



Notes of a Public Meeting regarding Marlbrook Tip

Tuesday, 13th March 2012, 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. J. Deeming (Chairman of Planning Committee)

Mrs. R. Bamford (Head of Planning and Regeneration Services)
Mrs. C. L. Felton (Head of Legal, Equalities and Democratic Services,
and Monitoring Officer)
Mrs. T. Lovejoy (Governance Lawyer)
Mr. I. Mackay (Senior Planning Enforcement Officer)
Mr. A. Ferguson (Central Operations Manager, Worcestershire
Regulatory Services)
Mr. M. Cox (Senior Practitioner - Air Quality/Contaminated Land,
Worcestershire Regulatory Services)

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

Presentation

JR opened the meeting and introduced the Council representatives and officers, together with the officers from Worcestershire Regulatory Services.

At the invitation of JR, Ruth Bamford [RB] addressed the meeting stating that she was happy to be present to respond to the local communities concerns. However, for the benefit of anyone who missed the Public Meeting held on 29th November 2011, or anyone else who may be new to the local community or issues surrounding the Marlbrook Tip, she repeated some of the historical issues relating to the site.

She also outlined the purpose for holding the meeting; that is, to continue to highlight the public concern issues, to continue to seek ways of addressing the planning-related and environmental-related issues, to discuss future actions and to ensure the continued involvement of the local community, as well as maintaining lines of communication with those householders directly affected.

In summarising the history of the site, RB referred to the three planning permissions relating to the site (B/2002/0618, B/2003/0378 and B/2003/1490) and the study undertaken by A. D. Horner Ltd. into the over-tipping. Furthermore, Claire Felton [CF] emphasised the undertaking given by the Chief Executive, Kevin Dicks [KD], and the Leader of the Council, Councillor Roger Hollingworth [RH], at the last meeting to "get to grips with" the situation which had arisen at the Marlbrook Tip site. In doing so, she referred to the Independent Audit Report which was reported to the Public Meeting held in November and stated that the recommendations contained therein were very important in seeking to address the concerns of local residents.

CF also referred to both the Overview and Scrutiny Task Group study into Planning Policy which, as part of the investigation, examined aspects of the issues raised as a result of the Marlbrook Tip situation, together with the concerns mentioned at the previous meeting in respect of the reports and calculations submitted by Faber Maunsell. She explained that, although the Council did not have a direct connection with Faber Maunsell, they were one of the organisations that the Council would need to be involved with in order to progress matters. She stated that the Chief Executive had already had one meeting with representatives from Faber Maunsell and a further meeting had been arranged for the near future.

RB acknowledged that many of these areas of work were still at an early stage but the involvement of so many organisations, agencies and individual third parties meant that many of the issues would need to be 'revisited' in due course. In addition, she stated that correspondence continued to be received from the local community, primarily relating to two main areas: (i) what has gone wrong and why; and (ii) what is Bromsgrove District Council going to do about the situation? In acknowledging the level of public concern, and recognising the comments made in the correspondence, the Public Meetings were the Council's most direct approach to ensure the involvement of local residents in seeking a solution which would be satisfactory to as many parties as possible.

However, in order to ensure that the site remained safe, RB explained that the opinion of environmental health, surveying, planning and landscaping professionals would have to be included as part of any remedial works, even if this did not quite produce the end result desired by a majority of the local residents. For example, the general consensus amongst local residents may be to contour the land to a certain preferred specification but, for safety reasons (in order to prevent any landslip or subsidence); a surveyor may reject any such proposals and therefore suggest a more suitable alternative. In addition, RB stated that in order to suitably address any landscaping issues, a minimal amount of additional material may have to be brought on to the site; for example, a better quality of topsoil. Furthermore, it has yet to be confirmed that the existing water management facilities on site are suitable to last long enough; say, into the next 10, 20, 30 or 40 years. Therefore, environmental management experts will need to have an input into the process of remediation, all of which will take time and considerable effort in order to maintain negotiations with all relevant agencies.

