth – Leader of Bromsgrove Council
- Councillor Kit Taylor – Planning Portfolio Holder

Introductions - Officers

- Kevin Dicks – Chief Executive Officer
- Ruth Bamford - Head of Planning and Regeneration
- Iain Mackay - Senior Enforcement Officer
- Nigel Hood - Enforcement Officer
- Mark Cox - Senior Practitioner Pollution (arriving later)

Introductions - continued

- Claire Felton - Head of Legal, Equalities and Democratic Services

- Andy Stephens - notetaker (the notes of the meeting and the powerpoint presentation will be placed on the website at http://www.bromsgrove.gov.uk/cms/environment-and-planning/planning.aspx

- Lyndon Essex - Environment Agency

Purpose of the meeting

- Some useful background information
- Provide information on the handling of the matter
- Respond to concerns and issues (ongoing)
- Discuss future action with regard to the site
- Ensure public involvement and communication (ongoing)

Some Site History

Application Ref.	Proposal	Decision
378/64	Birmingham City Corporation Tipping	Approved 20.07.64
91/0993	Replacement of damaged culvert with an open channel.	Approved 9.12.91
B/2002/0618	New drain culvert and balancing ponds – this allowed 58, 500 cubic meters	Approved 10.07.02
B/2003/0378	Remediation of former landfill site and creation of golf course (Condition 3 allowed 373,369 cubic metres)	Approved 25.01.06
B/2003/1490	Variation of Condition 3 of Planning permission B/2002/0618 (this variation allowed a further 36,500 cubic metres to application 2003/0618)	Approved 07.04.04

Environment Agency History

Planning Enforcement

- Planning enforcement is the process of investigating, monitoring, remedying and controlling unauthorised/harmful development and activity

Complaints – Key Issues

The planning enforcement team were receiving complaints from residents about:

1. Site Issues:

- Noise/dirt/traffic
- View
- Potential flooding
- Impossibility of meeting original proposal and implementing golf course
- Over-tipping

Complaints - Key Issues Cont’d

2. Council issues:

- Handling of the case
- Monitoring and Enforcement
- Failure to act sooner
- Trusting figures given by landowner

Council Actions so far

1. Direct involvement of CEO and HOS
2. Better liaison with Environment Agency
3. Commissioning of Study by AD Horner (end of March 2010)
4. Internal Audit Report (25 August 2011)
5. Item on Overview and Scrutiny agenda
6. Regular discussions between Members and Officers about what to do next and liaison with Worcestershire County Council and EA

Study by AD Horner

Conclusions:

•Volume of material added to site between Jan 2003 survey and AD Horner survey of April 2011 is 1,479,200 cubic metres

•Estimated volume of material that could have been brought to site is 373,369 + 58,500 + 36,500 cubic meters = 468,369 cubic metres

•This equates to 1,010,831 cubic metres of excess material. (1,479,200 - 486,369 = 1,010,831)

•This report is on the Council's website: (http://www.bromsgrove.gov.uk/cms/pdf/A%20D%20Horner%20Ltd%20Summary%20of%20Findings%20_survey%20112.pdf)

Internal Audit Report

Objective: To establish how over-tipping had occurred at Marlbrook Tip and to identify lessons to be learnt

Currently in draft status

Due to be confirmed and published ASAP

Summary of findings

1. Approval

- no evidence that Planning Committee were made aware of the significant resource that would be needed to monitor compliance with the conditions

2. Enforcement Action

- inadequate resources to provide the level of proactive enforcement monitoring that was required to effectively monitor compliance with planning conditions

Summary of findings Cont'd

3. Monitoring of adherence with planning conditions

- 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
- Lack of contact with senior management by Marlbrook Tip Monitoring Group
- There was the likelihood of control failure based on the fact that expense prohibited the site from having a weighbridge

Summary of findings Cont'd

4. Complaints

•Correspondence has been treated as service requests rather than complaints

•Failure to inform residents of:
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.

Overview and Scrutiny Process

A Task and Finish Group has already been set up and this will report back to the Overview and Scrutiny Board In February 2012

Moving Forward

- Recognise that investigations about how we got to this situation need to run their course.

- Parallel to this is important to begin to look at the planning options moving forward. What is the best thing to do now in the wider public interest?

Parameters for Planning Involvement

- The only purpose of any planning action is to improve the current planning situation in the wider public interest.
- Planning legislation cannot Impose fines with significant financial penalties e.g. max fine for Breach of Condition Notice is £1,000 (max) with a daily penalty (on subsequent conviction) of £100 per day (max) or any other sort of punishment on the site owner
- Stop the site owner from walking away from the site e.g. owner could file for bankruptcy

Planning options going forward – related to over tipping issue

- No Action – sometimes this is actually an option. But in this case more information and site improvements are necessary.

Planning options going forward

- Retrospective Planning Application. This is a statutory process with maximum stakeholder and community involvement. This seems unpalatable but planning acts allow for it and it is a requirement for the LPA to consider. A retrospective application could in simple terms be to retain the tip at present levels or some sort of variation. The applicant would need to submit a range of documentation to allow proposal to be evaluated e.g. site stability. It would not necessarily be approved.

Planning options going forward

- Breach of Condition Notice

- This is a notice asking the site owner to comply with the original planning condition
- If they don't it is referred to magistrates court but the penalty if convicted is low
- consultation would only be informal. (not usual)
- The "notice" goes with the person and not the land – so back to square one if ownership changes
- An advantage is that there is no right of appeal but could go to Judicial review if council is being unreasonable
- Obviously significant amounts of material would need to be removed and a planning justification is necessary.

Planning options going forward

- Enforcement Notice

- This is a notice asking the site owner to comply with the original planning condition
- If they don't it is referred to magistrates court but the penalty if convicted is higher than for a BCN, i.e. up to 20k or if heard at crown court an unlimited fine
- consultation would only be informal. (not usual)
- The "notice" goes with the land
- A disadvantage is that there is a right of appeal to PINS which can cause delays and who may not back the council position
- Obviously significant amounts of material would need to be removed and a planning justification is necessary.

Other planning issues

- Other breaches of planning control may require other courses of action
- E.g. condition about missing reports
- Alleged residential use on site
- Garden encroachment

Questions

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

Questions

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

Questions

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

Questions

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