

OVERVIEW AND SCRUTINY MANAGEMENT BOARD
Thursday 18 March 2021

Present:- Councillor Steele (in the Chair); Councillors Cusworth, R. Elliott, Jarvis, Jepson, Keenan, Mallinder, Napper, Taylor, Walsh and Wyatt.

Apologies for absence:- There were no apologies for absence.

The webcast of the Council Meeting can be viewed at:-

<https://rotherham.public-i.tv/core/portal/home>

337. DECLARATIONS OF INTEREST

There were no declarations of interest.

338. QUESTIONS FROM MEMBERS OF THE PUBLIC AND THE PRESS

- 1) Councillor Jones noted the difficulties that the operation of the site was causing due to the large lorries using the access road and stated that residents were being harassed for parking legally near the site on land not owned by the operator. Councillor Jones asked what action the Council was taking in regard to these concerns. The Chair requested that the Assistant Director – Community Safety and Streetscene responded to the question.

In response the Assistant Director Community Safety and Streetscene stated that the operator had no right to prevent access to the green space adjacent to the site, or to stop others using the road used to access the site and advised that the operator had been reminded of this. The Assistant Director advised that while the operator was able to take measures to ensure that they had access to the site, they were not allowed to prevent access to the road or adjacent green space. The Assistant Director advised that issue of weight and other restrictions on the surrounding roads was being looked at, but noted that the enforcement of weight limits and other restrictions would be the responsibility of the police, and as such the public should report any related concerns to the police.

As a supplementary question Councillor Jones asked who had been responsible for consulting with local residents and Millmoor Juniors regarding the use of the road and about the inactivity of the Health and Safety Executive (HSE), in carrying out their role in ensuring vehicles accessed the site safely, as local residents had advised that they had not received any contact about this matter.

In response the Cabinet Member for Waste, Roads and Community Safety advised that the Assistant Director – Streetscene and Community Safety had been in regular contact with the HSE and

that the Assistant Director as well as other officers had been in contact with Millmoor Juniors.

The Assistant Director noted that he had been working since operations at the site had recommenced in February with those responsible for safety at the site and advised that he had expressed concerns to the HSE regarding how vehicles were accessing the site. The Assistant Director confirmed that the HSE had spoken to the operator regarding road safety at the site and as a result, vehicles had ceased reversing into the site.

The Assistant Director noted that the operator had committed to the HSE to discuss areas of concern with Millmoor Juniors, but as this discussion had not yet taken place this non-compliance with an agreed action had been raised with the HSE. The Assistant Director advised he had an upcoming meeting with the Board of Millmoor Juniors to discuss their concerns. The Assistant Director concluded in noting that ultimately it was the responsibility of the HSE to ensure the safe operation of the site.

- 2) Mr Steve McKenna asked why the Council had misled the residents of Kimberworth regarding the communication with the Secretary of State regarding the Council's ability to issue a discontinuation order.

The Chair requested that the Cabinet Member for Waste, Roads and Community Safety and the officers present responded to the question.

In response the Cabinet Member for Waste, Roads and Community Safety stated it was very difficult to respond to such a vague accusation and noted that local residents had been kept informed on activity surrounding the site with the Council was having ongoing discussions with the Government on the matter. The Cabinet Member noted that the latest position regarding the site was detailed in the report that had been included in the agenda for the meeting.

The Chair asked Mr McKenna to clarify his question.

Mr McKenna stated that he and the Droppingwell Action Group had been told by Councillors that up until January 2021 there had been no response from the Secretary of State regarding a discontinuation order, however an FOI request that they had submitted had shown that responses had been received in July and December 2020. Mr McKenna stated that the Council had not made it known that the ability to issue a discontinuation order was theirs, and not the responsibility of the Secretary of State.

In response the Cabinet Member noted that the responses to

Council correspondence with the Secretary of State were freely available. The Cabinet Member stated that the Council was not concealing anything, and that work was continuing to reach a solution for a very complex and unique problem.