In terms of the planning permission granted under B/2003/0378, planning issues relating to the financial viability of the development of the site as a golf course would need to be looked at in fine detail. It was evident from the meeting that the local community are of the opinion that this is very unlikely. However, even though the public may be saying similar things in terms of moving forward, RB stated that there

is a lot to consider, it would take time to gather all the evidence together and for all parties to agree to a final solution.

Specific consideration was given to the environmental management and environmental health issues arising from the situation with the site. In this regard, Mark Cox [MC] addressed the meeting to explain his role in the process and stated that, from the outset, when the site was operating as a landfill site, all environmental matters were managed and monitored in the appropriate manner. He added that, from then until the present day, this environmental management and monitoring had been on-going and would continue well into the future. He added that some investigations would need to be made at some stage in the future with a view to ensuring a suitable capping layer on the landfill is maintained in order to prevent water seeping through to the waste material. However, in respect of concerns over the type of waste deposited on the site, he stated that documents had been provided by the applicant to demonstrate how they prevented contaminated material from being deposited. Although there was no conclusive proof, the evidence does indicate that this was the case and in view of the situation as a whole, it was appreciated by Worcestershire Regulatory Services and the Council that concerns about alleged dangerous materials being present were valid and genuine.

RB went on to explain what options were available to the Council to seek an eventual resolution to the current situation with the former tip site. She stated that, as far as she could tell, the owners of the site - Liberty Construction Ltd. - had a number of options available to them:-

- do nothing, except for continuing to carry out the required management and monitoring of the site to ensure that it remains in a stable condition (which could be achieved quite quickly);
- remove the excess material, apart from the tipping associated with the works undertaken pursuant to the Reservoirs Act, etc. (although this would mean further disruption to the local road network, as well as additional disturbance to local residents);
- carry out a minimum amount of re-contouring to achieve the most satisfactory outcome for the local residents, the Council and Liberty Construction Ltd.;
- "walk away" from responsibility for the site, leaving the District Council and Worcestershire County Council to perform the required remediation activities on the land, and pick up the bill for the related costs;
- continue with construction of the proposed golf course originally permitted under planning permission B/2003/0378, or seek an alternative viable proposal for the land as it stands at present.

However, RB considered that the best solution to the problems with the land, both in terms of planning issues and environmental matters, was to continue negotiations with all stakeholders in order to pursue a satisfactory outcome. Even with the options open to the Council to improve the current planning situation in the widest possible public interest - for example, either by way of a retrospective planning application, or enforcement action for a breach of planning control, or a combination of both - the Council considers that the most advantageous way of moving forward is to ensure all parties continue negotiations and communication.

RB outlined the advantages and disadvantages of the planning options available, stating that a retrospective planning application would not necessarily be approved

by the Council (a prospect which would be likely to take the decision out of the Council's remit in the event that the owner of the site appealed to the Planning Inspectorate) and that enforcement action could be a long and drawn out process with no guarantee of drawing matters to a close. Furthermore, she stated that any enforcement notice which could possibly be drafted would have to be specifically clear about what would be required of the site owner in order to adhere to the requirements of the notice. Again, such detail would extend the length of time the entire process took due to the technical involvement of other agencies; that is, any enforcement notice would require feedback from the different professional and consultants involved (such as Worcestershire Regulatory Services, the Environment Agency, Building Control and Drainage Engineers, etc.); there would also need to be formal discussions with Worcestershire County Council; and any Notice would require a significant legal input to ensure that it was specific, and not left open to differing interpretations.

In concluding the presentation, RB acknowledged that the issues relating to the site were very wide-ranging and complex. However, she stated that the Council wanted to keep the local community involved in what was happening and what was going to be happening with the site, and maintain the lines of communication in seeking to reach a satisfactory solution to the problems at the Marlbrook Tip site. She added that she was looking towards arranging another public meeting sometime in the autumn with a view to updating the local community with events at the site and decisions which had been made about its future over the summer.

