

Public Report
Overview and Scrutiny Management Board

Committee Name and Date of Committee Meeting

Overview and Scrutiny Management Board – 28 July 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)

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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 23rd 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. However, an update report was presented to the Overview and Scrutiny Management Board on 18th March 2021. Overview and Scrutiny Management Board resolved:

“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.”

This report provides a further update in terms of the site since March 2021.

Recommendations

Overview and Scrutiny Management Board are recommended:

1. 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 March 2020) – Response to recommendations from Overview and Scrutiny Management Board – Petition in respect of Droppingwell Landfill.
- Overview and Scrutiny Management Board (28 January 2020) – Meeting to consider a petition received calling on the Council to take enforcement action against the reopening of Droppingwell Landfill.
- Overview and Scrutiny Management Board (18 March 2021) – Grange Landfill Site Update

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Overview and Scrutiny Management Board – 28 January 2020 and 18 March 2021
Cabinet – 23 March 2020

Council Approval Required

No

Exempt from the Press and Public

No

Grange Landfill Site Update

1. Background

1.1 An update report, outlining the background and issues relating to Grange Landfill site, was presented to the Overview and Scrutiny Management Board on 18 March 2021. Overview and Scrutiny Management Board 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.

1.2 Over the last three months, the operator has continued to undertake works on site to prepare the site for full operation and to fulfil the requirements of the Environmental Permit. This has involved the importation of inert waste for use in construction, which is legally allowed under the terms of the Permit. At the date of this report, the conditions of the Environmental Permit have not been met, and full landfilling operations are not able to commence.

2. Key Issues

Planning

2.1 The Council last wrote to the Secretary of State on 26th February 2021, 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. Whilst additional information has been requested by, and provided to, the Ministry for Housing, Communities and Local Government in March 2021. A response was received from the Ministry of Housing, Communities and Local Government (MHCLG) on 14th July 2021. MHCLG conclude that they:

"...do not consider it would be expedient for the Secretary of State to exercise his powers to revoke planning permission or to discontinue use of land in this case."

Access to the Site

2.2 Given the increase in activity at the site in recent months, significant concerns have been raised about the movement of Heavy Goods Vehicles (HGVs) both

on the public highway and on the unadopted access road to the Grange Landfill site.

- 2.3 As the Local Highway Authority (LHA) the Council has a responsibility for safety on the public highway and concerns were raised about the use of Droppingwell Road for HGV traffic, and specifically about the safety of HGVs turning left into, and right out of, the site. The Council introduced a temporary traffic regulation order to prohibit any vehicle over 7.5 tonnes (unless those vehicles have a legitimate right to load or unload within the restricted area) from using Droppingwell Road from its junction with the northern kerb line of Baring Road to a point 63 metres north of the northern kerb line of Farm View Road. Vehicles over 7.5 tonnes, using Droppingwell Road are therefore now banned from accessing the site from the southern end.
- 2.4 A permanent Environment Weight Restriction TRO is expected to come into force later this year in line with the implementation of proposals to improve air quality on sections of Wortley Road.
- 2.5 Over the last three months there has been a significant increase in the number of concerns being reported to the Council in relating to the movement of HGVs on the unadopted access road to Grange Landfill site; in particular the proximity to Millmoor Juniors Football Club. As outlined in the previous report to OSMB, responsibility for safety on the access road falls to the operators of the access road.
- 2.6 Grange Landfill Ltd have 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. Given the shared access rights, Millmoor Juniors Football Club also have a duty to ensure that any risks to the operation of their site are also understood and mitigated as far as possible.
- 2.7 Given the nature of the site, the Council's preferred outcome would be for both parties to agree safe working procedures and methods of working that would remove or reduce the risks that have been identified. To date no safe working procedures have been agreed between Grange Landfill Ltd and Millmoor Juniors Football Club. The Council is working with Millmoor Juniors Football Club and the Health and Safety Executive to support this to take place.

Public Rights of Way

- 2.8 The Council initially received an application asserting that a number of public footpaths exist on the Grange Landfill site in September 2019. However, the final full and revised application was not received until August 2020. The Council is under a statutory duty to respond to the claimant(s) with 12 months of a claim for rights of way being lodged.
- 2.9 The Council must determine the claims under the Wildlife and Countryside Act 1981. Section 53(3)(c)(i) of that act provides that an Order should be made upon the discovery of evidence which (when considered with all other relevant evidence) shows that a right of way which is not shown in the map and statement subsists or is reasonable alleged to subsist.

- 2.10 If, based on evidence, the Council feels this case has been met, they should make a Definitive Map Modification Order (DMMO) under the Wildlife and Countryside Act 1981 to assert such rights exist. As part of the subsequent legal process a widespread consultation is then held which is open to objection. If objections are received that cannot be resolved, the Order must be submitted to the Secretary of State for confirmation, which will usually involve a public inquiry to decide if such rights exist or not.
- 2.11 If the Council does not consider such rights exist they must inform the claimants, who then have 28 days to appeal the decision to the Secretary of State.
- 2.12 In order that the Claim was dealt with independently of the Council, the investigation was undertaken by Robin Carr Associates, an external consultancy appointed through the Institute of Public Rights of Way and Access Management. The final report was submitted to the Council on 8th June 2021. Given the recommendation the Council then sought Counsel advice to support the decision.
- 2.13 An Officer Delegated Decision was made and published on 19th July 2021 which requested that Legal Services make a Definitive Map Modification Order (DMMO) to add the routes detailed in the report to the Definitive Map as public footpaths. This Order is subject to statutory consultation for a six-week period following the Order being made. In the event of no objections being received, or, if such objections are received, they are subsequently withdrawn, the Order will be confirmed. In the event of objections being received, and not subsequently withdrawn, the Order be referred to the Secretary of State for determination.
- 2.14 Until the consultation is complete and the Order is confirmed the Public Right of Way is not in place. The Council will seek to work with media outlets, local interested parties and through site signage to ensure that the public at large are aware of the situation relating to public access to the site until the matter is formally resolved.