As a supplementary question Mr McKenna asked why the Council had further misled the residents of Kimberworth by declaring at a meeting of Full Council in 2017 that no waste from Rotherham would end up at the landfill site, for waste from a Council development on Westgate to be subsequently dumped at the site.

In response the Cabinet Member noted her disappointment at the accusations of the Council misleading residents and covering up activity regarding the landfill site. The Cabinet Member advised that she had been infuriated when a contractor working for the Council had dumped one load of waste, on one day at the Grange landfill site and that the Assistant Director had subsequently taken the appropriate action to stop any further waste being dumped. The Cabinet Member stated that contractors must work to and uphold Council policies and stated that the incident should not have happened and would not happen again.

The Assistant Director detailed the actions that had been taken to resolve the matter and assured the meeting that such an incident would not happen again. The Assistant Director advised that a full investigation into the incident would take place.

339. EXCLUSION OF THE PRESS AND PUBLIC

There were no items that required the exclusion of the press and public.

340. LOCAL GOVERNMENT ASSOCIATION PEER REVIEW OF LICENSING

The Chair of the Licensing Board and the Assistant Director - Community Safety and Streetscene attended the meeting to present a report on the outcomes of the Local Government Association Peer Review of the operation of the Licensing Board Sub-Committee and Licensing Sub-Committee that had taken place in October 2020.

In introducing the report, the Chair of the Licensing Board noted that following Government intervention, the Council's Licensing policies and functions had been completely overhauled, with new Taxi Licensing, Licensing and Gambling Act and Sex Establishment Policies in place, with the Licensing and Gambling Act Policies having been subject to further review in March 2020. The Chair of the Licensing Board advised that the Peer Review had taken place as part of the desire to make constant improvements to services. The Chair of the Licensing Board noted that The Peer Review recommendations had been considered and accepted by the Licensing Board.

The Assistant Director - Community Safety and Streetscene advised that the recommendations that had arisen from the review, as well as the action plan for their implementation would be shared with stakeholders and that the recommendations would be implemented in the new municipal year.

The report set out the recommendations of the feedback report from the review and detailed the next steps in taking the recommendations forward. The full Peer Review report was attached as an appendix to the officer's report.

Members noted that the report and its recommendations had identified areas for improvement in how Licensing Board Sub-Committees and Licensing Sub-Committees operated regarding the adversarial and inaccessible in way in which they conducted their business. Members noted that this appeared to show that the methods of operation had gone from not being strong enough to being overregulated and process led. Members advised that it would be more transparent and accountable if the consideration by members, and the implementation of the recommendations contained in the report took place after the election of the new Council in May 2021.

The Chair of the Licensing Board assured members that the committees had not been operating in an over-regulated way, but with the Council having licensing policies that were viewed as demonstrating best practice it had now been the time to look more broadly at how other licensing activity was carried out at the Council.

The Chair asked what would happen next regarding the recommendations that had been made. The Assistant Director advised that a full action plan would be delivered by the licensing service alongside the Licensing Board.

The Chair thanked the of Chair of the Licensing Board and the Assistant Director - Assistant Director Community Safety and Streetscene for attending the meeting and answering member questions.

Resolved: -

That the report be noted.

341. GRANGE LANDFILL SITE UPDATE

The Cabinet Member for Waste, Roads and Community Safety, the Assistant Director - Community Safety and Streetscene, Head of Legal Services and the Head of Planning and Building Control attended the meeting to provide a progress report on activity regarding the Grange Landfill Site.

The report noted that on 30 October 2019 the Council had 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 had met the threshold for consideration by the Overview and Scrutiny Management Board a meeting had been held on 28 January 2020 to consider the petition. At that meeting the Overview and Scrutiny Management Board made eleven recommendations (Minute No.113) that were subsequently accepted by Cabinet on 23 March 2020 (Cabinet Minute No.140).

The reports stated that all but one of the recommendations that had been made had now been completed in full. The one outstanding action “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” had not been completed due to the impact of the pandemic, that had meant that activity at the site had ceased and Council resources had been re-prioritised to deal with the work related to the pandemic.