JR thanked RB for the presentation and acknowledged the work she had undertaken in laying down the planning ground rules with a view to sorting out the problems with the site in due course. He then opened up the meeting for members of the public to ask questions of the Members and officers.

Jeanette Butler: Could the land be turned into a wildlife centre?

- JR replied saying that it would be up to the owner of the land as to what happens to it and, in all probability he would not wish to remove any of the soil which had been deposited. Any development would also need to be subject to planning permission, which means the local community would be unlikely to have much control, as to what the owner wishes to do with the land.

Bruce Fisher: What would the Council be doing if there wasn't such public involvement and concern about the land; that is, in the absence of any public pressure, what would have been done?

- RB responded by stating that the Council would take action in respect of any development outside planning legislation unless it was not expedient to do so. Marlbrook Tip would be considered to be a serious concern in view of the breach of planning control which had taken place and action would definitely be taken in order to resolve the situation whether the local community had got involved or not.

Ann Doyle: It's been over twelve months since the Council were alerted by local residents about the over-tipping. Has there been any meetings with the owner of the land as to what they intend to do?

- RB replied, saying that the landowner has been made aware of the cost of submitting a retrospective planning application, together with having regard to the issues which would need to be addressed to support any such application. At present, it appears that his favoured development remains the construction of a golf course with an appropriately-sized clubhouse facility. It is considered that enforcement action may lead to this if it became necessary; for example, if negotiations were too slow in resolving matters.

Keith Woolford: When does the owner of the land forfeit the right to apply for retrospective planning permission? Can we be sure the site is safe?

- RB responded by saying that, as long as the land remains in a safe condition, there is no time limit for the submission of a retrospective planning application. As to whether the site is safe, a Building Control Engineer who visited the site stated that the land appears to be safe, and work relating to the environmental issues and drainage on site is continuing.

Sue Hughes: The Faber Maunsell reports cannot be relied on as being necessarily accurate; how can the local community know that the site is safe?

- MC responded to say that Worcestershire Regulatory Services (formerly Environmental Health at the District Council) are continuously reviewing the monitoring results for the site and to ensure the interpretation of reports is carried out appropriately, together with continuous liaison with Faber Maunsell. This work will continue regardless of anything else taking place on the site.

JR added that, as far as the Council and the agencies involved can tell, the site is safe. Gas from the former landfill area is being controlled and, most importantly, water from the site is clean - the various pools on site are doing what they have been constructed to do. *[Note: Gas from the landfill area is not at present controlled but monthly monitoring is undertaken and that information is independently reviewed by Worcestershire Regulatory Services with a view to ensuring the site is managed appropriately.]*

Alan White: What trust can be put into the Members and officials from both Worcestershire County Council and Bromsgrove District Council? We keep hearing the same information with the result that we are losing confidence. Any penalties against the site owner are likely to have negative effects on the Council.

- JR stated that there are a number of professionals monitoring the site and are giving regular, detailed reports of what is happening on the site. If anything, the monitoring of the site now is more intense than it ever has been.

Reg Longshaw: When the monitoring of the drainage issues on the site is complete, would there not still have to be a physical presence of someone on, or close to, the site in order to operate the manual drainage valves?

- Iain Mackay [IM] reported that the water systems on the site are part of, what is now, a completed automatic system which will operate as and when needed when experiencing heavy rain, and this has been confirmed by an Environment Agency representative. JR added that at least one officer of the Council that he

knew lived in the Marlbrook area and who is also very interested in ensuring this matter is eventually resolved.

Peter Dexton: In its current state, the site looks as if it would be an ideal target for members of the travelling community. Is the site secure so that this is not allowed to happen?

- JR responded to say that the owner is responsible for the security of the site and the Council has been given evidence to believe that the site is, in fact, secure.

