



**Bromsgrove**  
District Council  
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This document summarises and responds to comments made to the Planning and Regeneration Service since about November 2011.

Comments received are divided into two summary tables:-

Table (i)      Comments about the overtipping and related service issues.

Table (ii)     Comments about the future planning use of the 'site' going forward.

There is an overlap in comments made so Officers have provided generic responses on each point made in the final section of this document.

Each generic response has been given a paragraph number which is found beside each comment on the summary tables.

If you have any further comments or queries, then please email my PA, Nigel Boot, on [n.boot@bromsgroveandredditch.gov.uk](mailto:n.boot@bromsgroveandredditch.gov.uk).

Kind regards.

Ruth Bamford  
**Head of Planning and Regeneration**

**Summary Table (i) - Comments about the overtipping and related service issues**

Comments	Officer Response
Same letter sent to everyone who complained about the tip.	Correspondence 1.1
Told a meeting would take place in September; but did not take place until November 29th.	Correspondence 1.2
Why did Councillors refuse to believe that at times wagonloads considerably in excess of the permitted 75 per day were dumping on site?	Monitoring of tipping 2.2
If the Councillors did not believe the evidence from residents, why did they refuse to survey the tip in 2008 when strongly asked to in order to establish the facts?	Monitoring of tipping 2.3
It is in the public interest to investigate the financial circumstances surrounding Mr McIntosh/Liberty Construction.	Financial circumstances 3.1
BDC need to “grow a backbone”: it is sending out a message that it is an incompetent Council and people can get away with illegal development.	Professionalism 4.1-4.2
Duration of the works has been excessively long; residents need to know what the proposed remedies will be and that all works will be completed before the end of 2012. Would like to be given a final date for completion of work.	Duration of work 5.1
Council should contribute in part, if not full, to provide an acceptable scheme as they are responsible for the error. It is irrelevant that the current representatives of the Council do not consider themselves responsible and blame their predecessors and use this as the reason why they are not responsible to rectify the situation.	Professionalism 4.3-4.4

<p>The Council has failed abysmally to monitor the tip at every level - Councillors and Officers - a fact which has been obvious to the residents for a number of years.</p> <p>The tip operator must have received additional income for overtipping 1 million cubic metres but no one seems to have bothered to calculate the amount. Why has the Council not asked West Mercia police to investigate the matter to establish whether any criminality has taken place.</p> <p>There are rumours that the tip operator has another tip in Worcs; the Council should alert local Councils to avoid similar situations.</p>	<p>Monitoring of tipping 2.2-2.3</p> <p>Financial circumstances: investigation 3.2</p> <p>Miscellaneous 6.1</p>
<p>Purchased existing property in good faith, on the understanding that this was "green belt land", that the tipping had reached its final allowance and that a golf course would be the final outcome. Despite this it transpired that more waste was tipped, breaching planning conditions and the land level has grown with the peak being at an unacceptable height.</p> <p>Have invested a substantial amount of money into the property, which is a worry as the final outcome and the delay in reaching that outcome have a direct effect on the value of property. Stand to lose a significant portion of the value of this investment which is unacceptable as the situation could have been avoided.</p> <p>The long drawn out process of determining who is responsible for decision making in this matter is unacceptable.</p>	<p>Future of the site 12.12</p> <p>Duration of works 5.1</p> <p>Property prices and compensation 7.1</p> <p>Duration of works 5.1</p>
<p>There has been 5 years of constant noise and dust to produce a complete eyesore which will have clearly affected the value of my property. I would like to know if I can receive compensation for this, or at least a reduction in Council Tax due to the complete incompetence of the relevant local authority in dealing with this.</p>	<p>Property prices and compensation 7.1</p>

<p>The Council has expressed its wish not to see Liberty Construction punished. I find it hard to understand this stance, since the company had Planning Permission to tip a certain amount of material and knowingly exceeded this.</p> <p>At the time of the granting of permission, Liberty Construction would have calculated its return on investment, by way of tipping charges. By overtipping, by 272%, the company has exceeded its return by an enormous amount. It is imperative that a fine or penalty is made for this blatant disregard of the planning permission. Perhaps a fine in the order of £5.00 per cu metre of excess spoil could be levied. The revenue generated could then be used for landscaping of the site and future security measures.</p>	<p>Enforcement 8.1-8.2</p> <p>Financial circumstances 3.3-3.4</p>
<p>Due to the extent of the abuse of the planning permission by the owner, appropriate action should be taken against him and his consultant appointed to monitor the tipping activities. An appropriate fine would obviously be the cost to remove all the material over and above that which he was legally entitled to tip, after all he has made a massive profit from this illegal activity.</p> <p>The Environment Agency should be implicated, as ultimately it was their decision to declare (no doubt manipulated by Faber Maunsell) the stagnant pool to the northeast of the site a reservoir, therefore giving the green light to the Council to allow works under the Reservoirs Act even though about 90% of the site drained away from the 'reservoir'.</p> <p>It is imperative that high profile legal action is taken to prevent Bromsgrove becoming a 'soft target' for other unscrupulous landowners and consultants in the future.</p> <p>After suffering excessive noise, dust, loss of views, destruction of local roads and verges, roads covered in mud and consequently blocked highway drainage, essentially because the council failed to</p>	<p>Financial circumstances 3.4/ Enforcement 8.4</p> <p>Professionalism 4.2</p> <p>Property Prices and Compensation 7.2</p>

