

Public Report  
Overview and Scrutiny Management Board

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**Committee Name and Date of Committee Meeting**

Overview and Scrutiny Management Board – 18 March 2021

**Report Title**

Grange Landfill Site Update

**Is this a Key Decision and has it been included on the Forward Plan?**

No

**Strategic Director Approving Submission of the Report**

Paul Woodcock, Acting Strategic Director of Regeneration and Environment

**Report Author(s)**

Tom Smith, Assistant Director, Community Safety and Streetscene  
tom.smith@rotherham.gov.uk

**Ward(s) Affected**

Keppel  
Rotherham West

**Report Summary**

On 30 October 2019, the Council received a petition from the Droppingwell Action Group calling on the Authority to take enforcement action in respect of the Grange Landfill Site. As the petition met the threshold for consideration by the Overview and Scrutiny Management Board, a meeting was held on 28 January 2020 to receive representations from the lead petitioner and also heard from the Cabinet Member for Waste, Roads and Community Safety, officers and representatives of the Environment Agency in respect of the site.

The Overview and Scrutiny Management Board made eleven recommendations which were accepted by Cabinet on 23 March 2020. All but one of the recommendations have been completed in full. The outstanding action was: *“that an update report on the site and ongoing work with the Droppingwell Action Group be provided to Improving Places Select Commission in six months’ time”*.

This recommendation was not completed as expected by September 2020 due to the Covid-19 pandemic, which meant that activity at the site ceased and Council resources were prioritised to deal with the work to respond to the pandemic. This report therefore provides an update on the site and ongoing work as per the recommendation.

**Recommendations**

The Overview and Scrutiny Management Board are requested to note and comment on the report.

**List of Appendices Included**

## Appendix 1 Executive Summary of Legal Advice - Grange Landfill Site

### **Background Papers**

- Cabinet Report (23<sup>rd</sup> March 2020) – Response to recommendations from Overview and Scrutiny Management Board – Petition in respect of Droppingwell Landfill.
- Overview and Scrutiny Management Board (28<sup>th</sup> January 2020) – Meeting to consider a petition received calling on the Council to take enforcement action against the reopening of Droppingwell Landfill.

### **Consideration by any other Council Committee, Scrutiny or Advisory Panel**

Overview and Scrutiny Management Board – 28 January 2020

Cabinet – 23 March 2020

### **Council Approval Required**

No

### **Exempt from the Press and Public**

No

## Grange Landfill Site Update

### 1. Background

1.1 Tipping on the Grange Landfill site is believed to have started in 1929 however formal Planning Permission was not granted until 1958. This Planning permission gave consent for the tipping of waste on the site in two phases. Tipping of the first phase took place from the start of the permission until around 1996.

1.2 On 15 January 2017 Council unanimously carried a motion against the granting of an Environment Permit for waste disposal on the Grange Landfill site, by the Environment Agency (EA), on the basis of its detrimental impact on local residents and organisations in the area and the environment and on the basis that:

*“...the Environment Agency, nor any regulatory body, can effectively regulate tipping at Watson’s Tip, and the risks associated with the closed and capped section of the licensed site.”*

1.3 The motion set out the Council’s concerns in terms of a lack of consultation with the Council, Elected Members and the local residents before making the variation, and about the company involved in the operation of the site. Council called on the Environment Agency to communicate effectively with people affected and to re-examine the decision to issue the Environmental Permit. Finally, Council resolved that, until the EA took steps to revoke the Permit the Council would:

*“...continue to raise the risks the site may pose to surrounding land, the environment and the public.”*

1.4 Unfortunately, whilst the Council has explored a number of potential options to prevent the operation of the site since 2017, the Council has no powers it can enact to prevent the operation of the site.

1.5 Tipping of the phase one site ceased in 1996, and until 2019 no further activity had taken place on the site. In August 2019 the Council were informed by the Environment Agency that works to deliver the pre-operational conditions set out in the Environmental Permit would commence on 4 September 2019. Whilst operations began close to that date, they were subsequently suspended due to poor ground conditions. Given the Covid-19 pandemic no activity took place until operations recommenced in October 2020. Operations were suspended again on 3 December 2020 and recommenced in February 2021.

### 2. Key Issues

#### Environmental Permit

2.1 The operation of the site is regulated by the Environment Agency through an Environmental Permit. The Council has no regulatory powers in relation to the Permit.

- 2.2 The Council has explored the legal options to challenge the validity or operation of the Environmental Permit and has sought legal advice on the matter. An Executive Summary of the Legal Advice relating to this is provided at Appendix 1. It concludes that:

*“The prospects of any challenge to the continuation of the permit are very poor (below 20%).”*

