



Notes of a Public Meeting regarding Marlbrook Tip

Monday, 24th September 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 R. J. Deeming (Chairman of Planning Committee)
Councillor C. B. Taylor (Portfolio Holder for Planning, Core
Strategy and Regulatory Services)

Mrs. R. Bamford (Head of Planning and Regeneration Services)
Mr. M. Cox (Senior Practitioner – Pollution, Worcestershire
Regulatory Services)
Mr. D. Kelly (Acting Principal Planning Officer)
Mrs. A. Scarce (Note taker)

Councillor John Ruck (JR) opened the meeting and introduced the Members and officers present.

Presentation

Ruth Bamford (RB) explained the purpose of the meeting and provided background information for those members of the public who had not attended any of the previous public meetings. She explained that the presentation would cover lots of areas which were of concern and had been raised at those meetings. RB emphasised that it was important to continue to hold these meetings in order to share information and maintain lines of communication with those affected by the issue.

RB confirmed that she was satisfied that there had been over tipping at the site and that Kevin Dicks, the Chief Executive was in discussions with Faber Maunsell in this respect and the discrepancies in the figures they had provided. It was reiterated that this was a difficult position as Bromsgrove District Council (BDC) did not have a contract with Faber Maunsell and therefore could not take specific action against them.

It was confirmed that following a meeting in June 2012 Aecom (Philip Smart) had provided Liberty Construction with a quote for a further topographical survey, as it had been disputed that over tipping had taken place and Aecom had started to prepare a technical note as to the potential reasons for the

apparent discrepancy in the figures between the recorded vehicle inputs and an assessment of the topographical survey of 2011. It is understood that Liberty Construction are committed to this work, but as yet AECOM are still awaiting further instructions.

RB explained the role of Mark Cox (MC) from Worcestershire Regulatory Services (WRS) in supporting the planning department in respect of environmental issues and ensuring the discharge of any conditions attached to an application. This was to ensure that condition 15 of the Marlbrook Tip application was complied with. It was important that future actions on the site did not compromise or hinder its environmental management. MC confirmed that he had been liaising with the landowner and there had been recent reviews of the environmental factors and a schedule of amendments agreed.

Recent test results had shown some inconsistency and MC had asked for several bore holes to be upgraded. This was originally disputed by the Landowner/Aecom, but after further tests also provided inconsistent results, the Landowner agreed to new bore holes being drilled alongside a selection of existing bore holes. It was explained that the bore holes measured gas generated within the site itself and had a life expectancy of around 5 years. Three months of results from the new bore holes were currently overdue. The Landowner had been sent 2 written reminders that these were outstanding, in line with WRS procedure and if these were not forthcoming formal action would be taken against the Landowner as he would be in breach of Condition 15. RB confirmed that Condition 15 had, until recently, been satisfactorily met. However if the appropriate information was not received this would be classed as a breach of that condition. Residents asked why this was not classed as a breach back in April when the first set of results was not received, RB said BDC was trying to be reasonable and expected to receive the information they had asked for and would now deal with the matter formally if necessary.

RB gave details of the planning issues which had been identified and the planning issues moving forward as discussed at previous public meetings. In respect of the areas of concern moving forward, which RB had been agreed to action and report back on, these were how the boundary of the site would be treated, consideration of the green belt policy, the appropriate end use of the site and its financial viability, general development management policies and the removal of the temporary buildings. RB informed the public that the aim of tonight's meeting was to provide as much information as possible in respect of those areas, but unfortunately she had not received all the details and it may therefore be useful to have a further meeting in December.

RB reported that she had commissioned a report from Golfmarnoch Limited into the financial feasibility of using the site as a golf course. Golfmarnoch had walked the site on an initial investigation and collated a series of digital photographs. The presentation included several slides which had been compiled by Steve Marnoch a director of Golfmarnoch Limited combined with information provided by Mark Smith of Smith Leisure one of the UK's few chartered surveyors specialising solely in UK golf courses and related

property/business matters and Alan Wallace, Director of P Casey Environmental with experience in waste management for over 40 years (Steve Marnoch had worked with Alan Wallace in developing several golf projects involving landfill sites).