<p>manage and monitor the situation, there should be some form of compensation to local residents though it is difficult to know what is appropriate retrospectively.</p>	
<p>Bromsgrove Council have not acted in the interest of local residents on this issue and they must now act quickly and decisively in order to begin to restore confidence in them.</p>	<p>Professionalism 4.5-4.6</p>
<p>In an article in 'The Village' Councillor Ruck is quoted as saying '- it [Marlbrook Tip] was unstable- it is (now) safe', how can you be so sure?</p> <p>In July 2007 a very large amount of rain (150mm) fell on Pershore in 24 hours resulting in damaging floods. A very large amount of soil (first layer clay rich) has been tipped on to pre-existing slopes, in the event of 150mm of rain falling in 24 hours over the tip are your advisors confident no slippage will take place?</p>	<p>Safety 9.1</p> <p>Safety 9.1</p>
<p>I am concerned about a few of the underlying themes whereby the council seem reluctant to a) investigate the errors made in the planning and monitoring process, b) impose any fiscal penalties, and c) enforce the original terms of the planning application.</p> <p>A) Due to the fact that all parties (BDC, Faber Maunsell, EA) were clearly made aware of the abuse of the planning consent (including misleading volumes of each load reported by FM) at a very early stage in the tipping operation, their decisions cannot be considered as errors but as condoning the illegal activities. This surely demands further investigation to discover whether there was criminal intent?</p> <p>B) Surely there must be a way of recovering the cost of remediation of the site to the condition stated under the original planning consent. After all this would not be a fine, just the cost of compliance. Also, as a large part of the 'blame'</p>	<p>Criminality 10.1</p>

<p>seems to be (rightly) directed towards FM and their creative volume calculations, as a leading consultancy practice, they will carry professional indemnity insurance to cover eventualities such as this whereby their 'errors' have substantial cost implications.</p> <p>C) The wider implications that by merely accepting a retrospective planning application from the contractor will potentially open the floodgates to this form of blatant abuse across the district as a whole. Unscrupulous contractors will pick their targets based on the outcome of events such as this and it is vitally important that the council takes appropriate action. With the reduced number of landfill sites available and greatly increased cost of tipping, we should not forget how much of a lucrative business this is.</p> <p>There are short term cost savings that could be made by simply granting retrospective planning permission but the long term interests of the affected residents should be the primary consideration.</p>	<p>Retrospective planning 11.1-11.5</p> <p>Retrospective planning 11.2</p>
<p>My main complaint is over the excess amount of spoil that the tip owner has had the benefit of in terms of substantial amounts of extra money that he was not entitled to due to the excess tipping over and above the permitted levels. At well over a million tonnes this would amount to several million pounds of extra money made by the tip owner illegally. In addition the quantity surveyors who oversaw this project on behalf of the tip owner, and presumably BDC, should be held to account for allowing this event to happen. This raises the question of whether the tip owner should pay the excess amount back to BDC and in turn the community in compensation for putting up with all the years of disruption with heavy traffic, dirt and dust.</p> <p>There should certainly be a financial investigation to establish who has benefitted from the huge amount of money that has been made from this project at the expense of the local community and in particular BDC.</p>	<p>Financial circumstances 3.1</p> <p>Property prices and Compensation 7.2</p>

	Financial circumstances 3.1
<p>We know that is not going to be an easy solution to the problems at Marlbrook Tip, but we do feel it could have been avoided.</p> <p>I rang and wrote several letters complaining about the height of the land and we were informed that it was being carefully monitored by Faber Maunsell. Tipping was also going on in the early hours of the morning because we could hear the lorries vehicle reversing sound between 1am and 2am in the morning. The dust during the summer has been appalling and the impact of hosing down the site has been minimal.</p> <p>There is flooding in our top field and we have lost views over the countryside. The soil should be lowered to the correct approved height.</p> <p>The residents complained on numerous occasions about continual tipping and no action was taken by the Council. We will be attending the meeting on the 13th March.</p>	<p>Monitoring of Tipping 2.1 - 2.3. Enforcement 8.2 – 8.5.</p> <p>Enforcement 8.5 Future of site 12.3 and 12.9 Safety 9.1</p> <p>Monitoring of Tipping 2.1 - 2.3.</p>

