


<b>Report to:</b>	Standards Committee	<b>Date:</b>	16 September 2015
<b>Report title:</b>	Addendum to Petition Report		
<b>Report from:</b>	Jessica Crowe, Monitoring Officer		
<b>Ward/Areas affected:</b>	Borough wide		
<b>Chair of Committee/Lead Member:</b>	Tony Hazeldine, Independent member		
<b>Author(s)/Contact Number(s):</b>	Jessica Crowe, Monitoring Officer, 020 8770 6519		
<b>Corporate Plan Priorities:</b>	<ul style="list-style-type: none"> <li>An Open Council</li> </ul>		
<b>Open/Exempt:</b>	Open		
<b>Signed:</b>		<b>Date:</b>	16 September 2015

## 1. Summary

- 1.1 This is an addendum to the main report on the petition that has been referred to the Standards Committee. It provides clarification to the Committee on the points which the lead petitioner has requested be considered particularly by the Committee and seeks to answer some detailed questions that have been raised by the lead petitioner in support of the petition's request.

## 2. Recommendations

- 2.1 That the Committee note the lead petitioner's request to focus on the second part of the petition and the advice provided on the further detailed points raised.

## 3. Background

- 3.1 A petition has been referred from Full Council requesting an independent inquiry on the grounds that the Council has breached the Nolan Principles and hence it has been referred to the Standards Committee for consideration.
- 3.2 Since the agenda was published, officers have been in discussion with the lead petitioner to understand how we can best enable the issues raised in the petition to be considered by the Committee and he has requested further clarification of the focus that he, on behalf of the petitioners, wishes the Committee to take.

## 4. Issues

- 4.1 Since the background report on the petition referred to the Standards Committee was published, the lead petitioner has requested that the Committee's attention is drawn in particular to the second element of the petition, namely the information put out by Sutton Council in relation to



the Energy Recovery Facility (ERF), or incinerator, as described in the petition. The lead petitioner has acknowledged, on behalf of the petitioners overall, that the questions that he and others have raised over the last few months about the relationship between Viridor Credits, Viridor Ltd and Sutton Council members, as raised in the first part of the petition, amount to speculation and allegation, and he has asked the Committee to disregard these issues in favour of what he argues are the key points in the petition. These are the allegations that Sutton Council breached the Nolan Principles by putting out misleading information about the nature and environmental impact of the Energy Recovery Facility (referred to as the incinerator in the petition).

4.2 The points that the lead petitioner has requested the Committee specifically consider in support of this second element of the petition are his contentions:

- That in calling the incinerator an Energy Recovery Facility (ERF) rather than an incinerator the council deliberately sought to conceal its nature as the name ERF is not a commonly used term as the report suggests;
- That in 2013 the council only signed a Section 106 planning agreement for a 2005 application relating to the extension of the permission for the landfill until 2023 in order to be able to convince the public to support the planned ERF as otherwise there would be continued landfill activity until 2023;
- That the council failed to tell local residents that the country park promised in 1997 would not be delivered in 2015 and would instead only be delivered along with the ERF;
- That the council has misled residents about traffic movements associated with the landfill and ERF respectively.

4.3 These are the fundamental points into which the lead petitioner, on behalf of the other petitioners, has requested that the Council consider setting up an independent inquiry on the grounds that these alleged actions constitute a breach of the Nolan Principles of honesty and openness.

4.4 Since the petition was submitted and the agenda for this Committee has been published, a number of complaints have been made under the Council's Code for Conduct against current and former members. As these complaints are not mentioned in the petition and as there is due process to follow in respect of how these complaints are considered and investigated before they can be determined to have been substantiated, these complaints cannot be considered by the Committee at this meeting. In accordance with the Council's member complaints process an update will be provided for information to the next meeting after the process has been concluded.

