



PLANNING COMMITTEE – 6TH AUGUST 2014

**SUBJECT: TOWN AND COUNTRY PLANNING ACT 1990
LAND OPPOSITE BROOKLANDS, NELSON - CONSIDERATION OF THE
EXPEDIENCY OF ENFORCEMENT ACTION**

REPORT BY: ACTING DEPUTY CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 On 2nd June 2005 conditional planning permission (Ref: P/04/0221) was granted to import waste material to improve the condition of land and provide a paddock on land opposite Brooklands, Nelson. The planning application was submitted following the commencement of tipping on the site without the benefit of planning permission.
- 1.2 The site comprises an area of land of approximately 8 hectares located at the western end of the settlement of Nelson between the houses in the cul-de-sac of Brooklands and the watercourse to the north that forms the administrative boundary with Merthyr Tydfil County Borough Council. Within the site are four cesspits that serve the houses in Brooklands.
- 1.3 During the period between November 2009 and July 2010 Officers addressed various issues with the developer including hours of operation, concerns regarding the type of material being tipped on the site, temporary storage, creation of access, removal of skips, wheel cleaning, as well as the discharge of conditions imposed on planning permission P/04/0221.
- 1.4 The Environment Agency (EA – now Natural Resources Wales – NRW) advised at the application stage that the site benefited from an exemption under the Waste Licensing Regulations. There was a tonnage limit specified in the exemption and this would have been a matter for the EA to regulate.
- 1.5 In June 2012, a local Member contacted the Council advising that a resident of Brooklands had received a letter from the EA about the land in front of the houses claiming that water and sewage was leaking and causing pollution of the land, and requesting that the resident establish whether their cesspit was causing the problem. The Member raised several matters about the site, including that the operation of importing waste onto the land around the cesspits may well have had an adverse effect on the integrity of the cesspits, and that the levels of the site which appeared to be above the road at Brooklands could be causing a risk of flooding of the road and also the cesspits themselves, making them inaccessible for maintenance. A resident of Brooklands also contacted the Council directly about the same concerns.
- 1.6 Bearing in mind the existence of the planning permission Planning Officers met with the EA to discuss the background to the concerns. The EA confirmed that it was pursuing the matter regarding the cesspits and requested that the Council defer any action that they may be considering regarding the site until it had concluded its investigations into the cesspits.
- 1.7 In September 2012 the EA confirmed that investigations were ongoing and in December 2012 advised that they were considering their legal position regards possible action. However, in January 2013 the EA advised that the legislation that governs the management of cesspits is

within the Council's remit (Building Act 1984) and therefore the EA was unable to pursue the matter any further. The Council's Environmental Health Department therefore became formally involved with the cesspits and has been considering a way forward. Environmental Health Officers (EHO) arranged two meetings with the residents of Brooklands, one in July 2013 and another in October 2013, at which a specialist drainage company, UKDP, presented information on possible types and costs of a solution to the cesspits. EHO also arranged and paid for a camera survey of the connections from the individual houses under the road to the boundary of the site and all were found to be in an acceptable condition.

- 1.8 During that time Planning Officers awaited the outcome of that exercise to see whether the residents and/or the landowner would proceed with a scheme to rectify the problems with the cesspits. However, no scheme was forthcoming because it became clear that neither the residents nor the landowner consider that they are responsible.
- 1.9 In December 2013 Officers met with the local Member and some residents and in February 2014 met with the land owner/developer.
- 1.10 It is alleged by residents that the tipping on the site, approved by planning permission P/04/0221, has damaged the cesspits. The landowner denies that this is the case and suggests that some of the tanks were in poor condition prior to tipping. Council Officers have never witnessed damage to the cesspits and cannot therefore corroborate the allegations of the residents. A company that has been emptying three cesspits at Brooklands for many years has stated "prior to the landfilling operation starting the cesspits were working in a satisfactory manner, but that during the landfilling two of the side walls on two of the cesspits collapsed and two manhole lids are broken leaving the cesspits not fit for purpose".
- 1.11 The local Member and the residents are of the opinion that the Local Planning Authority, in granting planning permission for the development allowing tipping on the land and also for not adequately controlling the development, have a responsibility to ensure that the applicant abides by the terms of the planning permission and advice from Consultees and rectify the problems with the cesspits.
- 1.12 They have identified the following main issues:-
 - (i) The cesspits have been damaged by the landfill operations as evidenced by the third party statement.
 - (ii) The level of the landfill has exceeded the level granted planning permission.
 - (iii) The developer has not complied with advice given by the Transportation Engineering Manager, Senior Engineer (Land Drainage) and the Environment Agency at the time of the planning application in terms of preventing surface water and debris discharging onto the highway, and ensuring the integrity of groundwater and surface water.
 - (iv) Raising the level of the land above the tops of the cesspits has resulted in the cesspits being in depressions. These depressions have become ponds consisting of surface water flowing from the higher adjoining ground and water and sewage leaking from the damaged cesspits. It is suggested that if the level of the ground around the cesspits is reduced then this would assist in mitigating the problems with the ponds.
 - (v) The drainage of Brooklands has been changed as a result of the filling of an open culvert on the western edge of the site, which has resulted in flooding of the road and a risk of flooding to one of the houses.
 - (vi) A Method Statement required under the terms of the planning permission made no reference to safeguarding the cesspits
 - (vii) A drainage layer proposed beneath part of the tip may not have been installed.
- 1.13 Having met with the residents the Assembly Member has also written to express concern about the damage to the cesspits and that the ponds are completely unprotected and a person could fall into them.