## Summary Table (ii) - Comments about the future planning use of the site

Comments	Officer Responses
<p>An enforcement notice must be issued: Anyone else flouting planning regulations would be asked to put matters right; Liberty Construction must comply as well and put matters right.</p> <p>BDC should use the notice to claim back some of the expense.</p> <p>The penalties may be small but at least the company will have the enforcement notice against them.</p> <p>We would hate trucks to pass us again but we would hate the ruined view and worry of floods/landslides even more.</p> <p>Have suffered a permanent loss of view over part of Lickey Hills and devaluing of property. Who will compensate?</p> <p>The excess material dumped should be removed by McIntosh in accordance with planning enforcement</p> <p>The site should be made safe regarding slippage and flooding. The planting of trees may help in achieving this.</p>	<p>Enforcement 8.4-8.5</p> <p>Financial circumstances 3.3-3.4</p> <p>Enforcement 8.6</p> <p>Safety 9.2</p> <p>Property prices and Compensation 7.1-7.2</p> <p>Enforcement 8.4/Future of the site 12.1</p> <p>Safety 9.2</p>
<p>Disappointed that Council do not support removal of waste, but do favour contouring. Contouring without waste removal is likely to raise the land in areas which are currently at an acceptable height resulting in a final project which is inadequate and unacceptable. Some residents are opposed to lorries visiting the site for land removal but it is not fair to appease these residents and penalise others.</p> <p>The land at r/o my property should not be altered.</p> <p>Prepared to undergo inconvenience of lorries revisiting site if a fixed</p>	<p>Future of the site 12.1-12.2</p> <p>Future of the site 12.3</p> <p>Future of the site 12.2, 12.2b, 12.4</p> <p>Duration of works 5.1</p>

Summary of comments made



<p>time period can be stipulated and supervision provided by local authority to monitor works.</p> <p>Land should continue to be used for sheep grazing.</p> <p>Appropriate professionals must be consulted regarding stability, flooding and drainage and guarantees provided in writing by the Council.</p> <p>Anxious about flooding as home has flooded in past and result in a loss of £200,000.</p> <p>Concerned home will depreciate in value.</p> <p>Concerned over safety of property as no appropriate surveys have been conducted.</p> <p>Want privacy assurances regarding the land use.</p>	<p>Future of the site 12.1, 12.5</p> <p>Safety 9.1</p> <p>Safety 9.1</p> <p>Property prices and Compensation 7.1-7.2</p> <p>Safety 9.1</p> <p>Future of the site 12.4</p>
<p>Is it possible for the Council to purchase the tip from the Crown for a nominal fee?</p> <p>Is it possible for the Council to acquire the tenancy?</p> <p>Is it possible for the Council to compulsory purchase the site on health and safety grounds?</p> <p>If the Council could acquire the site, waste could be redistributed on the site and possibly to adjoining land i.e. there is a large field next to the tip which fronts onto the old Birmingham Road. This field is low lying and bowl-shaped and could accommodate much material to create a better contoured landscape. The owner does not seem to cultivate this field and may be persuaded if recompensed.</p> <p>Oppose another planning application from the tip operator.</p>	<p>Future of the site 12.6</p> <p>Future of the site 12.6</p> <p>Future of the site 12.7</p> <p>Future of the site 12.13</p>

<p>Oppose a golf course – we would end up with a party/club house with the attendant nuisance.</p> <p>Oppose another 3 years of lorries taking the excess material away – creating traffic havoc and wrecking the roads.</p> <p>Maybe the tip operator could transfer the rights to the Council and/or make a contribution to better landscaping if allowed to leave the excess material on site.</p> <p>Council should secure the tip to prevent a child drowning in the pool or travellers occupying it.</p> <p>Perhaps the Lickey Hills could take it over for the park rangers to monitor.</p>	<p>Future of the site 12.8</p> <p>Future of the site 12.9</p> <p>Future of the site 12.10</p> <p>Safety 9.2</p> <p>Future of the site 12.11</p>
<p>I would like assurances that the ground levels to the rear of 1 Middle House Drive will not be raised.</p> <p>I would like the peak of the hill to be lowered and soil removed from site within a specified period of time.</p> <p>I would like an appropriately qualified and well experienced professional to examine the whole site, including the pools of stagnant water, to determine the effectiveness of the drainage provision and for any appropriate action to be carried out.</p>	<p>Future of the site 12.2, 12.2b, 12.4</p> <p>Future of the site 12.2, 12.2b, 12.4</p> <p>Safety 9.1</p>
<p>A golf course is not commercially viable. Please do not allow him to get away with tipping more topsoil, the course will never happen.</p> <p>A driving range may be viable, but I think all the owner really wants to do is get licensed premises on Alvechurch highway. I have seen a number of golf courses built previously, and the course comes first, with revenue generated from this to help build a clubhouse to replace</p>	<p>Future of the site 12.8</p> <p>Future of the site 12.8</p>