Borehole

- 2.15 The report to OSMB on 18th March 2021 outlined that the Council was awaiting a formal request from the operator to access our land and undertake the work necessary to reinstate the borehole. The Council received that request from Grange Landfill Ltd on 30th April 2021.
- 2.16 In the interim the Council had written to the Environment Agency on 9th April 2021, on a number of matters, including the borehole. In that letter the Council asked the EA to confirm what would happen if the borehole was ultimately not reinstated, given the baseline monitoring information provided via this borehole is a pre-operational condition of the Permit. The Environment Agency responded that:
“The reinstatement of BH05 is preferable but not essential to the monitoring of any impacts from the landfill site... as an initial characterisation monitoring

programme was initiated for at least one year in advance of site development of Phase 2 to characterise the underlying and surrounding groundwater systems for future comparison against any landfill impacts from Phase 2 then failure to reinstate BH05 is not critical in terms of permit regulation as there remains sufficient up-gradient and down gradient groundwater monitoring boreholes on site to assess any potential groundwater impact.”

2.17 It is clear therefore that a decision to refuse permission to reinstate the borehole on Council land would not prevent the site from reopening. In the same letter the EA were clear about the benefits that the borehole brought in terms of monitoring any impact of groundwater from the site. Given the above, the Council made the decision to give authorisation for the reinstatement of groundwater borehole BH05 (GW5) on Council land.

Site Security and Monitoring

2.18 As part of the above letter to the EA of 9th April, the Council raised issues of site security and the ongoing monitoring of the site.

2.19 The Council has significant concerns that the site cannot be operated safely unless it is secured from public access. The EA responded that the operator has acknowledged that fencing needs to be in place and they are working to ensure that is the case. The EA confirmed that the safety and security of the 'lagoon' on site is not covered by the Environmental Permit. The lagoon was secured following intervention by the Health and Safety Executive.

2.20 The Council has been clear from the outset that it feels that Grange Landfill site is a high-risk site, given the activities on site, and the land use around it. The Council has consistently urged the EA to ensure that regular monitoring, over and above that which would usually be undertaken for a site of this type, is undertaken. This was reiterated in the Council's letter of 9th April, especially given the recent fire at the operator's site at Carlisle Street East in Sheffield.

2.21 The EA have confirmed that they have resumed their routine site inspections on quarterly basis until further notice and that they have visited the site twice so far in 2021.

Disposal of Waste from Housing Development

2.22 The Council has contracted with Willmott Dixon to build 171 new homes on three sites in Rotherham town centre. The development of the three post-industrial brownfield sites (on Sheffield Road and Wellgate) has involved the management of contaminated materials in the ground, none of which have been removed from the sites. They have been treated and used on the Sheffield Road car park site to raise the ground levels for flood mitigation purposes. They have then been contained under a capping layer where required, in line with the agreed Materials Management Plan.

2.23 A large amount of other material has been removed from the sites – mostly from the demolition of buildings on the Millfold House site but also from the breaking of hardstanding on the other two sites. In regulatory terms this is

classed as non-hazardous, the majority being soil and stones. Willmott Dixon sub-contracted the removal of material to Howard Civil Engineering, as part of the groundworks sub-contract. Howards, in turn sub-contracted the haulage of the waste to MHH. MHH took approximately 30 lorry loads of waste to the Droppingwell Tip and when the Council was alerted, the Council instructed Willmott Dixon to ensure no further waste was taken there from the site and trips to Droppingwell ceased immediately.

2.24 Whilst the Council has instructed that no further waste is taken to Droppingwell Tip, it is clear that the deposit of waste is permitted under an exemption to the Environmental Permit which allows inert waste to be imported for construction on site. The Environment Agency have confirmed that any waste currently being imported is under this exemption. The Environment Agency are responsible for the regulation of this exemption, and for ensuring that only inert waste is deposited on the site. Any concerns received by the Council in this regard have been reported immediately to the Environment Agency for investigation.

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 Council has 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 OSMB are reliant on the Council working with the EA, 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 CO₂ Emissions and Climate Change

11.1 There are no direct implications for CO₂ emissions or climate change from this report.

12. Implications for Partners

12.1 There are no implications for partners arising from this report.

13. Risks and Mitigation

13.1 There are no specific risks arising from this report.

14. Accountable Officer(s)

Tom Smith, Assistant Director Community Safety and Streetscene

Approvals obtained on behalf of:-

	Named Officer	Date
Chief Executive		Click here to enter a date.
Strategic Director of Finance & Customer Services (S.151 Officer)	Named officer	Click here to enter a date.
Assistant Director of Legal Services (Monitoring Officer)	Named officer	Click here to enter a date.
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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