



EXECUTIVE MEMBER BRIEFING PAPER

TO: EXECUTIVEMEMBER;REGENERATION;
EXECUTIVE MEMBER; RESOURCES

FROM: Director of Regeneration Housing and Neighbourhoods

DATE: 2nd April 2003

WARDS AFFECTED: Livesey with Pleasington

TITLE OF BRIEFING PAPER: Report of the Local Government
Ombudsman; complaint re unauthorised
landfill at Lower Whitehalgh Farm,
Brokenstones Road, Livesey.

1. PURPOSE

To advise executive members and Board of the Ombudsman's conclusions and recommendations in respect of a complaint against the Council.

2. RECOMMENDATIONS

- A. That the conclusions of the Ombudsman be noted,
- B. That the recommendations of the Ombudsman be accepted, and that an immediate payment of £5000 be made to the complainants;
- C. That the Ombudsman be advised of the Council's proposed action.

3. BACKGROUND

3.1 The complaint against the Council has been made by the occupiers of a dwellinghouse situated adjoining farmland attached to Lower Whitehalgh Farm. Planning permission had been granted in 1993 to change the use of the farmland to an 18 hole golf course. The permission expired without being implemented in March 1998; an application for renewal of the permission was approved with conditions in May 1998.

3.2 Relevant conditions on the permission included:

- Details of the following to be submitted to and approved by the Council before the commencement of any works: siting, design and

external appearance of the clubhouse, and other buildings; provision for drainage; car parking arrangements; the landscaping of the site.

- No development to be commenced until full details of the layout of the course including tees, fairways and greens have been submitted to and approved by the LPA.
- Trees and shrubs to be planted on the site in accordance with a landscape scheme to be submitted to and approved by the LPA before development is commenced. The scheme shall be implemented before the course is brought into use.
- Details of land regrading and any changes to contour levels of land shall be submitted to and approved in writing by the LPA before any development is commenced.

3.3 In June 1999 the Council's planning case officer met on site an individual who proposed to carry out preparatory works prior to construction of a golf course, including bunding around the course, a nursery for saplings and preparatory groundwork. Although the outcome of the discussion was subsequently confirmed in an exchange of letters, the height and extent of the bunding was not specified in any plans or submitted details.

3.4 In September 1999 works commenced on site including widening of a site entrance and then the importation of considerable amounts of waste materials. Although in some circumstances the addition of fill material may be necessary to the construction of a golf course, in this case the amounts were clearly excessive. Despite warnings to cease the import of wastes, an operation considered to be outside the scope of the planning permission, the operations continued.

3.5 In October the Council sought Counsel's advice on courses of action open to it to address the breach, but was advised that in the light of the case officer's written approval of proposed works, it was unlikely that enforcement notices would be successful, and also that if an injunction was served, the developer could claim compensation for lost contracts and the Council may have to bear the costs of removing the tipped material.

3.6 Attempts by the Environment Agency and the Council to bring the matter under control continued, including the required submission of details pursuant to the planning conditions. The Council again sought Counsel's opinion, and was advised that as the operations had clearly gone beyond preparatory works, enforcement notices should be served, regardless of the content of the case officer's letter. Enforcement notices were subsequently served on the operators and the landowner. Breach of condition notices were also served.

3.7 The Environment Agency withdrew the 'recreational' exemption

under waste management regulations in September 2000, having established that some imported materials were unsuitable, and deadlines to remove it having expired without action. This effectively put an end to the dumping of waste material.

- 3.8 The landowners appealed against the enforcement notices served on them. The Planning Inspector however supported the Council's case fully in dismissing the appeals, but allowed a period of 12 months for the imported materials to be removed, rather than the 3 months specified in the notices. He concluded that what had taken place was a material change of use of the land for deposit of wastes and that no work had been done to build a golf course in accordance with the plans.
- 3.9 The operators of the tipping were prosecuted for failure to comply with Breach of Condition notices, and were fined £1700 each including costs.
- 3.10 A planning application was received in July 2002 for a larger golf course, including the area of the earlier permission and for the importation of a further 700,000 cubic metres of waste material to construct it. This application was refused in February 2003.

4. THE COMPLAINT

The complaint is that the Council gave the developer permission to start works on the golf course without obtaining the details which were required by the conditions, and that the case officer's letter meant that the Council was unable to take action to prevent the tipping once it had started, and that had the letter not been sent much or all of the injustice they have suffered could have been prevented. The complainants say that these failures have led to months of disturbance caused by the immense scale of the tipping, problems with access and services and loss of value of over £80,000 to their home.

The Ombudsman concludes that the complainants have suffered considerably from the activities of the operators of the site, but states that it is unclear how much of this can be laid at the council's door. She says however that the Council granted permission for preliminary works without determining the extent or details of such works, which was maladministration.

The operator appears to have used the letter as an excuse to begin tipping on the site, but the view of the Planning Inspector was that whatever the case officer may have believed he was approving, he approved it in response to the operator's request to prepare for a golf course. What was actually taking place by then was the creation of a waste tip for which there was obviously no agreement. He states that the letter alone cannot be seen as responsible for what the operator did on site. Had the Council's officer required more details before giving

agreement, it would have been easier for the Council to take action sooner than it was able to.

She says with respect to the complainants' claim that the Council's maladministration led to loss of value to their home that any loss of value would be largely the result of construction of a waste tip rather than a golf course, and that the evidence suggests that this was the scheme intended by the waste operator in any event. She says the Council's action caused the complainants to suffer a loss of amenity for a period longer than they might have had the letter in question not been sent to the operator.

The Ombudsman's recommendation is that the Council should make a payment of £5000 to the complainants for the extended loss of amenity which they suffered. The Council should now seek to have the unlicensed waste removed from the site as a matter of urgency.

5. POLICY IMPLICATIONS

None.

6. FINANCIAL IMPLICATIONS

As above. The costs of this will be met from within the Regeneration portfolio's resources.

7. LEGAL IMPLICATIONS

The enforcement action will be pursued with the landowner as recommended by the Ombudsman.

8. RESOURCE IMPLICATIONS

CONTACT OFFICER: C. Livesey

DATE: 3rd April 2003

BACKGROUND PAPERS: Ombudsmans Report ref. 01/C/12023

Planning application file: 10/97/0850