<p>the temporary portacabins etc.</p> <p>I wish he could be made to move all the excess tipping, but know this is not viable.</p> <p>I think he should be heavily fined for blatant breach of planning, this will force him to voluntary liquidate his company. Ideally the local authority can then gain the land and maintain as public open space going forwards. I know this is at a large cost, but I think it is worth it overall.</p> <p>Alternatively, allow a driving range, single storey clubhouse, no licence, just a cafe etc, no living accommodation, no further topsoil required just landscaping of existing. Insist on a large number of trees being planted, to replace ones destroyed and to improve look of current eyesore. Insist on improvement to the perimeter of the land. I think this would make enough money to maintain the land as required.</p> <p>It is very obvious that people are living in static caravans on the site; this must be stopped immediately, it will be a habitation licence next!! Security is required to stop travellers accessing the site etc, but this is only a secure gate/fence.</p>	<p>Future of the site 12.9</p> <p>Financial Circumstances 3.3-3.4</p> <p>Future of the site 12.1</p> <p>Enforcement 8.7</p>
<p>The revenue received by the landowner, for the tipping, should be used to make good the land by way of grassing and contouring the site so that it looks like countryside and then maintained by them.</p> <p>The promise of a golf course was obviously deceit.</p> <p>I would not want to see more traffic and the disruption again to remove the over tipping.</p>	<p>Future of the site 12.8b</p> <p>Future of the site 12.9</p>
<p>Regarding the future of the site, I would like some guarantees from the Council that the area will again become green belt and that, due</p>	<p>Future of the site 12.12</p>

<p>to recent abuse and the unknown nature of the material tipped at the site, no planning applications for building will be considered in the future.</p>	<p>Future of the site 12.13</p>
<p>The site is in the green belt and forms a southern extension of the Lickey Hills. It now needs to be quickly returned to a state that reflects the outstanding position this holds in an area of Great Landscape Value surrounded by unspoilt Worcestershire countryside.</p> <p>We wish to have the contouring, and our view, restored to that which we would have been entitled had the planning permission been properly executed and monitored. This is to ensure Liberty Construction Ltd comply with green belt policy and in order to restore the visual amenity and overall openness of the site.</p> <p>This should be achieved by insisting that Liberty Construction Ltd conform to the terms of the planning permissions granted to them.</p> <p>They should quickly remove a quantity of material equal to the excess amount shown by the AD Horner Report. The site should then be contoured in line with the golf course design as submitted with the planning application.</p> <p>The Council should then appoint, and Liberty Construction Ltd should pay for, independent agents who will monitor and actually verify the amounts leaving the site.</p> <p>No new material to be brought on to the site until the existing excess of over 1,000,000 cubic metres is removed. If it is claimed that more topsoil is needed, then an equal amount of existing material must be removed prior to any new material being brought on to the site.</p>	<p>Future of the site 12.12</p> <p>Future of the site 12.2</p> <p>Enforcement 8.5</p> <p>Future of the site 12.8-12.9</p> <p>Future of the site 12.14</p>
<p>It would take many more months and maybe years of heavy lorries and great inconvenience to reverse the damage that has been done. However there certainly needs to be some safeguards that need to be</p>	<p>Future of the site 12.1</p>