Geoff Vale: Has a figure been estimated as to how much the owner of the land has made from being allowed to tip 1.5 million tonnes of waste material on the land?

- RB replied by saying that the amount of money the landowner may have made from the tipping of material on the land is not a material planning consideration, so little thought has been given to calculating this. In fact, it has been suggested that West Mercia Constabulary and / or Her Majesty's Revenue and Customs should be involved but the Council, as a body, is unable to get involved in such civil disputes. The advice from the Council is for members of the local community to seek to involve these, or other similar, organisations.

Mervyn Lee: The Council appointed independent advisors to determine the amount of over-tipped material; what was their estimate as to how much material had been tipped over and above the tipping permitted under Plan Ref.: B/2003/1490? Surely the amount over-tipped is illegal and police should be involved?

- RB stated that a survey undertaken in 2003 before any material had been deposited on the site was compared to the results of a survey by A. D. Horner Ltd. in April 2011. The difference was reported to have been in excess of 1,000,000 cubic metres. JR added that, again, the involvement of the Police is something the Council cannot be drawn into but members of the local community may wish to write to the appropriate authorities.

Paul Batchelor: The tipping trucks have caused a lot of damage to local roads. Whilst the road surface in Rose Hill is about to be replaced, will the surface on the Old Birmingham Road be replaced in the near future?

- JR replied by saying that the resurfacing of the local road network is something which the County Council would deal with. Whilst the condition of the road as a result of the heavy traffic is appreciated, any resurfacing would be part of the County Council's maintenance schedule and suggested that local residents contacted County Councillor Mrs. Sheila Blagg for information.

Roy Hughes: Faber Maunsell is complicit in what has happened at the site - the basic mathematical errors in their report mean that they should play a large role in rectifying matters. Had the figures been calculated correctly, tipping should have ceased nearly two years before it did. How can we trust the Council, especially in the light of a number of Faber Maunsell reports which were not submitted?

- RB responded by stating that KD had analysed the reports submitted by Faber Maunsell and how their calculations have contributed to the situation that is now apparent. KD has already held one meeting with Faber Maunsell

representatives, and another one is planned in the near future, with a view to understanding the figures and calculations, and to seek an acceptable solution to the issues.

JR stated that he was aware of Mr. Hughes's involvement and that KD will reply in due course, and maintain an open line of communication. However, it has to be remembered that Faber Maunsell were contracted by Liberty Construction Ltd., not the Council; nonetheless, the Council were striving to find a way forward with these matters and all findings will be made publicly available in order that the local community can see work is on-going and in a positive direction.

Bruce Fisher: If the Council suspected that the Faber Maunsell data had been presented inaccurately, whether by accident or design, what can, or will, be done?

- JR replied by stating that everything that needs to be done will be done but, at this stage, it is too late to act pre-emptively. Facts as to what has happened are still being established even at this stage.

CF reiterated that many of the current problems were caused by the fact that Faber Maunsell was not contracted by the Council. Factual evidence of what the Council and Faber Maunsell plans to do does not exist because there was no contract between the two parties. Therefore, the Council was seeking to resolve the issues by negotiation because Faber Maunsell could, theoretically, refer the matter to their own legal advisers which, the Council considers, would prolong the entire process even more.

She went on to state that Faber Maunsell were a well-regarded multi-national company, and that it would be in the Council's interests to allow them to negotiate a solution with all parties involved. The Council has found itself trying to balance legislative requirements with the intentions of the companies involved, the advice of professionals in various fields of expertise, and the wishes of the local community in order to seek a satisfactory conclusion to a series of unfortunate events.

Ann Doyle: The Council were supposed to be the lead authority in trying to rectify the problems at the site, yet a number of Faber Maunsell reports were still missed. Why did it take the insistence of Mr. Hughes contacting the Council before it took the matter up with Faber Maunsell? What else are the Council not doing that they should be?