2. CONSIDERATION OF THE ISSUES

- 2.1 Planning permission was granted against the background of comments expressed by the applicant and a spokesperson for the residents at the time of the consideration of the planning application. The applicant said that he would where necessary modify the existing manhole covers if there were differences in ground levels to make up and also seek to ensure that no damage was caused to the cesspits as a result of the filling operations. However, he did point out that some of the cesspits were in need of urgent repair, these repairs being the responsibility of the individual householders. He commented that whether or not planning was granted the cesspits could not remain in their present condition, because they leaked, smelled in summer, and were a health hazard as well as a danger.
- 2.2 This information was passed to the residents of Brooklands. In response, they asked whether Brooklands could be connected to the mains sewerage system, but commented that if mains connection was not a possibility, there were some issues with individual residents regarding damage to the existing cesspits. It was, however, accepted by them that these were matters for the landowner and the individual residents to resolve. In addition they commented that with regard to the cesspits, whilst sometimes smelly and an irritation to both the landowner and the residents, their existence was a fact of life, and for all the residents and the landowner they must ensure that nothing hinders the working of the cesspits as that would make life very unpleasant and difficult for everyone concerned in Brooklands, and they trusted that the landowner and the other residents could work together amicably to resolve any difficulties relating to this area.
- 2.3 The comments of the applicant and the residents were referred to in the report of the application to the Planning Committee, at which time conditional consent was granted. It should be noted that there are no conditions of the planning permission that specifically relate to the cesspits.
- 2.4 It is the opinion of Officers that the cesspits are a private matter between the landowner and the householders, and the comments of the local residents at the time of the planning application appeared to reflect that. The Head of Legal Services has advised that if the owners of the properties connected to the cesspits consider that the landowner has interfered with their rights or caused damage, they should seek their own independent advice. If there has been any infringement of their legal rights they would be in a position to take legal action against the landowner. This is essentially a private matter and the Authority should not become involved.
- 2.5 Notwithstanding this opinion, Officers have been giving consideration to the terms of the planning permission, whether they have been complied with, and in the event of non-compliance, whether it is expedient to take enforcement action and whether such action could result in the problems with the cesspits being rectified. Welsh Government guidance advises that in considering enforcement action the decisive issue for the Local Planning Authority should be whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.
- 2.6 With regards to the levels of the site, condition 2 of planning permission P/04/0221 requires the vertical and lateral extent of the landfill to comply with the approved drawings. Whilst the site has not been surveyed it is evident that the current levels are generally higher than the approved levels. Since the approved levels have been exceeded and no further waste materials can be imported to the site, the site is ready for restoration. However, it is considered that it would be prudent if the problems with the cesspits are rectified before any restoration. Even if action is taken at this stage with the site not yet restored, it is considered that the current general levels of the site, with the exception of some mounds of material that would need to be spread out over the site, do not have a negative visual impact and do not unacceptably affect public amenity. Taking these factors into account it is not considered expedient to enforce the planning condition in respect of the levels. In any event the Authority could only enforce the approved levels, which are higher than the levels of the cesspits.