<p>adopted as to the present state of play.</p> <p>Is the huge mound now created completely safe from future collapse and landslide and hence the properties which back onto the tip free from any threat – what guarantees can you make on the issue and will these be backed up by evidence of civil engineers and other experts?</p> <p>Are there any other long term affects on the environment? How will it affect the value and sale of the properties in the future?</p> <p>What penalties are to be levelled at Liberty Construction for blatantly breaking the terms of their agreement?</p> <p>Are we still to expect a 9 hole golf course – we notice that all signs advertising it have now been removed.</p> <p>Can you please clarify the current position with regard to the properties that purchased land from Liberty in order to extend their gardens seemingly without change of use planning permission to alter the land use to garden. We did not join in with this exercise and have not been consulted on the issue. If we ultimately choose to do likewise what is the position with regard to the additional land should we decide to sell our property?</p>	<p>Safety 9.1</p> <p>Safety 9.1</p> <p>Financial circumstances 3.3</p> <p>Future of the site 12.8-12.8b</p> <p>Miscellaneous 6.2</p>
<p>I am keen to get feedback on what other residents in the area have put forward for ideas and suggestions for the site, and also what the council itself deems best for the future.</p> <p>There has been talk of a nine hole golf course been developed, a Park for local community among other suggestions. I was keen to hear of these ideas and would also like to see something similar for the site.</p> <p>Can you come back to me with possible other ideas as I am keen to</p>	<p>Future of the site 12.1</p> <p>Future of the site 12.8-12.8b</p> <p>Future of the site 12.1</p>

hear from yourself, and maybe what others have suggested?	
For the Council to try and enforce removal of the excess with a view to returning the site to its original state would be futile and very costly to all parties concerned. Whilst some local residents may wish this to happen, they certainly wouldn't be overjoyed at the return of all the many daily lorries causing mayhem and chaos during the course of removal.	Future of the site 12.9
Leave the site as currently landscaped to return to its natural beauty.	Future of the site 12.15
Liberty Construction to complete cosmetic repairs to the exposed culvert/drain away at the rear of properties in Ashgrove Close.	Miscellaneous 6.3
Carry out effective replacement of all the dead trees & shrubs that Liberty tried to re-plant two years ago.	Future of the site 12.16
Liberty Construction to complete the Golf Course in its entirety, to an agreed realistic timescale, thus enhancing the area for all.	Golf course 12.8-12.8b
The site has been left in a disgusting condition and is a scar on the area of some scenic beauty forming part of the Lickey Hills landscape.	Future of the site 12.1
All work has now stopped on site, but contouring should be completed especially along the eastern elevation fronting the Old Birmingham Road whilst BDC decide the next course of action.	Future of the site 12.2
The view from my back garden is improved compared to what it was several years ago which was mounds of earth resulting in some flooding. I'm glad to say that this has now been rectified. However I still feel more could be done to improve the site further. Some trees have been planted in the now grassed area at the rear of my house which I approve of and initially did improve the outlook. However I am concerned that all have since died. Is this as a result of the toxins in	Future of the site 12.17

<p>the earth? I feel that the council should investigate this and make the area safe should it require it.</p> <p>Currently the land is used for sheep grazing which I am happy with but I would not approve of any alternative use of this land. It should remain as pasture land with no buildings. The only improvements should be the planting of trees and shrubs to improve the outlook.</p> <p>I totally disagree with the possibility of a golf course being on this site. I feel that local residents have endured enough and we should now be allowed to enjoy our outlooks without any fear of soil tipping or building work.</p> <p>I urge the Council to make the site more appealing and in keeping with the countryside.</p>	<p>Future of the site 12.5</p> <p>Future of the site 12.8</p> <p>Future of the site 12.1</p>
<p>No one has taken any notice of suggestions that have been put forward in the past. As long ago as 1999 I wrote to Bromsgrove District Council asking that the land be taken over by them and used for a nature\conservation area to compensate for other areas of 'Green Belt' that are disappearing under housing developments.</p> <p>Since the tipping began we have been subjected to the noise and dust from the activity of the trucks both on and off the site. It is a welcome relief to now enjoy our garden without the constant banging of tailgates and clouds of dust. The last thing we want is the return of the trucks.</p> <p>As long as we can be reassured that the site is safe from slippage and flooding we would prefer that it be turned over to nature. There is an abundance of wildlife in the area, badgers, deer, foxes, birds. Now that activity on the site has stopped the land behind our property has become alive with visiting birds, lapwings, fieldfares, redwings, goldfinches, buzzards etc.</p>	<p>Future of the site 12.1</p> <p>Future of the site 12.9</p> <p>Safety 9.1/ Future of the site 12.15</p>

<p>We do not feel that any action should be taken against residents who have bought land from 'Liberty Construction' in order to enhance their outlook, in fact we were almost there ourselves until the digger broke down! Maybe they could also apply for 'Retrospective Planning Permission'.</p> <p>We would like to see the planting of a 'Jubilee Forest' with a 'Folly' at the highest point dedicated to Bromsgrove District Council!!</p>	<p>Future of the site 12.16</p>
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## **Officer Comments**

