

APPENDIX 1

REPORT TO SCRUTINY COMMISSION RE SUMMARY OF EVENTS AT THE `KLONDYKE` SITE OFF NEWTOWN LINFORD LANE GROBY

The information has been listed under specific headings; there will be some overlap but it is considered that this approach will have more coherence. Events at the site have been dealt with under the following subject headings;

1. Compulsory Purchase Order
2. Injunctions,
3. Application for Planning Enforcement Order,
4. Appeal against both the enforcement notice and the refusal of LDC in respect of the `Compound`,
5. Application for replacement dwelling,
6. Other enforcement action
7. Planning History

1) Compulsory Purchase Order CPO

- a) At a member/officer meeting on 24 July 2013, one of the agreed actions was to prepare a report to Council recommending that CPO powers were used to acquire the Klondyke site. The aim was to make September/November Council. In the event, a report was presented to the Council meeting on 3 December 2013
- b) A report and a draft Statement of Reasons were submitted to the Council meeting. The resolution of Council on 3rd December 2013 is set out in minute 300. The key points from the minute were to approve the making of the HBBC (Klondyke Allotments) CPO 2013 and to submit it to the Secretary of State for confirmation; to delegate authority to the then chief executive to enter into negotiations with Mineral Quarry Products Ltd in order to agree the terms of an indemnity agreement to contribute to the cost of the compulsory purchase; and remediation of the site.
- c) Emails between HBBC and the quarry company indicated that, as late as August 2014, there was no agreement as to how any issue of contamination on the site would be dealt with, and who would bear the costs of dealing with any remediation
- d) At a meeting on 1 October 2014, which included councillors, officers and representatives from MQP, discussion ensued on how to move forward the resolution of 3 December 2013 to make a CPO. The agreed actions from that meeting were to provide for a further meeting in 3 months, for proposals for

exploring the costs of any remediation, for a formal offer to purchase to the occupiers of the site, and the investigation of a 'leisure' option

- e) The then chief executive, on 11 December 2014 wrote to several borough councillors, and to officers, indicating that in view, inter alia, of the lack of unlawful activity on the site in recent months, he did not consider the expenditure of further time and money on the proposal was good value for money, and that he didn't propose to call a further meeting at that point
- f) There were further officer/member meetings during 2015, and, as a result, instructions were sent to counsel on 23 November 2015, seeking his advice on four issues relating to the site, including the proposed CPO. Counsel responded on 26 November 2015 and concluded that seeking to attain a CPO at that time was not well-advised and was fraught with difficulties
- g) The then chief executive had produced a note, dated 23 November 2015, of a brief history and activity on the Klondyke site. The note concluded that the decision to pursue the CPO was still extant and could be activated if members thought it could be activated at an affordable cost
- h) The then chief executive having read counsel's advice of 26 November 2015, emailed relevant council officers on 26 November 2015 saying that it looked as if the decision of Council on 3 December 2013 was not sound and that there would be a need to return to Council with a different justification, if a CPO were to be pursued. He indicated that officers should pursue strongly the enforcement options on which counsel had also advised, and these enforcement matters are discussed later in this report.
- i) There was a meeting on 21 November 2016 between borough councillors, including the Leader and the then chief executive, and other officers. The purpose of the meeting was stated to be to seek clarity on the potential to pursue a CPO on the Klondyke site, to resolve the uncertainty for the future, to produce a community facility and to protect the site from further unauthorised use. The agreed actions included the convening of a meeting with parties who would have an interest in developing the site
- j) There was a meeting on 12 December 2016 between borough councillors, parish councillors, Groby Juniors Football Club, and officers of the borough council, including the then chief executive and the then deputy chief executive. The conclusions from that meeting included work to be undertaken between council officers and the club to establish the need and potential existing capacity as a basis for identifying a leisure reason for a CPO, and for council officers to identify the costs of remediation and ownership. Officers met with the Groby Juniors Football Club on 13 January 2017 to advise on producing a business case. There was subsequently little progress in the production of the business case and in the meantime a Parish Poll was called by the Steering Group for June 2017.