The salient points of the report from Golfmarnoch Limited were:

- Golf is a mature market and it was generally agreed that there was an oversupply
- In the current economic climate banks were generally unwilling to lend for golf projects.
- Usage of golf courses was down and the competition was high
- Costs of golf have decreased, which was good for golfers, but bad for golf course owners.
- A 9 hole golf course was not a good investment unless linked with a driving range/practice facilities.
- It was generally accepted that there should be one course to 20-25,000 people – Bromsgrove is circa 100,000
- Local competition was tough, if not already saturated, with local facilities comprising courses of various sizes, driving ranges and practice facilities, both private and public pay and play courses.

In respect of Liberty Construction RB said to the best of her knowledge they had no experience or track record in golf course construction or management and currently the site was not fit for a golf course development without significant improvement and alteration. In conclusion the site in its current condition was not fit for purpose as a golf course without significant investment circa £750,000.

RB went on to explain that Halcrow had been commissioned by BDC to produce a report regarding the stability of the slopes of the site, surface water drainage and landscaping and vegetation. However, she was disappointed in having to report that Halcrow had not completed the information that was needed, for this meeting.

Halcrow had reviewed the existing ground investigation data, carried out initial slope stability analysis and recommended the drilling of two 10m deep boreholes to provide soil strength and groundwater information. The stability analysis would be completed following the results of the boreholes. The timescales for the completion of this work was, that the boreholes should be completed by mid-October, the test results for the anticipated clay soil was mid-November with the interpretation and stability analysis anticipated in mid-December.

Halcrow was assessing the suitability of the surface water drainage measures at the site (including the black material which was currently in place – it was noted that the condition of this had deteriorated in some places) and it was anticipated that the initial proposals for the long-term surface water drainage solution would be completed by the end of October and any drainage

requirements identified as a result of the stability analysis would then be incorporated into these proposals once available in mid-December.

Finally, Halcrow were undertaking an assessment of the landscaping options at the site and had sampled topsoils/surface soils at 24 locations across the site and had scheduled laboratory testing in accordance with BS to assess the suitability of the soils for vegetation growth. These tests included pH, organic and nutrients content. The results of the soil sampling would be available in early October and the report in respect of seed mixes and planting for the site would be ready by the end of October.

RB explained that despite her stressing to Halcrow that all this information was needed they had failed to produce it in time and apologised for this. RB then provided information on the realistic options moving forward which included the issue of a breach of condition notice in respect of the environmental monitoring issues and the preparation (which were underway) in respect of a planning enforcement notice regarding a range of issues. The Council would only have one opportunity to serve an Enforcement Notice so it was therefore important that this covered every issue, which would take time but was currently underway. RB said the necessary information should be available in December and suggested a further public meeting be arranged thereafter.

JR thanked RB for the presentation and opened up the meeting for members of the public to ask questions of officers and Councillors.

Sue Hartley: From what has been said it appears that Faber Maunsell have not accepted the inaccuracies within the figures (which led to over tipping) and have done nothing about it. How long will we have to wait and is there any future in pursuing this?

- RB The Enforcement Notice will include this, they would have the right to appeal against this if they disputed that over tipping had taken place. Currently the Chief Executive was dealing directly with Faber Maunsell, she was not involved because it was not a planning issue. She was happy with the report from A D Horner and that over tipping had taken place. The Council cannot make them do a further study to prove that over tipping has taken place as we have no contract with them.

Anne Doyle: An appeal would put them in the frontline and not be appropriate publicity for such a big company.

- JR the Enforcement Notice will resolve this.

Claire Marsh: Are we talking to the owner of the site about any of this?

- JR this is the action we have decided to take.
- Yes in terms of a possible application RB stated that it is up to the owner as to what happens.

Martin Fox: I have not attended any of the previous meetings, has the decision been made not to remove the over tipping?

- RB the advice was an assumption that the material is kept where it is. Although it was fair to say that there was mixed views on this. Some people wished it to be removed others were pleased it was not, as they did not want to face the thought of the lorries situation again, so it would stay where it was unless there was a good reason for it not too. If the consultants say remove it, then this would be looked at again.
- JR & BC The important thing was to ensure the safety of the site and that the drainage of the site as there had been flooding in the past. They had been reassured that currently the site was safe, now it would be up to the legal team to resolve the matter and residents must be assured that everything that can be done will be done to resolve the matter.

