

**Ballymoney Borough Council
Health & Environmental Services Committee Meeting No 367 – 13th January 2011**

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BALLYMONEY BOROUGH COUNCIL

Minutes of Health & Environmental Services Committee Meeting No 367 held in the Council Chamber, Riada House, Ballymoney on Thursday 13th January 2011 at 7.05pm.

IN THE CHAIR Councillor E Robinson

PRESENT

Aldermen
C Cousley, MBE, Deputy Mayor
J Simpson

Councillors
J Finlay
R Halliday
M McCamphill
P McGuigan
C McLaughlin
A Patterson
I Stevenson

APOLOGIES

F Campbell
H Connolly
M Storey, MLA

IN ATTENDANCE

Chief Executive
Director of Borough Services
Committee Clerk

367.1 LANDFILL SITE CLOSURE

* Councillor McGuigan joined the meeting at 7.08pm.

The Director of Borough Services gave the following report to members:

- The European Commission, following complaint, has initiated infraction proceedings in respect of the failure by Northern Ireland to properly implement the provisions of the EU Landfill Directive.
- The alleged breach of the EU Landfill Directive relates to the 10 no. landfill sites across Northern Ireland which closed between July 2001 and January 2004.
- The Council's former landfill site at Crosstagherty is one of 5 no. such Council sites. Crosstagherty Landfill was operational until 26th November 2003 when it closed and the site resolution under which it operated was rescinded in accordance with the provisions of the Pollution Control & Local Government Order (NI) 1978. This action was taken on foot of advice both from consultants and the relevant DoE official.
- Following correspondence in February 2010 from the Permanent Secretary of the Department of the Environment for Northern Ireland, Council agreed to act jointly with

the other Councils in a similar situation to progress a resolution to the matter and in that regard legal advice has been sought and received.

- In order to obtain a stay to the current infraction proceedings, it is the intent of the Department of the Environment to demonstrate to the European Commission that it has the matter in hand and is progressing the resolution of the issue by –
 1. amending the Landfill Regulations (NI) 2003 “ to change the date from which landfill sites which close (or have closed) must comply with the Landfill Directive (1999/31/EC) to 16th July 2001 and to redefine the term ‘operator’ to extend its meaning to cover the period 16th July 2001 to 18th December 2003”; and
 2. in respect of the 5 no. former Council operated landfill sites to secure a Framework Agreement with those Councils.
- The Department’s position was set out by the DoE Minister and his officials at a meeting at Stormont in December 2010 –
 1. It will proceed with the amended Landfill Regulations [necessary to properly transpose the EU Landfill Directive (1999/31/EC) as required by the European Commission.
 2. The 5 no. Council’s are asked to sign up to the proposed Framework Agreement by 21st January 2011.
 3. Contingent on this, the Department is committed to meeting 50% of the additional costs associated with site closure plans. [This offer is made without prejudice as to how the longer term remediation liabilities will be met and does not represent a precedent.]
- Given the fact that EU Infraction Proceedings are extant and that Council is subject to same, it is necessary that Council work with the Department as follows –
 1. Adopt the proposed Framework Agreement by 21st January 2011;
 2. Commission consultants to prepare a Site Closure Plan for Crosstagherty Landfill to meet the Council’s EU Landfill Directive obligations; and
 3. Progress the closure of its former Landfill at Crosstagherty, when the NI Environment Agency [NIEA] has approved the Site Closure Plan to the higher EU Landfill Directive standard.

During the ensuing discussion, members were concerned to know more about the advice Council received at the time it decided to close its landfill in 2003; the infraction proceedings process and the stage proceedings were at; the implications of the proposed Landfill Regulations the DoE was minded to make and the proposed framework agreement Councils were being asked to sign up to and the potential costs involved; the process of judicial review and its potential cost and who had met with the DoE Minister and why he had set such a tight deadline for the Councils to respond.

The Chief Executive and the Director of Borough Services responded to member questions. Members were made aware that Northern Ireland was the only part of the United Kingdom facing action for not properly transposing European law and thus breaching the provisions of the Landfill Directive. Whilst it was confirmed that the advice received from the senior DoE official in 2003 was oral, it was strongly the opinion of members that the Department [albeit at the time of direct rule] must accept the prime responsibility for the matter now of concern to the European Commission and therefore bear the cost. The Chair stated that in her capacity as President of NILGA she had sought information from the other Councils affected and apprised the meeting of her findings. The Chief Executive pointed out from the correspondence received from the Department that infraction proceedings were in train and it was accepted that the Director was correct in his interpretation that proceedings had

commenced. The Chief Executive advised that the legal advice received by the Councils affected was that Councils were emanations of the State and were therefore bound to comply with European law. The question was not whether to comply or not, but who would pay the additional cost closure to the higher Landfill Directive standard entailed. Members were reminded that prior to Council making its decision in 2003 its consultants had estimated that the difference in cost between the respective standards was £500,000 to £1M, whereas the DoE in its Regulatory Impact Assessment when it had consulted in June 2010 on its proposed Landfill Amendment Regulations stated the cost to be £8.6M per site, a figure it later admitted was really guesswork. Members were also made aware by officers that whereas previously it had been the view of Local Government Audit that all costs associated with closure were to be regarded as revenue, the DoE in discussions which had taken place last year now were advising that the majority of the closure costs could be regarded as capital for which loan sanction would be available. The Chair gave examples of the effect on the rates various expenditure greater than what was currently in the Councils Capital Fund [£1.7M] would mean, even though the spend might be funded by way of a loan.

The Chief Executive reminded members that Council was aware of the issue under discussion as it had in April 2010 agreed to work closely with the other four Councils affected and obtain necessary legal advice jointly. Council had commented on the Departments proposals to amend the Landfill Regulations acting on the joint legal advice received, as members were aware, as had the other Councils affected.

He gave further details concerning the meeting called by the DoE Minister at Stormont on 16th December as referred to by the Director in his report and advised that it was the Minister who in subsequent correspondence had set the deadline of 21st January 2011 for the five Councils affected to sign up to the proposed Framework Agreement. Members were of the view that whilst the issue was technical in nature it was clearly now a political matter predominately and that it was necessary to engage further with both the Minister and the Environment Committee.

* Councillor McGuigan and Councillor McLaughlin left the meeting at 8.10pm.

The Director in response to further questions advised members that at his suggestion in 1999 Council had established a capital fund recognising that it had to build up resources in order to be in a position to undertake the work that inevitably would be necessary to close its former landfill site. More recently Council had decided not to put further money into this fund, but on foot of advice from Local Government Audit it had again year-on-year put further money into the fund. The Director also advised that to date following its closure the only work done at the site was to provide a temporary capping.

In response to the Chair, the Chief Executive advised that a meeting of the relevant officers of the five Councils affected was to take place on 14th January.

Following further discussion, it was agreed that –

- officers would report back to Council at the meeting on 19th January on the outcomes of their meeting on 14th January;
- the Chief Executive would clarify the potential cost of Judicial Review; and
- a meeting be sought with the DoE Minister in order that members could make representations to him.

The meeting closed at 9.05pm.