4.5 In response to the specific points made in support of the second part of the petition, officers from Environment, Housing and Regeneration have provided the following information, which the Committee may find helpful:

4.6 The Council does not accept that the term Energy Recovery Facility was used in order to mislead or deceive, or to conceal its true nature. It is a term in common use to describe modern



waste treatment facilities, and is used in public documents and websites across the country and overseas to describe waste to energy plants in, for example:

- West London;
- SE London;
- Cardiff;
- Leeds;
- Leicestershire;
- Newhaven;
- Oxfordshire;
- Sheffield; and
- Staffordshire

- 4.7 The 2005 landfill application was granted permission in 2013 following the signing of the Section 106 legal agreement containing the planning conditions by which the applicant had to agree to abide. The reference to the 2008 permission relates to when the Development Control Committee first resolved to grant the 2005 application, subject to the completion of the legal agreement. This permission is still valid and is being implemented. The separate ERF planning permission, also granted in 2013, amends the restoration plan (reducing the void available for landfilling) and (by virtue of its s106 agreement) brings forward the date for the end of landfilling from 2023. The s106 that accompanies the landfill is also still valid, but only as amended by the ERF s106 agreement.
- 4.8 The previous landfill permission required cessation by 2015 so it was essential that the 2005 application was concluded and permission issued to ensure that the landfill operation had a valid planning permission and continued to serve local authorities and local businesses for waste disposal. This is the reason why the S106 agreement was signed in 2013, not as part of a deal to enable the council to 'sell' the ERF. If Viridor were to utilise all of the void permitted by the 2005 application, it is unlikely that the landfill would be full before 2023. The ERF application, however, provided for a significant void reduction as the waste that would have filled it will be diverted to the ERF, hence the earlier end date.
- 4.9 The change in the date for providing the country park was referred to during the consultations on the planning applications and at numerous public meetings. It is the case that no council can bind a future one and a democratically elected council is at liberty to make its own decisions on the basis of the best evidence and advice available at the time and in the context of the statutory framework in place at the time. It is fully accepted that some residents are unhappy about the decision to set up the ERF, but this does not mean that the decision was improperly taken.
- 4.10 In relation to the contention about traffic movements, the council has used a range of expert reports to assess the likely volume of traffic and has never sought to mislead the public about this. Viridor submitted a traffic management report as it was required to do as part of its planning application and environmental analysis was commissioned by the Council from SHM Enviro, to bring independent rigour to the analysis of the applicant's own submissions in respect of environmental impact.



- 4.11 The Committee is reminded again that the planning application decision went through a judicial review process and the Council was found to have behaved properly in all its decision-making on this application. Judicial review by the courts is the only mechanism for setting aside a decision by a public authority on grounds of unlawfulness; there is a strict timescale applied by the courts for bringing grounds for judicial review and this deadline has long since passed. It was for the challengers of the decision to choose the grounds for review, and a wide set of issues were considered by the courts during the review and all grounds for further review dismissed. It is unclear what further value could be added by a council commissioned independent review when there has in effect already been an exhaustive one into the lawfulness of the planning decisions through the courts.
- 4.12 The Committee is also reminded that the decision to build an ERF to replace the landfill was not taken by Sutton Council alone, and followed a rigorous and transparent procurement process undertaken by the South London Waste Partnership. This process involved the evaluation of bids (including financial models and environmental performance of proposed solutions) by partner borough officers as well as external advisors (financial advisors – PwC, legal advisors – Wragge & Co and technical advisors – Entec). The outcome of this process was the joint award of the contract to Viridor which will save the partner boroughs £200m over the life of the contract.

## 5. Options Considered

- 5.1 There is nothing further to add to the options previously set out in the original report.

## 6. Impacts and Implications

### Financial

- 6.1 There is nothing further to add to the original report.

### Legal

- 6.2 Legal implications are covered in the body of the report.

## 7. Appendices and Background Documents

Appendix Letter	Title
	None.

### **Background Documents**

petition submitted to Full Council on 13 July 2015

### **Audit Trail**

Version	Final	Date: 16 September 2015
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Sutton

<b>Consultation with other officers</b>		
<b>Officer</b>	<b>Comments Sought</b>	<b>Comments checked by</b>
Finance	Yes	Phil Butlin, Executive Head of Finance
Legal	Yes	Paul Evans, South London Legal Partnership
Other Officers:	Yes	Mary Morrissey, Strategic Director EH&R

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