In introducing the report, the Cabinet Member for Waste, Roads and Community Safety advised that the report provided a progress report on the site and the ongoing work with the Droppingwell Action Group that had been requested at the meeting of the Overview and Scrutiny Management Board on 28 January 2020.

The report noted that tipping on the Grange Landfill site was believed to have started in 1929, however formal Planning Permission had not been granted until 1958. The planning permission had given consent for the tipping of waste on the site in two phases, with tipping of the first phase taking place from the start of the permission until around 1996. In August 2019 the Council had been informed by the Environment Agency that works to deliver the pre-operational conditions set out in the Environmental Permit that had been issued by the Environment Agency would commence on 4 September 2019, but activities having started were subsequently suspended due to poor ground conditions. Due to the pandemic no further activity at the site had taken place until operations recommenced in October 2020 before being suspended again on 3 December 2020 and finally recommencing in February 2021.

The Cabinet Member emphasised that the operation of the site was regulated by the Environment Agency through an Environmental Permit, and as such the Council had no regulatory powers in relation to the Permit. The Cabinet Member advised that the Council had explored the legal options in order to challenge the validity or operation of the Environmental Permit and had sought legal advice on the matter. The Cabinet Member advised that the latest legal advice obtained by the Council had concluded that “*The prospects of any challenge to the continuation of the permit are very poor (below 20%).*” The full Executive Summary of the legal advice that had been received was attached as an appendix to the officer’s report.

The Cabinet Member reaffirmed the Council’s desire for all activity at the

landfill site to be stopped by the use of a discontinuation order but advised that this would require the Council to pay compensation to the operator of the site that would be substantial. The Cabinet Member advised the level of compensation, estimated to be at least £20million, was neither affordable, nor an appropriate use of public money for the Council to consider as 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.

The Cabinet Member advised that Council had made multiple written representations to the Secretary of State on the matter, and whilst responses had been received, there was no current intention by the Secretary of State to intervene in the matter. The Cabinet Member noted that on 26 February 2021 the Council had written 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, however to date the Council had not received a response to this request.

The Head of Legal Services advised that legal services had been working with the Assistant Director - Community Safety and Streetscene in exploring every possible option to stop the operation of the landfill site and that this work would continue.

The Assistant Director advised that the Council had raised a number of concerns relating to groundwater monitoring at the site and that the Environment Agency had undertaken an investigation into those concerns that had concluded in showing that they had found no evidence of falsification of groundwater sampling data. The Assistant Director advised that the operator must now make a formal request to the Council to access Council land and to undertake the work necessary to reinstate the borehole, however no formal request had, to date been received by the Council.

Members asked how the latest legal advice received by the Council differed to earlier legal advice that had been received which members noted had indicated that a judicial review regarding the use of the site was possible. Members also asked how much the legal advice received had cost the Council. The Head of Legal Services noted the earlier advice that had been received, but advised that the current advice, that also drew on previous considerations, was based on the situation regarding the landfill site as it currently was and had been provided by the same QC who had provided the earlier advice. The Head of Legal Services advised that the previous advice had not stated that there was a clear case for the Council to request a judicial review of the use of the site. The Head of Legal Services advised that the cost of the legal advice received would be calculated and circulated to members in confidence.

Members asked if there were any similar landfill sites elsewhere in the

country that could be looked at that may have set a precedent for the type of action that could be taken. The Cabinet Member noted that there were many old landfill sites across the country that were becoming problematic with regard to planning and regulation but noted that the situation with the Grange landfill site was unique. The Head of Planning and Building Control advised that old planning permissions with few conditions were causing problems at sites nationally, but that the significant length of time where the site had been dormant had added to the complexity of the issue. The Head of Planning advised that requests to update legislation in relation to old planning permissions had been rejected by Government.

Members asked whether if the bore hole was reinstated whether the operator would continue to manage the sampling process. The Assistant Director reaffirmed that the borehole was not currently in operation and that the Council had not received a request for its reinstatement. The Assistant Director advised that it was normal practice for operators of sites to manage their own water sampling processes with the Environment Agency checking procedures periodically.