Mike – Ashgrove Close: Was the Council aware that in mid-summer water had come off the tip and come into Ashgrove Close? Houses were not flooded but gardens had been.

- RB Would investigate this and get further details at the end of meeting.

Baden Carlson – Hon Secretary, Lickey Hills Society: With landscaping it had been hoped that the tip would become part of the natural landscape, as Councillors and officers can you give your commitment to this, whether it is as a golf course or the site is restored to good arable land?

- JR we cannot give that commitment, but hope, until we have had the full report. The Council's concerns and those living in the vicinity are that it will become an attractive area. It is not known if more top soil will be needed.

What happens if Liberty Construction walk away?

- RB if they walked away and the Enforcement Notice was in place and listed everything that needed to be done at the site, a report would go to the Council listing what needed to be done together with costings for that work and it would have to decide whether it was in the public interest for money to be spent on some or all of that work.
- RB it is likely that the Council would ensure that the site was safe and secure and would undertake any work that was necessary to achieve this.

What happens if the site is sold?

- RB If the Enforcement Notice has been served and the site is sold, the Notice goes with the land and the purchaser would have to ensure that the work listed in the Enforcement Notice was carried out.

Councillor Peter McDonald: What confidence can residents have in the Enforcement Notice and when will it be served, will it go before the Planning Committee?

- RB although not an exhaustive list, the following would be included within the Enforcement Notice – improving the visual amenity, ensuring site stability, landscaping and planting, surface water management, environmental management issues, boundary treatment, appropriate end use, removal of temporary buildings, general development management policies.
- JR this is why it is important that we get the details of the Enforcement Notice right.
- RB the Council does not have to consult with the public in respect of the Enforcement Notice; however she would be happy to share the content with the public. The Enforcement Notice must be very specific and crystal clear in exactly what needs to be done and if movement of the soil needed to take place these instructions would need to be very clear as would the instructions in respect of landscaping and planting. This would include what seeds and the ratio in order for the landscaping to be sustained. This was just a flavour of what would be included within the Notice.
- JR the Enforcement Notice can have a criminal liability to it, so it is important that everything is included and we get it right.

Roy Hughes: The surface water management needs urgent attention, there were large tares in the lining, and more water is getting underneath. Is this a problem waiting to happen?

- RB the consultants have said this is not currently a problem and the lining can last between 5-15 years.

Alan White: It seems from tonight's meeting all things are assumptions of what you would like to see and nothing has been forthcoming from Liberty Construction to help? When this first started the owner of Liberty Construction said he could take us to where he had built a golf course. Now it would appear that there is no willingness from him to help and if he sells the site it would all start again. What powers do you actually have?

- RB the Enforcement Notice is served with anyone who has an interest in the land, the new purchaser would therefore be aware of the liability relating to the Enforcement Notice.

There appears to be no willingness to co-operate with anyone?

- RB does meet with the site owner, who appears to be still under the impression that the site will eventually be a golf course. The consultant has said otherwise and that it would not be economically viable and perhaps he needs to employ a planning consultant to put forward a suitable use for the site. The Council would need full facts and figures

to ensure that anything that was considered for the site in future was economically viable.

Sue Hartley: What if he sold the site to a building developer?

- RB it was not the Council's planning approach to allow development on greenbelt land unless very special circumstances are presented and considered acceptable.

What would happen if he sold the land to the travelling community?

- RB just because they own the land doesn't mean they have the right to use it for whatever purpose they like, the underlying principle would be the same and the Enforcement Notice would still stand.
- MC during problems with the site the owner was complying with conditions and had been co-operating. . Whoever owns the site would have liabilities as a landowner.

Has anyone costed out the essentials listed within the Enforcement Notice and if so, what would be a rough estimate of the cost?

- RB this has not been done as yet

Keith Woolford: How much has been spent to date?

- RB to date approximately £10,000 on consultants, with the possibility of another £15,000. WCC have offered to pay for half of this to date.
- JR legislation has recently changed and part of the responsibility now comes under WCC.

Sue Hughes: We are paying it as Council Tax payers.

Keith Woolford: When the Enforcement Notice is prepared, what time frame is there for the owner to complete the work?

- RB couldn't answer this until the Council know the exact detail of what needed to be done, the Council has to be careful as it does not want the owner to respond by saying what is expected is unreasonable.

