

## REPORT TO CABINET

Title: **PETITION – REQUEST FOR COMPENSATION DURING  
BADNELL’S PIT REMEDIATION**

Date: 10<sup>th</sup> February 2011

Members Reporting: Councillors Mrs Knight and Kellaway

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Wards affected: Maidenhead Riverside

### 1. SUMMARY

- 1.1.1 A petition has been received which requests consideration to the payment of compensation during the remediation of Badnell's Pit. There are no statutory requirements for the payment of compensation by the developer or the Council.
- 1.1.2 The Council refused planning permission for the works and permission was granted by the Secretary of State on appeal with detailed controls including measures to minimise disturbance to residents and protect their health. The Council continues to work with the developer and residents to ensure these objectives are achieved.
- 1.1.3 Despite this, it is recognised that some residents will suffer some disturbance during the works. However, complaints about activities on the site are low and the residents' monitoring group is meeting regularly. The historical presence of the pit will have depressed property values which will likely rise when the works are complete. It is not considered appropriate for the Council to compensate residents near the site.

### 2. RECOMMENDATION

**That the petitioners be informed:**

- a. **There is no statutory basis for compensation and the Council does not consider there are other grounds for compensation; and**
- b. **The Council remains firmly committed to working with residents and the developer to ensure disturbance is minimised and the health of residents is protected.**

What will be different for residents as a result of this decision?

Residents near the site will understand why it is not appropriate to pay compensation. All residents can be assured the Council manages its limited resources fairly and consistently for the benefit of the Borough as a whole.

### **3. SUPPORTING INFORMATION**

#### **3.1 The Petition**

3.1.1 The petition is signed by 55 residents and requests the Council “*investigates the possibility of some compensation for the blight on our houses whilst the remediation works are carried out to Badnell’s Pit*”. The Head of Planning & Development wrote on 8<sup>th</sup> November 2010 to advise compensation could not be provided and, in accordance with the Council’s petition arrangements, the petitioners have requested the matter be considered by Cabinet.

#### **3.2 The permission to remediate**

3.2.1 The remediation of the former Badnell’s Pit was granted planning permission on appeal by the Secretary of State in May 2006 following a public inquiry into the Council’s refusal of the application for the works. The content of the pit will be removed and replaced with clean fill. The remediation is required to take place in accordance with a detailed method statement as well as comply with 26 conditions and a series of additional requirements in a legal agreement. Together these measures are designed to:

- Protect the health of residents;
- Minimise disturbance to residents;
- Ensure they are kept informed throughout the works; and
- Ensure other environmental objectives of the works are achieved.

3.2.2 As well as detailed technical requirements, the measures include:

- A restriction on the hours of lorry movements to 9am - 5pm Monday to Friday and 9am – 1pm on Saturday, with no working on Public Holidays;
- A limit on the total number of daily vehicle movements to 300, of which no more than 200 may be lorries (100 in and 100 out);
- 24 hour noise, air quality, groundwater and vibration live monitoring;
- A specialist Council officer based on site monitoring compliance with the method statement, supported by specialist consultants;
- A monitoring group of residents hosted by the Council and reviewing monitoring on behalf of residents;

- Monthly newsletters, publication of monitoring results on the development website and notice boards in the area run by the developer.

### **3.3 No provisions within the Planning Acts for compensation**

- 3.3.1 There is no requirement or provision in the Planning Acts for the payment of compensation by either a developer or a Council when a development takes place. Some decisions on planning applications will enhance the value of nearby sites, whilst decisions on other planning applications may reduce or freeze values in the short term, particular whilst development takes place.
- 3.3.2 In the broadest sense these tend to at least balance each other over time and land values rarely go down as a consequence of development. The presence of the pit is likely to have depressed property values in the area and, once complete, the remediation of the pit may well increase nearby property values.
- 3.3.3 The site has been identified as a possible housing site in the Local Plan since 1993. Residents buying houses will therefore have been aware of the possibility of development taking place for a considerable time and will have been able to take it into account in their decision.

### **3.4 No other basis for paying compensation**

- 3.4.1 When the former Secretary of State granted planning permission he accepted the controls and other measures secured would be sufficient to protect residents and minimise the disturbance they experienced. After permission was granted the Council also worked with the developer to ensure the lorries use a temporary bridge across the Moor to avoid them passing more than 200 resident homes on their way to the A4.
- 3.4.2 The developer is operating within the terms of the permission and, after some refinements to protocols during the preparatory works, complaints about activities on the site have been low in number. The residents' monitoring group is meeting regularly and the developer is keeping the community well informed about activities on the site.
- 3.4.3 Some disturbance occurs with most development sites, but the developer continues to work with the Council and residents to ensure it is minimised. Whilst it is accepted residents would rather choose not to have the current works, the impact on their lives is being minimised wherever possible. Once the works are complete it is likely to have a positive effect on local property values.
- 3.4.4 The Head of Finance has the discretion to reduce Council Tax, using powers confirmed by the 2003 Local Government Act. However, these powers are rarely used as they set precedents and raising expectations which are extremely difficult to manage and there is no case law. Research shows that use of these powers has been prompted only by major events, such as in North Cornwall after the 2004 flooding in Boscastle.

## 4. OPTIONS AVAILABLE AND RISK ASSESSMENT

### 4.1 Options

	Option	Comments	Financial Implications
1.	Do not pay compensation	Recommended	Revenue: none  Capital: none
2.	Provide compensation to residents in the form of free or discounted services	Not recommended	Revenue: Cost would depend on the scale and content of the free or discounted service and the impact on the Council and its partners.  Capital: None
3.	Provide compensation to residents in the form of reduced Council Tax	Not recommended	Revenue: Cost would depend on the number of properties and the banding of those properties. A 10% reduction on a band E property would save the owner £151, and the Council would be responsible for 83% of the impact of this on Collection Fund balances.  Capital: None

### 4.2 Risk assessment

- 4.2.1 The Council remains firmly committed to working with the developer and residents to ensure the impact of the works on residents is minimised. **Option 1** could be portrayed as the Council being unresponsive to local residents unless the continuing good partnership work of the residents' monitoring group, the Council and the developer is highlighted and residents understand why it is not appropriate for compensation to be paid.
- 4.2.2 Providing compensation in the form of either **Option 2** or **Option 3** bring similar risks. In the context of the controls in place and the minimisation of disruption, the basis for compensation and which households receive it must be clear and measurable to avoid considerable financial risk or suggestions that the compensation is inequitable

to other residents. There are many other developments occurring in the Borough where residents could similarly argue the impact could be compensated and paying compensation changes the current assumption of the legislation that losses and gains from developments generally balance each other.

- 4.2.3 The payment of compensation would also have a direct impact on other services provided by the Council as spending would need to be reduced to reflect the reduced income or the costs of providing free services.

## 5. CONSULTATIONS CARRIED OUT

- 5.1.1 None

## 6. COMMENTS FROM THE OVERVIEW AND SCRUTINY PANEL

- 6.1.1 The matter will be considered by Overview and Scrutiny Panel on 24<sup>th</sup> January.

## 7. IMPLICATIONS

- 7.1.1 The following implications have been addressed where indicated below.

Financial	Legal	Human Rights Act	Planning	Sustainable Development	Diversity & Equality
✓	✓	✓	✓	✓	✓

Background Papers:

Planning application case file 03/40644