### **Correspondence**

- 1.1 When dealing with representations, the planning department provide professional and thorough responses. As a number of representations regarding Marlbrook Tip have expressed very similar and general concerns, it was deemed appropriate to provide standard responses where necessary. All representations, however, were considered individually and as it was felt that a standard response would not discount or disadvantage any of the residents to which it was sent, the practice was justified. Given that a public meeting was also forthcoming, it was possible for any matters not covered satisfactorily within the response letter to be raised and addressed in more detail at the meeting.
- 1.2 Given the complex and evolving nature of this case, timelines have inevitably shifted. Although this is not ideal and may seem undesirable, any decisions to move timelines have not been taken lightly and have been based on the benefits of doing so. Where timescales have had to be put back, the soonest viable alternative has been taken. With regard to the change of the public meeting, the date was changed to ensure that important information that was not available in September could be accessed and passed on to members of the public. Significantly, the Internal Audit would not have been available in September and as such it would not have been possible to give members of the public these findings or answers to questions about the management and handling of the situation. Whilst we endeavour to reach a conclusion to this matter as soon as possible and to meet existing deadlines, we want to ensure that every aspect of the case has been covered and that members of the public are receiving the latest and most pertinent information.

### **Monitoring of tipping**

- 2.1 Bromsgrove District Council are committed to securing a satisfactory resolution. The Internal Audit report has served to highlight areas for improvement.
- 2.2 The Council did not actively refuse to believe over-tipping was taking place, but, as outlined in the Internal Audit, entrusted both the Faber Maunsell reports and the work of the Monitoring Group, as in the conditions of the permission, to flag up any problems. There was no precedent for such a case at the time, so there was no method for dealing with the monitoring of such an application in place. The decision to impose a condition requiring Liberty to submit information through Faber Maunsell was deemed reasonable at the time of granting, and there was no reason to presume that this method would be unsatisfactory. Where doubts were eventually expressed by the Monitoring Group over the Faber Maunsell reports, these were not always successfully escalated to Senior Officers or appropriate Members within the Council and thus never gained the necessary coverage or weight.

- 2.3 It seems that complaints from the Monitoring Group were not escalated to senior management. As such, the need to survey the site was not seen as necessary as everything was seen to be in order. These issues have been thoroughly highlighted by the Internal Audit Report.

### **Financial Circumstances**

- 3.1 It is not within the Council's jurisdiction to investigate the financial circumstances surrounding the case, nor is it possible to provide comments on the financial circumstance regarding the case. If further information is required about these matters, it would be best handled by the police or Inland Revenue.
- 3.2 It is not possible for the Council to calculate any profit from over-tipping and as such the priority has been on dealing with matters that relate specifically to the planning consent and regulations for which we do have jurisdiction. We have taken measures to address those areas which are within our remit, including an internal audit report and overview and scrutiny exercise.
- 3.3 There is no legislation that the local government can call upon to impose a financial penalty on the tip owner.
- 3.4 Although the Council has a limited range of enforcement options at its disposal, these tools do not impose significant financial penalties. Only if any enforcement conditions are not met may a fine be payable and this would be to the courts rather than the Council. (see Enforcement)

### **Professionalism**

- 4.1 Bromsgrove District Council are aware of the problems of public perception caused by the handling of the Marlbrook Tip case. However, the new administration have been swift and responsive in stopping tipping and works at the site and beginning formal investigations with a view to both highlighting areas of failure in order that these may be addressed and prevented for all future cases, and assuring a satisfactory conclusion to the current case. By working with residents and the local community to address their concerns and develop a satisfactory strategy to take the site forward, Bromsgrove Council are committed to establishing positive relations once again and undoing the negative impressions brought about by this case.
- 4.2 The planning department is committed to ensuring that all development that takes place is appropriate and lawful. Any development that is found to be unlawful is subject to thorough investigation and enforcement. Illegal development will not be tolerated and measures will be taken to prevent and remove it where found.
- 4.3 There is no sense of shirking responsibility and the Council fully accept responsibility for resolving the matter.

- 4.4 Until the future strategy of the site is determined, it is not possible to comment on any contribution of Bromsgrove District Council to any given scheme.
- 4.5 The decision to launch an internal audit investigation was taken in order to identify the failings of the Council in the handling of this case in order that they can be prevented from recurring in the future. The recommendations that have been proposed in the areas of planning approval, monitoring arrangements, enforcement action, complaint handling and communications will all contribute to improving the Council's planning system and are currently being implemented by the Head of Service.
- 4.6 Although there are areas of improvement that will be developed to ameliorate the planning system, it is pertinent to stress the exceptionality of this case. This is not to detract from the shortcomings in the case's handling but to suggest that this case which has reflected badly on the department as a whole is not indicative of the department's general standards.