- k) This poll criticised the Council in not pursuing the 2013 report relating to compulsory purchase and called on the council to meet the purchase and remediation costs of the site. Whilst this was an indication of support from the Groby residents it is not binding on the Council and was not presented formally to Council to respond.
- l) At a meeting of the Groby Parish Council Klondyke Steering Group on 31 August 2017, HBBC representatives agreed to seek counsel's opinion in relation to the making of a CPO on the site, and counsel was instructed on 18 September 2017 to advise the council on the feasibility of securing a CPO of the site
- m) Counsel responded with his advice on 5th October 2017 and copies of the instructions and the advice were sent to Councillors Cartwright, Hollick, O'Shea and Hall and a meeting took place with officers on 25 October 2017 at which Councillors Hall, Cartwright and Hollick were present..
- n) It was agreed at the meeting on 25 October 2017 that a summary of the advice and recommendations from counsel on 5 October 2017 and 16 November 2017 would be prepared and discussed at the next meeting of the Groby Parish Council Klondyke Steering Group.
- o) The summary was available at the next meeting of the Klondyke Steering Group on 26 January 2018 at which counsel was also present along with the Leader, Deputy Leader, Chair of Scrutiny, ward, borough and County Councillors. The essence of the advice from counsel was there was not at that time a compelling case for making a CPO to secure the use of the site for leisure use. The Steering Group subsequently produced a summary of advice received from their barrister.
- p) At that meeting it was agreed that the Groby Parish Council would consider their preferred grounds to further develop a case for compulsory purchase based on tree planting or sports provision for the Groby Juniors Football Club. In addition the meeting received advice from the HBBC counsel on the need for evidence of options appraisal for football pitches, advancing a Neighbourhood Development Plan supporting the chosen option and putting in representations to the emerging Local Plan progress. Officers would then develop a report to Council detailing this case for consideration including costs for the purchase and remediation of the site depending on the chosen end use. There was also discussion as to liabilities for funding between GPC and HBBC.
- q) A letter from Groby Parish Council was received 13 March confirming the preference of football pitches but with the proviso that if this is not supported by the football pitch review that it reserves its position to "pursue option "B" for a woodland area or any other project that satisfies the only eventual acceptable outcome for the electors of Groby, which is for the complete Klondyke site to be secured by compulsory purchase and restored to a proper planning purpose identified in Policy 9 of the Hinckley Bosworth Borough Council Core Strategy adopted in 2009".

2. Injunctions

- a) Two injunctions have been secured in relation to areas of the site, the first dated 19th April 2007, and the second dated 19 April 2011.
- b) The 2007 injunction was the culmination of enforcement action which had commenced with the service of an enforcement notice issued on 4 August 2005, requiring the cessation of the use of that part of the site comprised in the enforcement notice as a residential caravan site, the removal of all caravans, the removal of all hardstanding and the reinstatement of the land to the condition prior to the unauthorised use.
- c) The enforcement notice was appealed and dismissed on appeal.
- d) The injunction was necessary to ensure the implementation of the enforcement appeal decision. The caravans were removed. Following complaints from members further approaches to the owner of the site in 2017 resulted in actions relating to the remaining hardstanding and HBBC enforcement offers confirmed in December 2017 that the hardstanding had been removed from the site and topsoil has been laid. This compliance with the terms of the injunction are disputed by the Steering Group and further investigations are to be carried out.
- e) The 2011 injunction was sought and secured following reports of an anticipated incursion of caravans. The injunction covered the whole of the site but there was no incursion and the interim injunction lapsed on 1 June 2011.

3. Application for Planning Enforcement Order “The Compound”

- a) The compound is a small area of the site surrounded by high metal sheeting containing various structures including a former caravan where a resident had allegedly lived from 1987. This fact was disputed by local residents and officers when an application for a Lawful Development Certificate was submitted in 2015 see below. One of the issues on which counsel’s advice was sought in November 2015 concerned whether HBBC should pursue a Planning Enforcement Order against the occupier of the site.
- b) The provision had been introduced by the Localism Act 2011 and was an attempt to legislate to deal with enforcement cases where there had been concealment from the local planning authority of breaches of planning control.
- c) The advantage of obtaining such an order is that if successful it knocked out any ground (d) appeal before an enforcement appeal was heard.
- d) Counsel advised that he considered it probable on the evidence before him that the Magistrates Court would grant an order
- e) HBBC sought such an order and the hearing was held before a District Judge in late 2016; the Judge found in favour of the occupier and the Order was not granted.
- f) HBBC were ordered to pay the Occupier’s costs.