Anne Doyle: If there is a list of actions we are asking him to complete, then they all must need to be done, 90% of people will think within a year he will have walked away. So if these are essential would BDC carry out the work instead?

- JR stated that the Council has to be realistic; it could pick up responsibility of the site and take legal action if the owner walked away. The Council has an obligation to ask the owner to complete the work in the first instance.

As a Plan (b) if some of the essential work is affordable would it not make more sense to pay the owner £1 for the site and the Council to take responsibility and do the essential work?

- JR agreed this could be looked into, but it should be remembered that there is the responsibility for the ongoing upkeep of the area and we need to go down the legal routine initially.
- RB it is likely the owner is still involved as it is hoped that there was still value in some sort of development on the site.

Peter Dexton: Was a representative of Liberty Construction invited to attend tonight's meeting?

- RB the owner was aware that the meeting was going ahead but had not specifically been invited, but would be in future if deemed necessary.

Roy Hughes: When the survey was completed in June, why didn't the Council enforce the planning conditions and tell the owner to remove the soil?

- JR because that was not what people wanted.
- RB this could have caused damage and without knowing the issues that this might have caused it was felt it would be more appropriate to work with what was left.
- JR if the soil had been taken away incorrectly it could have caused more problems.
- RB under legislation (Reservoirs Act) the owner had to deal with certain of the issues.
- MC under Condition 15 monitoring is required to be undertaken and could be reviewed at anytime in the future, when a borehole is at the end of its life span and suspect data is received.

Retrospective planning permission would in effect be agreed when the Enforcement Notice was issued?

- RB that is correct, but only if everything in the Enforcement Notice was complied with.

Why has progress not been made?

- RB as previously explained matters were still in the hands of the consultants, who had been unable to adhere to the ridged timescales they were set.
- RB was happy to hold another meeting in January 2013 to provide a further update. She had met with the Barrister today to begin drafting the Enforcement Notice, but it cannot be completed until all the information was available, which was now likely to be mid December.
- JR when the Enforcement Notice has been completed and due process adhered to, notification would be put on the website.

Sue Hartley: Whilst we understand that we must be careful in preparing the Enforcement Notice, if the owner sells the land tomorrow and there is nothing to show that this has been done, could the owner say this?

- RB the Enforcement Notice can be served at anytime irrespective of who owns the site.

Could the land be sold without the Council being informed?

- RB a search would be carried out when the Enforcement Notice was ready to be served.

Do you know for a fact that Liberty still owns the site?

- RB this has not been checked recently.

John Cawthen: Sometime ago there was plans for a large function room on the site and there was concern that this would go through, was there any news on this?

- JR no application has come forward, if it had it would have gone before the Planning Committee.

Councillor Peter McDonald: Having attended the last 2 public meetings, it was clear there was a breach of planning conditions. When can we expect the Enforcement Notice to be served?

- RB yes an Enforcement Notice was required. The Enforcement Notice could go to the Magistrates Court, if it was referred to the Crown Court where an unlimited fine could be imposed. Being fined would not necessarily make the owner complete the work, but this would take the matter out of the Council's hands and into that of the court. The owner could appeal against the Notice which would cause delays and take the Council on a further journey.
- If the owner were to be declared bankrupt the site would refer back to the Crown.

Sue Hughes: Do you now have sufficient enforcement officers in place?

This is a priority case

Paul Batchelor: Residents were told the roads would be resurfaced, this has not happened, yet other roads in the district, in a better condition, have been resurfaced. What is the current position in respect of this?

- JR a contribution was agreed between the owner and WCC; the resurfacing of roads is a county issue and needs to be taken up with them as it is outside of BDC's hands.

JR said he felt it was not necessary at the moment to hold a further meeting until more information was available, but that the website would be kept up to date with any necessary information. Some members of the public said they would prefer to have regular updates via a meeting as they did not feel website updates would cover everything and not everyone had access to it. JR understood this but said information must be available to pass on in order to make the meeting worthwhile.

RB confirmed she was happy to hold a further meeting when all the information was available and to share the content of the Enforcement Notice with interested parties.

JR and BC thanked members of the local community for their attendance and comments, together with thanking officers of the Council.

The meeting closed at 8.37 p.m.