Members asked how the figure of £20million in compensation for the operator had been worked out if a discontinuation order was to be served. The Assistant Director advised that this was an estimated figure based on the value of the land and its value of a landfill site. The Assistant Director noted that the figures used were based on local land values and the value of similar sites elsewhere, and as such were widely accessible.

The Chair thanked the Cabinet Member for Waste, Roads and Community Safety, the Assistant Director - Community Safety and Streetscene, Head of Legal Services and the Head of Planning and Building Control for attending the meeting and answering member questions.

Resolved: -

- 1) That the report be noted.
- 2) That a further report on the latest situation surrounding the Grange Landfill be presented to the Overview and Scrutiny Management Board in three months' time.
- 3) That the Council continues to lobby the Secretary of State regarding the ongoing concerns about the operation of the Grange Landfill site.
- 4) That the Council requests that Rotherham's MP continues to lobby the Secretary of State regarding the ongoing concerns about the operation of the Grange Landfill site.
- 5) That the Chair and Vice-Chair of the Overview and Scrutiny Management Board are provided with a report regarding the Council's work with the different agencies involved in regulating the

operation of the Grange Landfill site.

- 6) That the Council continues to explore all the available options for stopping activity at the Grange Landfill site.

342. PEDESTRIAN CROSSING ASSESSMENT OVERVIEW

The Cabinet Member for Waste, Roads and Community Safety, the Assistant Director for Planning, Regeneration and Transport, the Interim Head of Transport Infrastructure and the Senior Engineer - Road Safety attended the meeting to present a report in response to a request made at the 16 December meeting of the Overview and Scrutiny Management Board. At that meeting it has been resolved that the Cabinet Member for Waste, Roads and Community Safety gave consideration to the actions that could be taken to ensure that pedestrian crossings and other road infrastructure across the Borough fully took into account the needs of vulnerable road users (Minute No.278).

In introducing the report, the Cabinet Member for Waste, Roads and Community Safety advised that the report provided the further detail on how the needs of vulnerable road users were taken into consideration in the design of crossing infrastructure and also on the processes used for the determination of crossing “wait times” that had been noted as a concern by members.

The Interim Head of Transport Infrastructure advised that a key part of the design considerations for signalised crossings was the configuration of both pedestrian and road traffic “wait times” and that this issue was considered in great detail in order to ensure the optimum highway usage was attained to enable the effective and safe use of the crossing for pedestrians and other non-motorised road users whilst also maintaining effective traffic flow. The report stated that Rotherham’s pedestrian crossing installations were configured using “wait time” parameters detailed in government guidance note “LTN 2/95 the Design of Pedestrian Crossings”.

The Interim Head of Transport Infrastructure advised that issues relating to vulnerable road users were taken into account throughout the design processes associated with new highway projects and that these were also evaluated during the road safety audit process, with particular attention taken at sites where it was known that there were vulnerable road users, such as outside schools or in areas of with large numbers of pedestrians and cyclists.

The report provided a detailed explanation of the processes surrounding pedestrian crossings and how pedestrian “wait times” were calculated. A list of infrastructure measures that could be used to support vulnerable road users when crossing the road was attached as an appendix to the officer’s report.

The Interim Head of Transport Infrastructure noted that even with the most careful planning of road crossings, roads were dangerous places and that all road users, including pedestrians needed to behave safely when using and crossing roads.

Members asked how ward members were engaged with regarding proposals for pedestrian crossings and other road infrastructure developments in their wards. The Interim Head of Transport Infrastructure advised that as the design of such infrastructure needed to follow national guidance that there was limited scope for member consultation on design, but assured members that ward members would always be consulted with to gain insight on local needs and concerns. The Interim Head of Transport Infrastructure noted that any aspect of a design that could be implemented in different ways would always be consulted on. Members noted that engagement with ward members was essential and asked that if an aspect of a road crossing, for example, could not be changed or had to be built in a certain way, officers should explain to ward members the reasons for this so that they in turn could share this information with residents.