#### **Time taken to seek a resolution**

- 5.1 The time taken has been far from ideal, but the situation has been greatly progressed in recent months. The decision to review, inspect and audit the case has inevitably prolonged the matter, but this was deemed to be a necessary and important process for the resolution of the case. It is hoped that an efficient resolution can be made and we will press for this to come as soon as possible. However, it is important that an acceptable planning outcome is secured and as such imposing any deadlines may result in further problems and an unsatisfactory resolution. It is therefore integral that although we work to resolve the matter as quickly as possible this is not at the compromise of quality or satisfaction. It may be unrealistic to complete works by the end of 2012, in light of the consultation with experts and professionals that needs to be conducted first and then a judgment made over the future strategy. Timescales will not be clear until further decisions as to the future strategy have been made, but the matter is one of significant urgency and will continue to remain as a top priority.

#### **Miscellaneous**

- 6.1 At the time of this report, there is no evidence of the tip operators having another tip in the local area. Should information reach us to the contrary we would liaise wherever necessary, but ultimately the judgement would rest with the relevant local planning authority.
- 6.2 A fence can be erected and the land enclosed that has been purchased without needing planning permission. However if the new land is used for garden purposes, this will effect a "change of use" which will then require planning permission. The Council will be preparing a clear letter to residents on the matter in due course.
- 6.3 Water management issues on the site need to be considered when decisions are made about the future of the site.

### **Property prices and compensation**

- 7.1 There is no evidence at this juncture that properties have lost value. The question of compensation is something the Ombudsman would take into account in dealing with any complaint.
- 7.2 Although we recognise, and sympathise with the residents, the Council is not offering compensation. However, we are, and will continue working hard to ensure a satisfactory planning strategy for the site which we hope will give residents some recompense.

### **Enforcement**

- 8.1 The Council has limited powers of jurisdiction and the process of enforcement is discretionary, determined on a case by case basis in terms of the best way to remedy breaches of planning permission. Different tools and methods will be used in different instances but ultimately their use is solely to secure compliance. The Courts have no powers other than to impose a financial penalty where there is no compliance with any enforcement notice.
- 8.2 Bromsgrove Council are keen to see the situation at Marlbrook Tip resolved but there is no legislation that local government can call upon to punish for overtipping. From a planning perspective all that can be done is to make land use planning decisions going forward that are in the wider public interest.
- 8.3 Planning enforcement does have a limited range of tools that could be utilised in this case. However, should a Notice be issued, it may be subject to an appeal. Fines are a form of punishment but will not be put towards remediation works; the money will go to the Treasury.
- 8.4 Decisions on the specific future strategy for the site are still yet to be made and all options are being considered in order that we can reach a satisfactory and beneficial conclusion for all. Therefore only hypothetical arguments about the various enforcement tools can be made at this stage.
- 8.5 There is the option to use an Enforcement Notice. However, it is now impossible for the owners to meet the original planning permission because of such things as the flood alleviation works which required the alteration of the site levels to ensure excess water does not adversely affect adjacent land or properties and is legally enforceable by other agencies. There will be limits as to what the Enforcement Notice can demand. It may be an option is to require the removal of some excess material from the site, but before such a request is made it is necessary to consider the effects of such action. Furthermore, it is possible that Liberty Construction could appeal an Enforcement Notice so the requirements of the Notice would need to be reasonable and achievable. The use of an Enforcement Notice will be given due consideration as we consider the most appropriate and beneficial course of action.

- 8.6 The decision to use any Enforcement Notice will be based on planning grounds as to whether it would bring about the best conclusion to the situation on site.
- 8.7 The Council currently has an open enforcement case dealing with the alleged residential use on site and will continue to monitor this case.

### **Safety**

- 9.1 Bromsgrove District Council is commissioning a survey to be undertaken into the site at Marlbrook Tip. This study will address issues such as stability, safety, flooding and topography and will provide an overall picture of the current state of the site and help determine a future strategy for taking the site forward. At this stage, therefore no information can be given on the issues of site safety. However, the survey will be available as soon as possible. The survey could inform any Enforcement Notice.
- 9.2 The issue of safety will be paramount to the future strategy of the site.

### **Criminality**

- 10.1 It is not within the Council's jurisdiction to launch or conduct a criminal investigation into those involved. If further information is sought from the public into these matters, it would be best handled by the police or inland revenue.

