

# AGENDA SUPPLEMENT (2)

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**Meeting:** Cabinet  
**Place:** The Kennet Room - County Hall, Trowbridge BA14 8JN  
**Date:** Tuesday 30 January 2018  
**Time:** 9.30 am

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The Agenda for the above meeting was published on **22 January 2018**. Additional documents are now available and are attached to this Agenda Supplement.

Please direct any enquiries on this Agenda to Will Oulton, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 713935 or email [william.oulton@wiltshire.gov.uk](mailto:william.oulton@wiltshire.gov.uk)

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5 **Public participation and Questions from Councillors (Pages 3 - 8)**

- Question from Mrs Jayne Baker
- Question from Mrs Charmian Spickernell

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**Questions from Jayne Baker.**

**To Councillor Toby Sturgis – Cabinet member for Spatial Planning, Development Management and Property**

**Question**

1. Can Cabinet confirm that there have been precedents for selling land designated “in perpetuity” as an open space, and that the legality of such sales has been tested in the Courts?

**Answer**

In the original planning permission there was a planning obligation that public open space areas needed to be maintained in perpetuity. As a result of terms agreed in section 52 agreements as part of that permission the land was transferred to the Council as landowner. The Council then held the land for open space purposes to meet those planning obligations.

As stated in the report the Council as landowner does have obligations to maintain open space but that duty can be fulfilled elsewhere if there is adequate compensatory space offered in replacement.

The Planning Inspector confirmed in his decision dated 20<sup>th</sup> July 2016 that the replacement open space meets and exceeds the original planning obligations.

Provided the alternative open space is created and available to meet those planning obligations which must be held in perpetuity then the land does not have to be held for that purpose.

There have been precedents for selling land held as open space when that purpose is no longer needed or a suitable alternative provision to meet that community need is provided. This meeting today is part of the legal process so that the Council as land owner can satisfy itself that there is a suitable alternative space to allow appropriation under section 122 of the Local Government Act 1972.

**Question**

2. Are Cabinet aware that the Government website giving guidance on using planning permissions clearly states that “planning permission runs with the land and any conditions imposed on the permissions will bind future owners”? <https://www.gov.uk/guidance/use-of-planning-conditions> This clearly contradicts the statement in Paragraph 6 of the report presented to Cabinet stating the “S52 agreements are no longer considered to be extant for planning purposes as the site has been laid out and transferred to the Council”.

## **Answer**

The Cabinet is aware of the status of planning permissions and conditions. As indicated in the answer to the last question the planning obligation transferred to the Council when the land was transferred pursuant to section 52 agreements. That planning obligation remains with the land until it is no longer required or suitable alternative provision can meet those obligations. As the report sets out, a later planning appeal has granted outline planning permission for change of use including a recognition that the proposed open space meets or exceeds that obligation.

The report confirms that the Council has received legal advice from Counsel that the obligations in the S52 Agreements were no longer extant as they have been met.

The planning obligation which was created by the original permission for the land being proposed for appropriation itself was transferred to the Council as land owner. That planning obligation will continue to apply for the area accepted by the planning inspectorate as suitable alternative replacement.

## **Question**

3. Can Cabinet confirm that, in the event of a sale of the land, access by the local community, including the elderly living in residential accommodation, children and young people, to Marlborough Common as the nearest open space, would be made safe through the provision of a proper crossing?

## **Answer**

This question appears to be directed at access by local people to 'Marlborough Common' and whether the Council has any plans for 'the provision of a proper crossing' of the A346 Swindon Road. That would be a matter for highways, if the need arose, as there is no requirement in the planning permission for any such works.

## **Question**

4. Can Cabinet confirm that there would be safe access for the emergency services on to the compensatory space, such as at Bay Bridge, in the event of an incident requiring an emergency response?

## **Answer**

The compensatory space is not near Bay Bridge. There will be pedestrian access to the compensatory open space from the existing road at Rabley Wood View. The emergency services will be able to access the site from there.