- 2.7 In addition, it is considered that the ground area of the land fill extends beyond the limits shown on the approved drawings in that the northern limits are closer to the watercourse than approved and the western limits may well be closer to the adjoining land to the west, with an open culvert having been filled in part particularly where it is close to the boundary with the western end of the road fronting Brooklands. The extent of tipping along the northern edge had been drawn to the applicant's attention in the past. The reason for the limits were to protect trees closer to the watercourse and along the western edge of the site and to protect a wet area of nature conservation interest.
- 2.8 Planning Officers and the Council's Arboricultural Officer have very recently inspected the site accompanied by the landowner. Based on that visual inspection it would appear that in parts the tip is closer to the watercourse on the northern boundary than approved, although the landowner disagreed, suggesting that it does comply and that he had adjusted the limits as advised by Officers previously. The limit of tipping along the western boundary appeared to comply with the approved plans. It is not possible to be entirely accurate about the limits without a topographical survey, but it is considered that it is not essential to require one bearing in mind that the general appearance of the site is not detrimental to the character of the area. With regards to the impact of the tipping on the trees, the Arboricultural Officer's assessment was not available at the time of report preparation, but a verbal update will be provided at the Committee.
- 2.9 The developer would have been responsible for controlling the development in line with the advice issued by statutory Consultees. It is standard practice to issue such advisory notes which draw attention to matters covered by other legislation.
- 2.10 The Council's Senior Engineer (Land Drainage) has visited the site, but has advised that in order to assess any run off either across or from the site he would have to attend the site during heavy rainfall. He noted that there is only one gully serving the complete length of the highway and that should the site have been lower than the highway prior to filling, it is possible that the surface water run off from the highway discharged onto the site. He noted that this informal situation happens in many areas throughout the borough where there is no or insufficient drainage. Should the developer's actions have interrupted the informal drainage situation then he could be made aware, but it is doubtful whether the Authority would take action against him. In respect of the filling of the open culvert to the north west he has commented that he would inspect this when he visits during a wet period, at which time he would look at the run-off in and around the site in order to establish an understanding of any actual or potential flooding.
- 2.11 There was no specific requirement for the cesspits to be included in the Method Statement required by a planning condition. The requirement for the statement was based on a comment from the Senior Engineer (Land Drainage) on the planning application: "the filling, which should be with inert material, should ensure that no contamination of the existing watercourse occurs, the earthworks should proceed in a manner that does not affect the free flow of the stream and causes no silt to run into the stream". The statement addressed that requirement. The applicant was aware of the location of the cesspits and it would have been his responsibility to abide by the statements he made to protect the integrity and functioning of the cesspits.
- 2.12 Officers cannot confirm whether the drainage layer under part of the landfill area was installed since it was not inspected and not witnessed during any of the inspections undertaken. Nevertheless, there is no evidence that the reprofiled land in general is not draining properly. There are some ponds above some of the cesspits, but the cesspits should not be draining to the ground in any case. The applicant has advised that the drainage layer was installed.
- 2.13 Regards the security of the site, there is currently a physical barrier to prevent access to the site, namely a fence with a barbed wire top and lockable gate.
- 2.14 The Environment Health Officer considers that the site security is acceptable and the landowner has been reminded of the need to ensure that the pond areas are securely fenced

to avoid any risk to members of the public.

3. CONCLUSIONS

- 3.1 Notwithstanding that the cesspits are within the site granted planning permission for tipping, the problems regarding the integrity and functioning of the cesspits are private matters between the landowner and householders as confirmed by the Head of Legal Services. This position was also confirmed by both parties at the time of the consideration and determination of the planning application. There is nothing under planning legislation that the authority can do to force the developer to remediate the cesspits. Any enforcement action either in respect of the height of the reprofiled land, or if considered expedient (following further investigation) in respect of the extent of the reprofiled land and also land drainage, would not result in the problems with the cesspits being rectified.
- 3.2 Environmental Health Officers consider that the cesspits are not fit for purpose in their current state. In the absence of any actions by either the owner of the land, or the owners of the cesspits, to repair the cesspits, the Environmental Health Department would have the option of serving a legal notice on the owners of the cesspits requiring that they be repaired / made fit for purpose.

4. RECOMMENDATIONS

- 4.1 A. That Committee endorse the opinion that the problems regarding the integrity and functioning of the cesspits are private matters between the owners of the cesspits and the owner of the land and are not matters in which the Council has any involvement.
- B. That it is not expedient to take enforcement action in respect of the current general levels of the land referred to above on the grounds of visual amenity.
- C. That as a result of the inspection by the Arboricultural Officer in relation to the trees and following the result of the inspection by the Senior Engineer (Land Drainage) in relation to the drainage at an appropriate time of the year that Officers report further to Planning Committee on the expediency of enforcement action in respect of those matters.