## **Planning**

- 2.3 A new Planning Application, to expand the use of the site, was received in 1989 and refused by the Council. This decision was subject to appeal by the applicant. In 1992 the Planning Inspector dismissed the appeal, finding in favour of the Council. However, whilst the appeal was dismissed, the Planning Inspector was clear that, given the new application had been refused, the existing 1958 Planning Permission was still in place and the site could remain in operation, subject to the existing conditions.
- 2.4 The Planning permission contains no restrictions in terms of the hours of operation of the site, or the movement of vehicles, which would be the case for any modern Planning permission for a site of this type.
- 2.5 It was understood that the phase 2 of tipping could not begin until the operator had restored the first phase to the approved levels due to the over-tipping of the site. The understanding was that, if the second phase works began without the first phase being properly restored, the Council could initiate enforcement proceedings, provided it was expedient to do so. However, an amendment was made to the planning permission in 1994 through an approved restoration scheme, which amended the approved levels. Whilst the permission was not formally amended, the approval of the restoration scheme in 1994 means that it is no longer possible to bring any enforcement action.
- 2.6 Whilst the Council and the Secretary of State both have powers under the Town and Country Planning Act 1990 to revoke or discontinue a planning permission, the Council would be required to compensate the planning permission holder. The Council estimates that compensation could equate to tens of millions of pounds. The Council does not have the financial resources to pay at that level of cost. In addition, the Council would not be able to justify the proportionality of spending such an amount of local public money on a single planning issue without contravention of value for money and financial fiduciary requirements.
- 2.7 The Council has made multiple written representations to the Secretary of State. Whilst responses have been received, there is no current intention of the Secretary of State to intervene in this matter. On 26 February 2021 the Council wrote to the Secretary of State to ask them to use their powers under the Town and Country Planning Act 1990, to revoke or discontinue the planning permission and to fund any compensation claims from the Government purse. To date the Council has not received a response to this request.

## **Access to the Site**

- 2.8 The access road to Grange Landfill site is on land owned by the Council. However, it is clear from the legal documentation that the owner of the tip was granted a right of way over the land. There are no restrictions in place in terms of the use of the access route that has been granted. The Council has a duty not to obstruct the use of the way, but it has no duty to maintain the access route in a useable condition.
- 2.9 The Council has taken steps to ensure that the site operator cannot damage Council green space when using the access, by erecting a gate and barriers to prevent turning on our land at the site entrance. The Council has also erected signs to warn pedestrians using the right of way that there may be vehicles moving on the road. The installation of these signs in no way takes away the responsibility from the operator to work in a safe way on the access road.
- 2.10 The operator has a legal duty to operate safely and to take steps to ensure the safety of others using the access road, such as Millmoor Juniors Football Club and/or the public. Any breach of safety would be regulated by the Health and Safety Executive. A number of concerns about vehicle movements on the access road have recently been reported to the Health and Safety Executive for investigation.
- 2.11 The Council has also recently written to the operator to remind them of their responsibilities in this regard.

## **Public Rights of Way**

- 2.12 The Council has received an application for a Public Right of Way on the site. The application is undergoing further assessment and investigation so that a decision can be made as to whether the evidence provides enough weight to carry the claim forward.

## **Borehole Investigation**

- 2.13 The Council raised a number of concerns relating to groundwater monitoring at the site and the Environment Agency undertook an investigation into those concerns. They concluded that they found no evidence of falsification of groundwater sampling data.
- 2.14 The operator must now make a formal request to the Council to access our land and undertake the work necessary to reinstate the borehole. To date no formal request has been received by the Council.

## **3. Options considered and recommended proposal**

- 3.1 There are no options to be considered in relation to this report other than the consideration of the OSMB recommendations and the proposed response.

#### **4. Consultation on proposal**

- 4.1 The Cabinet Member and Officers have been in regular dialogue with senior officials from the Environment Agency, including regular meetings. It is expected that this engagement will continue going forward and a number of the recommendations from Overview and Scrutiny Management Board are reliant on the Council working with the Environment Agency, Droppingwell Action Group and Grange Landfill.

#### **5. Timetable and Accountability for Implementing this Decision**

- 5.1 Work is ongoing to explore options for any further actions associated with Grange Landfill site.

#### **6. Financial and Procurement Advice and Implications (to be written by the relevant Head of Finance and the Head of Procurement on behalf of s151 Officer)**

- 6.1 There are no direct financial or procurement implications arising from this report. The cost of officer time engaged on this matter will be contained within existing approved revenue budgets.

#### **7. Legal Advice and Implications (to be written by Legal Officer on behalf of Assistant Director Legal Services)**

- 7.1 There are no direct legal implications arising from this report. The Council will continue to actively consider all legal issues that arise relating to the site through the assistance of Legal Services.

- 7.2 Where necessary, the Council will seek advice in relation to any potential action relating to the site and reserves the right to take any such action should the advice support the same.

#### **8. Human Resources Advice and Implications**

- 8.1 There are no direct human resources implications arising from this report.

#### **9. Implications for Children and Young People and Vulnerable Adults**

- 9.1 There are no direct implications for children and young people or vulnerable adults arising from this report.

#### **10. Equalities and Human Rights Advice and Implications**

- 10.1 There are no direct equalities or human rights implications arising from this report.

#### **11. Implications for Partners**

- 11.1 There are no implications for partners arising from this report.

#### **12. Risks and Mitigation**

12.1 There are no specific risks arising from this report.

**13. Accountable Officer(s)**

Tom Smith, Assistant Director Community Safety and Streetscene

Approvals obtained on behalf of: -

	<b>Named Officer</b>	<b>Date</b>
Chief Executive		10/03/21
Strategic Director of Finance & Customer Services (S.151 Officer)	Named officer	10/03/21
Assistant Director of Legal Services (Monitoring Officer)	Named officer	10/03/21
Assistant Director of Human Resources (if appropriate)		Click here to enter a date.
Head of Human Resources (if appropriate)		Click here to enter a date.

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