Detailed plans of the layout, access, appearance, landscaping and scale will have to be submitted as part of the conditions of the outline planning permission before any development takes place.

**Question**

5. Can Cabinet confirm that, in the event of a sale of the land, Wiltshire Council would set up binding contracts with any future owners of the whole area to ensure the entire compensatory open space would be kept well-drained, safe and in good order?

**Answer**

In the event of a sale of the land, any contracts for sale will require the purchaser to comply with the conditions set out in the Planning Inspector's decision, which includes a management plan for the compensatory open space.

The planning permission requires details of the drainage strategy, including details of its maintenance and management after completion, to be agreed before development starts.

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## Questions from Anne Henshaw, Chair of the CPRE.

**Councillor Bridget Wayman – Cabinet member for Highways, Transport and Waste**

### RE: Everleigh Household Recycling Centre

At a meeting of the Pewsey Area Board held on 8<sup>th</sup> January 2018, Wiltshire Council provided an update in respect of the Everleigh HRC, which is known to be under scrutiny currently by the Environment Agency because of drainage problems. The update highlighted various issues as follows:

- a). Concerns expressed by the Council's new contractors, FCC Environment, who became responsible for the site on 2<sup>nd</sup> October 2017, that previous operation of the site did not conform with Environmental Regulations.
- b). As of 6<sup>th</sup> October 2017, local residents have been banned from recycling an extensive range of otherwise normally recyclable materials to the site. They have been directed to place these materials in the container for household waste.
- c). FCC Environment's further concerns relating to the condition of the sealed drainage tank, and potential leakage therefrom, could appear to be justified in the light of the Council's admission that the "concrete retaining walls are heavily cracked and a significant amount of corroded reinforcement bar is visible." Prima facie, this admission might be regarded as displaying negligence on the part of the Council, and/ or the previous Operator, due to failure to properly inspect and maintain the site. Such defects normally occur only over a considerable period of time, and concrete degradation in such circumstances is a common and widely known problem.
- d) The Council's update refers to estimated costs to rectify matters being established, prior to a submission to Cabinet to decide on priorities for capital investment. Information obtained informally by CPRE indicates that the sum involved to rectify the situation at Everleigh would be in the region of £80,000.

### **Question**

1. Why was the fitness for purpose of the Everleigh site evidently not monitored properly over what is likely to have been a considerable period of time and timely work, maintenance and repairs not carried out?

### **Answer**

*Responses to be provided*

### **Question**

2. In order to establish who was ultimately responsible for this failure to act, what statutory, or other legal obligations applied to
  - a) Wiltshire Council, as the Owner of the site

And

- b) Hills Waste Management as the previous Operator thereof, and what, if any, were the provisions written into the contract between the Owner and the previous Operator with regard to responsibility for inspection, maintenance and repairs?

**Answer**

*Responses to be provided*

**Question**

3. Will Cabinet confirm that any necessary expenditure to rectify the situation will be funded by the Council and made available forthwith to restore this site to full function pending resolution of who may be legally liable and to what extent for the cost of rectification? Similarly, will Cabinet also confirm that it will fund any associated clean-up costs at the site should these be required?

**Answer**

*Responses to be provided*

**Question**

4. Can Cabinet confirm that a full and proper inspection has been made of all the other Council owned waste recycling sites, and that the Council, and FCC Environment, as the new incoming Operator, are fully satisfied that no similar (or different) problems exist at any of these sites, that would impede full operation in accordance with all existing regulations?

**Answer**

*Responses to be provided*

**Question**

5. Local residents are well aware that it has long been the Council's wish to close the Everleigh site down on the grounds of expense and usage, without, however, seemingly ever appreciating its value and importance to a very rural community. Will Cabinet provide an undertaking that Everleigh will NOT be closed down either because of its present problems, or for any associated drop in usage, given that these difficulties, prima facie, would seem to have been due to a serious lack of competence on the part of the Council, as the Owner of the site, and/or Hills Waste Management as the previous Operator?

**Answer**

*Responses to be provided*