Members asked for further information on the processes involved in the changing of speed limits on roads. The Senior Engineer - Road Safety detailed the processes involved but noted that the speed limit on a road needed to be reasonable in relation to each individual road, for example a 30mph limit on a country road would not be reasonable and the speed limit would be unenforceable. The Senior Engineer advised that the adherence to any speed limit required road users to accept any speed limit as a reasonable one. The Senior Engineer stated that if members had any particular concerns about speed limits that may need looking due to increased traffic or new residential developments, then these could be looked at.

Members agreed that safety of all road users should be the main consideration when setting any speed limit and that that any speed limit on a road should always be enforced. The Senior Engineer assured members that speeding in any form was not condoned but advised that a view was always taken, in consultation with the police when setting a speed limit on a road regarding its individual circumstances to what a realistic and reasonable expectation of drivers would be for the speed of that road.

The Senior Engineer advised that if a speed limit was lowered on a road then additional road infrastructure would also need to be installed in order to make the new speed limit a realistic one for that road. The Senior Engineer noted that this requirement added extra costs for lowering speed limits on roads, and as such made some proposals to reduce speed limits unviable as reducing speed limits without the accompanying changes to road infrastructure being made could make the reduction in the speed limit ineffective.

Members noted examples of effective collaborative working with officers regarding road safety issues in their wards. The Cabinet Member noted the procedures for consultation with ward members that were in place and that the records of delegated decisions taken by officers, along with the accompanying reports when changes to road infrastructure had been made were available on the Council website.

The Chair thanked the Cabinet Member for Waste, Roads and Community Safety, the Assistant Director for Planning, Regeneration and Transport, the Interim Head of Transport Infrastructure and the Senior Engineer - Road Safety for attending the meeting and answering member questions.

Resolved: -

- 1) That the report be noted
- 2) That ward members are always consulted during the planning stages of any new pedestrian crossing, changes to road infrastructure or road safety measures in their ward.
- 3) That ward members should actively engage with officers when they are notified of changes to road infrastructure in their ward.
- 4) That, if required, officers prepare briefing notes for ward members that explain the reasons why a particular change has been made regarding new pedestrian crossings or changes to road infrastructure or road safety measures in their ward.

343. OUTCOMES FROM SCRUTINY WORKING GROUP - HOUSING HUBS

The Chair of the Improving Places Select Commission presented a report that detailed the recommendations that had arisen from of a review that that that had been carried out by a sub-group of the Improving Places Select Commission regarding Housing Hubs.

The Chair thanked the Chair of the Improving Places Select Commission and the members who had taken part in the review for their work in conducting the review.

Resolved: -

- 1) That the briefing be noted, and the following recommendations be submitted to Cabinet for approval: -
 - a) That training and guidance be provided as part of Member Induction to ensure that new Members have a working knowledge of how Ward Housing Hubs link with Neighbourhoods.
 - b) That provision be made to enable more joint-ward funding

and collaboration across ward boundaries where there is mutual agreement and benefit.

- c) That Members be provided with clear, reader-friendly criteria for HRA funding and guidance around other sources of funding if HRA funds do not apply; and that the guidance include an explanation of the 'roll over' facility for unallocated spend, from one year to the next, within the four year cycle.
- d) That projects be procured and delivered through an appropriate and timely procurement process with a view to demonstrating value for money.
- e) That provision be made for approval of projects earlier in the municipal year to maximise the time available to deliver approved projects.
- f) That processes be developed to enable decision-making where there are only two Ward Members, for example, in the event of a dispute or quoracy issue.
- g) That a range of methods be adopted to promote Ward Housing Hubs and to enable residents to engage actively in a way which suits their needs and preferences.
- h) That the Council's Employment Solutions Team liaise with RotherFed to promote the Pathways Employment Scheme across all the wards.

- 2) That the next update be presented to Improving Places Select Commission in 12 months' time.

344. CALL-IN ISSUES

There were no call-in issues.

345. URGENT BUSINESS

There were no items of urgent business.

346. DATE AND TIME OF NEXT MEETING

The Chair thanked members for their work during a very challenging year and thanked officers for their efforts in supporting the work of the Overview and Scrutiny Management Board.

Resolved: - That the next meeting of the Overview and Scrutiny Management Board will be held at 11am on Wednesday 16 June 2021.