### **Retrospective Planning**

- 11.1 In light of the case at Marlbrook Tip, the Council is committed to ensuring that this incident is not repeated. The internal audit investigation as well as the Council's own examination of the case have identified potential factors that may have contributed to the situation at Marlbrook Tip as well as areas that need improvement in order to prevent a recurrence of this case. The Council is now much more informed and mindful about the ways in which to handle and monitor such cases and will be better placed to treat any future applications or development of this kind and to prevent a similar situation from occurring.
- 11.2 Decisions on the specific future strategy for the site are still yet to be made and all options are being considered in order that we can reach a satisfactory and beneficial conclusion for all. Therefore only hypothetical arguments about retrospective planning permission can be made at this stage for the purposes of this document.
- 11.3 Any retrospective planning permission will be subject to a thorough assessment and imposition of planning conditions.

- 11.4 Any retrospective planning permission given to the site will allow the Council to impose controlling conditions on the site which will ensure that the unlawful development of the site is in some way remedied and brought in line with the Council's demands.
- 11.5 Whilst retrospective planning permission may be considered as an invitation for other abuses of the planning system, the Planning Acts specifically allow for such applications. The Council's improved awareness of, and systems for handling, monitoring and enforcing, such cases places us in a better position to prevent the recurrence of such situations in the future.

### **Future of the site**

- 12.1 Decisions on the specific future strategy for the site are still yet to be made and all options are being considered in order that we can reach a satisfactory and beneficial conclusion for all. The strategy of contouring has been raised and will be given due consideration.
- 12.2 The suggestion of re-contouring has been raised and will be given due consideration.
- 12.2b If land is re-contoured then by implication there will be changes to the topography of the site. Any decision to re-contour will address which areas should be lowered or heightened.
- 12.3 Unfortunately, whatever route is taken, it is likely to be the case that some people are going to be displeased with the outcome, however this decision will not be based on wishing to appease one group more than another but will be an informed decision on the merits of the various options.
- 12.4 Whilst we wish to improve the situation for all residents, it is not possible to address individual expectations and demands. Although such considerations will go into the decision-making process, ultimately the strategy taken will be based on the best solution for the site and as such not all individual needs will be met by this.
- 12.5 The end use of the land cannot be determined at this stage.
- 12.6 If the site was for sale and it was deemed appropriate for the Council to purchase it, then a report setting out the pros and cons of any action would be considered and a decision made at that time.
- 12.7 The matter of redistribution has been raised and will be given due consideration, as discussed above.
- 12.8 The matter of a golf course on site has been raised but the end use of the land cannot be determined at this stage.

- 12.8b Planning permission was given for a golf course, however the original conditions of the permission have not been met so a retrospective planning application would be required for a golf course. It should be noted that, in general terms, the existence of a valid planning permission does not mean that development will necessarily occur.
- 12.9 The matter of waste removal has been raised but it is unlikely that significant amounts of material will be removed from the site. The question of weighing up the benefits of removing the waste from the site against the disadvantages of the means of removing the waste (lorries, traffic, noise etc) need to be addressed.
- 12.10 If the site was for sale and it was deemed appropriate for the Council to purchase it, then a report setting out the pros and cons of any action would be considered and a decision made at that time.
- 12.11 It is not clear at this stage whether public open space will be the best use for the site. The end use of the land cannot be determined at this stage.
- 12.12 The site is designated Green Belt in the current and emerging plan for the area. This has not changed as a consequence of the tipping.
- 12.13 It is a legal requirement that the Council considers all valid applications received. Should an application be received for the site it will be treated as any other application and judged on its planning merits.
- 12.14 At the time of writing, there were no proposals to bring any new material on site.
- 12.15 The matter of leaving the site as it is has been raised and will be given due consideration.
- 12.16 The matter of landscaping has been raised and will be given due consideration. There will need to be a comprehensive landscape survey done to decide on the planting and to ensure that conditions are correct for growth.
- 12.17 Since the 1940s this site has been a landfill site and, by their very nature, landfill sites contain a variety of contaminants. What contaminants are present at any one site will depend very much on the types of wastes tipped at the site. In the case of Marlbrook Tip various wastes were tipped including industrial and household wastes. As such contaminants associated with these wastes are likely to be present and will have been present since the start of the original landfilling of the site in the 1940s.

With regard to the material imported to the site by Liberty Construction, Liberty Construction have provided details of the procedure they have followed for ensuring that material accepted at the site was suitable for use and met the agreed acceptance criteria for levels of contaminants. The procedure is considered to be a standard and appropriate procedure. To validate Liberty Construction's procedure and give confidence that the imported material is suitable for use, sampling of the surface and near surface soils will be undertaken

professionally and independently following completion of any works to re-contour existing material or remove material from the site, depending on the decisions made regarding the best way forward for the site.