



**AGENDA ITEM: 6n**

**CABINET: 10 JANUARY 2017**

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**Report of: Borough Solicitor and Director of Development & Regeneration**

**Relevant Portfolio Holder: Councillor I Moran**

**Contact for further information: Mr T Broderick (Extn 5001)  
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**SUBJECT: REQUEST FOR FUNDS – OPPOSITION TO EXTENSION OF  
WHITEMOSS LANDFILL SITE, SKELMERSDALE**

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Wards affected: Skelmersdale South

**1.0 PURPOSE OF THE REPORT**

1.1 To consider a request for a contribution to assist in funding a challenge to the Secretary of State's decision to allow planning permission to extend the Whitemoss Landfill Site, Skelmersdale.

**2.0 RECOMMENDATION**

2.1 That Members determine whether to agree to the funding request.

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**3.0 BACKGROUND**

3.1 On 19 December 2016 a request for funding was received from "ARROW Northwest", a voluntary organisation opposing the extension of the Whitemoss Landfill site. The funding request is for a contribution towards the costs of pursuing a challenge at a hearing to be held at the Royal Courts of Justice in London against the Secretary of State's decision to permit the landfill extension. On 4 January 2017 ARROW Northwest confirmed that it is requesting a contribution of £4000 from the Council.

3.2 Whitemoss Landfill Ltd. wish to extend its business at Whitemoss, Skelmersdale (the Project). The Project was designated a Nationally Significant Infrastructure Project by the Secretary of State under the Planning Act 2008. Council noted its concerns in relation to the proposed development and authorised the Managing Directors to write to the Secretary of State to have the matter determined locally (Appendix 1). However, the Secretary of State did not accede to that request.

- 3.3 Cabinet, at its meeting in July 2014, considered a report of the Assistant Director Housing and Regeneration (Appendix 2) and authorised him, in consultation with the relevant Portfolio Holder to take all necessary steps to conduct the Council's case in relation to resisting the Compulsory Acquisition of the Council's adjacent land by Whitemoss Landfill Ltd. and all matters incidental thereto having regard to paragraph 4 of the report (which included the drainage position of the land and its contribution to the SUDS system which the Council installed when the Whitemoss Business Park was built). It was not the Council's determination to challenge the other elements of the application for permission.
- 3.4 In the event the decision of the Secretary of State was that permission be granted and, in pursuance of this he approved the compulsory acquisition. Following the receipt of external advice the Council considered there were insufficient grounds to pursue a case to challenge the Secretary of State's decision.
- 3.5 Members will recall that an earlier request for funding, in the sum of £4000 was agreed by Cabinet at its meeting on 2 February 2016 – minute 98 (Appendix 3) and this sum was paid over. The litigation being pursued by the ARROW Northwest group is taken in the name of one of its constituent individual members.

#### **4.0 CURRENT POSITION**

- 4.1 On 5 October 2016 the Court of Appeal granted permission for a hearing of the judicial review of the Secretary of State's decision. This granting of permission indicates that the challenge is arguable. However, it does not establish that the case will be won; which is a matter to be determined at the full hearing which Arrow Northwest is listed to take place on the 2 March 2017 at the Royal Courts of Justice.
- 4.2 No detail is known as to the strength of the challenge to the decision of the Secretary of State. It is noted though that the initial application for permission to proceed with the judicial review i.e. the "permission stage" in the High Court was not successful. The applicants then appealed that decision and were successful in gaining permission at a hearing in the Court of Appeal on the 5 October 2016. Accordingly, the case may now proceed to a full substantive hearing (as outlined above) which will attract significant additional expenditure by the parties. ARROW Northwest now seek an additional contribution of £4000 towards the cost of conducting the substantive hearing which it appears will be partly funded (35%) by legal aid and partly (65%) by way of community contribution. The total amount required to be raised by the community is stated to be £10,000.
- 4.3 Members may wish to consider that the request, which is not one which is routinely entertained by the Council, may lead to other similar requests being submitted. Members may also wish to note that there is no detail of what would happen if the matter would need to be further argued on appeal, and whether further funding requests may be forthcoming.
- 4.4 As outlined in the July 2014 Cabinet report (Appendix 2) the Council's interests in terms of its landholding would be served by a successful challenge to the decision of the Secretary of State.

4.5 Members need to be aware of the call-in mechanism and the need for early action in their deliberations. As stated above the case is scheduled for hearing on 2 March 2017.

## **5.0 FINANCIAL AND RESOURCE IMPLICATIONS**

5.1 If members are minded to agree to the request for a contribution of £4000 this will be made available from the Major Projects Reserve .

## **6.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

6.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

## **7.0 RISK ASSESSMENT**

7.1 If the funding request is agreed then the Council would wish to ensure that funds are appropriately applied. Through delegated arrangements this could be achieved. The Council's contribution should not commit the Council to further involvement or any degree of control over the proceedings.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

### **Appendices (to be referenced if included)**

1 – Decision of Council – 16 April 2014

2 - Report of the Assistant Director Housing and Regeneration – Cabinet - July 2014

3 – Decision of Cabinet – 2 February 2016