- RB replied by stating that Mr. Hughes had certainly acted as the catalyst to kick-start the Council into action following the over-tipping and has ensured that the Council will not lose it's focus on the current problems with the land; in fact, KD was absent from this public meeting due to being on leave, yet was maintaining communication with Mr. Hughes while away from the office!

CF added that the Council did not have a contractual relationship with Faber Maunsell and that the only way to manage the situation now was via negotiation. The Council was 'leaving no stone unturned' in an effort to now seek a satisfactory solution to the issues surrounding the land.

Fiona Griffin: Private companies exist to maximise their profits which mean that, unlike the Council, Liberty Construction Ltd. are not acting in the wider public interest.

- CF commented that managing the situation with Liberty Construction Ltd. could be difficult due to the differing nature of the company's business and the work of the Council. Similarly, Faber Maunsell would be concerned about their reputation, but the company also exists to make a profit. Liberty Construction Ltd. was obliged to have a business relationship with Environmental Health / Worcestershire Regulatory Services regardless of its relationship with the Council because of the wider public health / public interest issues. Whilst Liberty Construction might have different planning considerations in mind, all agencies now need to seriously work together to find out what might or might not work on the site to draw the matters to a conclusion.

Jenny Samways: Whose job was it to check the Faber Maunsell figures, and why were the figures merely accepted without question? This should not have been the task of someone in the local community.

- JR stated that the person (or persons) responsible was (or were) no longer working for the District Council.

John Cawthen: I have been living with large trucks passing within twenty yards of my front window for ten years which has been bad enough. If the land owner were to build a function room as part of the proposed golf course development, the disturbance would be likely to continue with additional traffic at very unsocial hours. The owner needs to fix the current situation and then leave well alone.

- RB stated that these and all similar comments are well noted, and will be borne in mind during the negotiations in seeking a solution.

Frank Graves: Is it the Council's intention for another 'Table Mountain' to be constructed? Surely, the landowner should sort out the problems with the site and then give it up.

- JR responded by stating that, initially, there were two courses of action available: (i) to remove a quantity of deposited material (and endure the consequences of what that would entail; such as additional heavy traffic, more road damage, etc.); or (ii) accept the material that has been tipped and make the best of the situation. Either way, the 'balancing act' needed to be maintained for a compromise to be reached to the satisfaction of all parties. Part of the 'balancing act' was also to ensure that the landowner does not walk away from the negotiations. Needless to say, the Council are trying to find a long-lasting, satisfactory solution as quickly as possible. However, there are certain things the Council can do and certain things that it can't.

RB added that, from the general feeling and approach of the meeting, enforcement action seemed to be the most favourable way forward in order to sort the matters out.

Susan Hartley: The prospect of depositing more material to 'cap' the landfill element of the site is terrifying. I do not trust the landowner, and I do not trust the Council to correctly monitor the situation.

- MC stated that he was not sure whether there was enough clay-based material on the site to 'cap' it but, in any event, the amount required would be carefully calculated in conjunction with the Environment Agency. RB stated that she had referred to more material being brought onto the site merely for landscaping purposes; for example, to get a sufficient-grade of topsoil.

John Williams: Could any enforcement action lead to Liberty Construction Ltd. taking action against Faber Maunsell for providing incorrect calculations as to the amount of material transported and deposited?

- RB stated that she would consider the implications of this question for future reference. CF stated that any enforcement notice would need to be explicitly specific about what Liberty Construction Ltd. would be required to do. If the company appealed the enforcement notice to the Planning Inspectorate, the Council's flexibility would be removed from the situation as a whole; hence, the careful 'balancing act'.

To close the meeting, JR thanked members of the local community for their attendance and invited any further comments to be submitted in writing to RB. In conclusion, Councillor Dr. Brian Cooper thanked the members of the local community for their attendance, together with thanking the officers of the Council for their attendance at the meeting.

The meeting closed at 8.30 p.m.