

**Minutes of the Environment and Sustainability Committee
3 November 2021**

Present:

Councillor I.J. Beardsmore (Chairman)
Councillor O. Rybinski (Vice-Chairman)

Councillors:

J.T.F. Doran	K.M. Grant	J.R. Sexton
T. Fidler	T. Lagden	
N.J. Gething	V.J. Leighton	

Substitutions: Councillors J. Vinson

Apologies: Councillors R.J. Noble and V. Siva

In Attendance: Councillors C. Bateson, M. Beecher and L. E. Nichols

503 Disclosures of Interest

There were none.

504 Questions from members of the Public

There were none.

505 Request for site investigation of land to rear of Thames Side

This Extraordinary meeting was held at the request of the Committee to advise on how the Council could progress a site investigation of the land to the rear of Thameside, report on the outcome and consider whether any further measures might be necessary.

Tracey Willmott-French, Senior Environmental Health Manager, presented the report which provided historical information relating to the death of Zane Gbangbola including a summary of the Coroner's findings and conclusions. It also provided details of actions taken by Spelthorne Borough Council at the time and subsequently in the light of potential new evidence brought forward. The only power available to the Council's to instigate investigation of the site

was Part 2a of the Environmental Protection Act 1990 and this should only be used when no alternative was available. A detailed Desk Study in accordance with the Statutory Guidance had been conducted at the time of the Coroner's inquest and it had concluded that the risk profile at the site did not meet the criteria to either proceed to further even more detailed assessment or for the site to be categorised as 'contaminated land' under Part 2A of the Environmental Protection Act 1990.

A great deal of work was already underway by the Environmental Health team to review the existing evidence and consider what further information was required and how to obtain this in order to provide advice to the Committee on how this could be progressed.

Further information about the environmental permit/licence arrangements for the site was required to establish the Council's options and powers to consider the Committee's request and a Freedom of Information (FOI) request had been submitted to the Environment Agency in respect of this. The Environment Agency had responded with details of the permits for the land to the south of the M3 behind Thameside and also the land to the north of the M3. As the permits had not been surrendered, the environment permit regime was likely to take precedence over the Part 2A powers of the Council.

A FOI request was to be submitted to the Ministry of Defence (MoD) in the week commencing 8 November, following the BBC's report that a whistleblower from the MoD had stated that he believed sub-contractors had dumped waste chemicals in the gravel pits behind Thameside which he considered could produce cyanide. It was necessary to conduct a considerable amount of research prior to submitting the FOI to ensure that the request was suitably worded to ensure that the correct information was obtained.

Legal advice had been sought as to actions available to the Council but further information was needed before this could be properly considered. Councillor Gething commented that whilst he had every sympathy for the family who had suffered a terrible tragedy, having read all the documents available he considered that the matter had been thoroughly and extensively investigated previously and the grounds for seeking further investigation of the site were tenuous.

It transpired from Committee members' comments, that an email had been sent to them from a third party about the matter and officers asked if this could be forwarded to relevant officers for consideration.

Clare Lucas, Principal Pollution Officer, advised that the Environment Agency as the regulatory authority had been helpful and forthcoming in providing information. The agency regularly conducted testing and gas monitoring of the land with the live permit (which was the land to the north of the M3) and had provided a large amount of data which was being sifted and analysed by the Environmental Health team.

Within the Council, the Pollution Control team screen the Planning Schedule for potential land contamination issues and this was checked weekly. The Pollution Control team also maintain a database of land where the current or historic land use or pollution incidents may have given rise to contamination. There were good relationships between teams, officers had many years' experience of dealing with contaminated land issues and a robust system and measures were in place.

It was suggested that the installation of the Esso pipeline may provide a route to request information about the land and the Environmental Health team undertook to approach the relevant parties to enquire how their site investigations were progressing and if they could provide any information about this particular site.

The possibility of putting environmental pollution equipment in situ for potential flooding and investigating who might have responsibility for this was suggested by the Committee.

A number of members expressed the view that the land should be further investigated to ensure it was safe and provide reassurance to the public. The Chair agreed and stressed that at this stage only a site investigation was being sought to gather evidence of any contamination of the site. Once that evidence was available then any further steps could be considered if necessary.

The Committee asked what the Council's obligation would be if a serious risk was established. They were advised that there was a detailed phased process, each stage had to be rigorously approached and results evaluated before moving to the next stage. Each stage informed the next and no stage be bypassed. If there was not sufficient evidence at the end of each phase to move on to the following one, the Council was required to stop.

The Senior Environmental Health Manager advised that the cost of a site investigation would be expensive and there were no government grants available. However, the Council had not refused funding for any site investigations in her experience when evidence supported that action.

The hydrogen cyanide readings recorded by the Fire Service and the differing views of experts about how this could have arisen and whether this may or may not have been the cause of death was also discussed by Members.

Members asked if it was possible to look back at past assessments to help inform, provide some reassurance, and a profile for future use. They were advised that data was gathered and archived and a system was in place to cross-reference any records, incidents or planning applications to the land which could identify it as being potentially contaminated. However, the tests varied according to the regime. The cost of remediation was very expensive and within the planning realm where a property was within proximity to a landfill an applicant would usually opt to install a gas lining which was

significantly cheaper than conducting a site investigation to determine if a gas lining was necessary.

Questions were raised about a planning application for the Relief Lock Keeper's house in 2010. Cllr Fidler suggested that a change in the risk assessment had taken place as the PBA report described it as a potentially unacceptable risk, but this had been downgraded to not an unacceptable risk by the time the Coroner's report was issued. The Chair advised that he had been given an extract of a report by a member of the public relating to the property at that time, however copyright laws prevented it being used by a third party and it was not on the planning file. The Principal Pollution Control Officer referred to the 2010 PBA Phase 1 Ground Condition Report for the Lock Keepers Cottage in which the risk estimation for human health was moderate/low. The legal team were seeking advice on whether this and other professionals' information and data provided to the inquest could be used.

Once all available information had been obtained, then legal advice would be sought on which body had jurisdiction for a site investigation. However, in view of the considerable amount of work to be undertaken, and details still awaited it was unlikely that there would be time to prepare a report for the next meeting of the Committee in January 2022 and March 2022 was a more realistic target. The Committee were also advised that funding requirements may need to be considered as there would not be any budget provision for this potentially in the current financial year and that procurement of external services will affect the timeline of the work.

It was **resolved** to:

1. Note the report
2. Request that a verbal update was provided at the next Committee meeting in January 2022.

506 Urgent business

There was none.