4. Appeals against enforcement notice and refusal of Lawful Development Certificate in respect of the `Compound`

- a) These issues are linked with the previous section relating to the seeking of a Planning Enforcement Order
- b) In August 2015 an application was made for a Lawful Development Certificate in respect of an existing building within the site, which was subsequently referred to by officers as `The Compound`
- c) The application was refused by the Borough Council in a Decision Notice dated 2 November 2015 on the grounds that the building had been concealed from the Council and that the applicant had not proved that the building had been occupied continuously for a period of 10 years back from the date of the application
- d) An enforcement notice was issued by the Council on 7 January 2016 requiring the applicant to cease the residential use of the land and to remove the structure (described in the notice as a `twin unit mobile home`) from the site
- e) Counsel had advised on the wording of the enforcement notice.
- f) Appeals were submitted in January 2016 against both the refusal of a Lawful Development Certificate, and also against the enforcement notice and the date of the inquiry was eventually fixed for 4 April 2017
- g) Different counsel was appointed to represent the Council at the proposed public inquiry and, following a meeting in early March 2017, with Borough and Parish Councillors, he gave frank advice on the Council's prospects for the forthcoming inquiry, in relation to the enforcement notice and the Council's chances of success in defending the Lawful Development Certificate
- h) As a result of that advice the Council withdrew the enforcement notice at the inquiry on 4 April 2017 and prepared to defend its refusal of a Lawful Development Certificate
- i) There was some confusion at the inquiry as to exactly what had been applied for by the applicant under a Lawful Development Certificate. This was reflected in the inspector's decision letter when she said she wasn't entirely clear whether an application had been for an existing use or for operational development in the erection of the structure/building. The council had come to the inquiry prepared to defend an application for a certificate re the use of the building
- j) The applicant's counsel clarified the position that the application for a lawful development certificate was in respect of the erection of a dwellinghouse and not for the use as a dwellinghouse.
- k) The council's case was then reviewed with counsel and borough councillors, and counsel was instructed to advise the inspector that the council no longer wished to contest the appeal. It was considered that the evidence of the appellant was

sufficient to demonstrate on the balance of probability that the erection of a dwellinghouse had been substantially complete more than 4 years before the time of the application

- l) The inspector's decision was published on 2 June 2017 and a Lawful Development Certificate was granted in respect of the erection of a dwellinghouse. The inspector made clear that the certificate did not address the lawfulness of any existing use of the building
- m) A meeting was held in August 2017 to receive a de-briefing from counsel on the outcome of the above appeals. Borough and Groby parish councillors were present and a number of questions put forward by councillors were addressed by counsel. A note of the questions and the responses were then circulated to those attending.

5. Application for replacement dwelling

- a) An application for a replacement dwelling to replace the one declared lawful in the decision letter of 2 June 2017 in the Compound has been submitted (17/01002/FUL) and planning committee resolved to refuse the application at Planning Committee on 6 March 2018 on 3 grounds including the likely sterilisation of important mineral reserves in the adjoining quarry

6. Other enforcement action

- a) The occupation of the compound. Following site visits in 2017 concerns were expressed as to the living conditions of the occupier of the Compound. The site was inspected in May 2017 by an officer from the Private Sector Housing team who offered advice on safety aspects.
- b) The Compound has now been listed for Council Tax from April 2017 and action taken to recover Council Tax.
- c) An enforcement notice was served on the 7 December 2017 requiring the cessation of the use of a different area of the site for the maintenance, repair and storage of motor vehicles. This notice has been appealed by the applicant and HBBC are currently awaiting a start date letter for the appeal.
- d) Also on the same area of the site a Planning Contravention Notice was served in relation to the siting of a caravan. The response has now been received stating that the caravan has been occupied for in excess of ten years. Enforcement action is being considered relating to this claim.

- e) On an element of the above the site other enforcement notices were served back in 2007 relating to caravans and structures which were removed however the obligations remain on the site.
- f) The Steering Group have raised other issues relating to the use of the site and these continue to be investigated.

g) Planning History

- 05/00019/ENF Appeal against Enforcement Notice (Change of Use) Dismissed 17.08.2006
- 05/00366/COU Change of use of land to permanent residential for siting of six caravans and three toilet blocks Refused 15.06.2005
- 06/00005/PP Change of use of land to permanent residential for siting of six caravans and three toilet blocks Dismissed 17.08.2006
- 07/01241/COU Change of use of allotment gardens to create farm space and erection of day centre and stables App Returned 05.12.2007
- 08/00186/FUL Erection of three timber stables and one tack room and associated area of hard standing Refused 04.06.2008
- 15/00933/CLUE Application for a Certificate of Lawful Existing Use for a dwelling Refused 02.11.2015
- 16/00006/ENF Appeal Withdrawn 30.03.2017
- 16/00003/CLD Application for a Certificate of Lawful Existing Use for a dwelling Allowed 02.06.2017