

BOROUGH OF BARROW-IN-FURNESS

HOUSING MANAGEMENT FORUM

Special Meeting: Thursday, 31st October, 2013
at 2.00 pm (Committee Room No. 4)

Site Visits

Middleton Avenue; Roosegate Estate; Vulcan Road; Ormsgill Estate and Griffin Estate

Depart Market Street at **11.00 a.m.**

A G E N D A

PART ONE

1. To note any items which the Chairman considers to be of an urgent nature.
2. Admission of Public and Press

To consider whether the public and press should be excluded from the meeting during consideration of any of the items on the agenda.

3. Declarations of Interest

To receive declarations by Members and/or co-optees of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the revised Code of Conduct, they are required to declare any disclosable pecuniary interests or other registrable interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting).

Members may however, also decide, in the interests of clarity and transparency, to declare at this point in the meeting, any such disclosable pecuniary interests which they have already declared in the Register, as well as any other registrable or other interests.

4. Apologies for Absence/Changes in Membership.

FOR DECISION

OPERATIONAL

- (D) 5. Housing Maintenance Contract.
- (D) 6. Housing Maintenance Contract 2005-2011: Closure of Accounts with Integral.

- (D) 7. Reconsideration of Request for Vehicle Crossing on land in front of 6-24 Middleton Avenue.

NOTE: (D) – Delegated to the Executive Committee
(R) – Referred to the Council

HOUSING MANAGEMENT FORUM MEMBERS:

Councillors: K Hamilton (Chairman)
D Barlow
M Irwin
A. Johnston
F G Murray
R J Pointer
J Richardson
K Williams

Tenant Representatives: Mr M Burton
Mr A McIntosh
Mr W Ward
Mrs K Warne
Mrs. G. Giddings (substitute)

For queries regarding this agenda, please contact:

Sharron Rushton
Democratic Services Officer
Tel: 01229 876321
Email: srushton@barrowbc.gov.uk

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HOUSING MANAGEMENT FORUM	(D) Agenda Item 5
Date of Meeting: 31st October, 2013	
Reporting Officer: Colin Garnet, Housing Manager	
<p>Title: Housing Maintenance Contract</p> <p>Summary and Conclusions:</p> <p>The purpose of this report is to seek member's approval to cease applying liquidated and ascertained damages (penalties) over a 3 month period to allow Vinci the opportunity to utilise additional resources and complete the backlog of repairs.</p> <p>Recommendations:</p> <p>Members are requested to agree the suspension of liquidated and ascertained damages to all task orders invoiced between 1st September 2013 and 3rd December 2013 in line with the contract addendum shown in Appendix A to allow Vinci sufficient time to address the current backlog of repairs.</p>	

Report

At your meeting held on 1st March 2012 members agreed to impose liquidated and ascertained damages (penalties) to all orders issued after 1st April 2012. Penalties are to be applied to all task orders where the work was completed late.

Following the initial mobilisation period Vinci have implemented a number of organisational re-structures in an attempt to deliver efficiency and cost savings. These operational changes have not been successful and despite using a range of additional manpower options Vinci have been faced with a backlog of overdue repairs. The table below shows a summary of the backlog:

Date	No of repairs overdue (*approximately)
October 2012	800*
January 2013	600*
June 2013	400*
September 2013	260 (actual)

The housing maintenance section has been working closely with Vinci to reduce the numbers of overdue repairs and improve key performance

indicators. The application of penalties does not appear to have improved the situation.

The contracts partnering advisor (PSS Consulting) advise that penalties should not accrue to a level where their application may be construed as “punitive”, i.e. intended as a punishment, or used to describe costs that are so high they are difficult to pay. In the case of Vinci the application of penalties appear to be restricting their ability to appoint additional resources to deal with the problem.

As an example; on the 22nd August 2013 Vinci presented invoices for around 3500 task orders totalling £115,169.58. In applying the penalties to this work a figure of -£55,630.20 was eligible for deduction, leaving a balance to pay of £59,539.38.

Whilst the Council may wish to administer penalties in line with the contract, members should be mindful of the potential legal challenge that may arise if they are deemed by a court or tribunal to be of a punitive nature.

The suggested 3 month period will allow Vinci sufficient operational scope to address the problem and alleviate concerns regarding any legal challenge about punitive damages.

(i) Legal Implications

Penalties will be applied in accordance with those specified in the Contract.

(ii) Risk Assessment

The continuing application of financial penalties may result in a punitive action by the contractor i.e. intended as a punishment, or used to describe costs that are so high they are difficult to pay. The agreement to suspend the application of penalties for an agreed period will reduce the risk of a legal challenge by the contractor and allow sufficient scope for Vinci to address the operational issues affecting service delivery.

(iii) Financial Implications

The recommendation has no financial implications.

(iv) Health and Safety Implications

The recommendation has no, minor or significant implications.

(v) Equality and Diversity

The recommendation has no detrimental impact on service users showing any of the protected characteristics under current Equalities legislation.

(vi) Health and Well-being Implications

The recommendation has no adverse effect on the Health and Wellbeing of users of this service.

Housing Maintenance Contract 2011/15.

(Available to view from Les Davies, Housing Maintenance Manager, Tel: 876540)

APPENDIX A

2011 HOUSING MAINTENANCE CONTRACT

- Addendum to Schedule 6 Part 1-4 (B)

Delete the following clause:

Cost Adjustments

All works orders - In the event of the Contractors failure to complete task orders within the priority timescales, the Service Manager will levy liquidated and ascertained damages of £5.00 (five pounds) per task order and £2.00 (two pounds) per day for each subsequent day overdue.

Orders coded F and G (Voids) - will be discounted 10% for working in unoccupied dwellings and properties.

In the event of the Contractors failure to complete task orders within the priority timescales, the Service Manager will levy liquidated and ascertained damages for the period. These damages will equate to the gross rent of the dwelling plus an administrative charge of £5.00 (five pounds), levied per week or part thereof.

Insert new Clause:

(B) PRIORITY CODING FOR WORK ORDERS

The Employer agrees not to levy delay damages on all certified payments made between 1st September 2013 and 3rd December 2013, subject to the agreement by the Councils Executive Committee at their meeting to be held on 18th December 2013.

Where the Executive Committee decision does not support this agreement delay damages will be retrospectively calculated and applied to all certified payments made during the period stated above.

HOUSING MANAGEMENT FORUM	(D) Agenda Item 6
Date of Meeting: 31st October, 2013	
Reporting Officer: Colin Garnett, Housing Manager	
Title: Housing Maintenance Contract 2005 - 2011: Closure of Accounts with Integral	
Summary and Conclusions:	
The purpose of this report is to consider and agree arrangements for the closure of the Housing Maintenance Contract with Integral which ended on 4th November 2011.	
Recommendations:	
Members are requested to agree a one-off payment of £120,000 to cover outstanding work and settlement of the risk and reward element of the Contract.	

Report

The Responsive repairs and Maintenance Contract 2005/11 came to an end on the 4th November 2011.

The Contract arrangements were based on an NEC form of Contract including Option 3 which included "Risk and Reward."

The concept of the Risk and Reward element of the Contract was to encourage efficiency of delivery. It limited the Council's risk, should a job exceed the agreed target price, but also facilitated a payment to the Contractor should they deliver a job below the target cost on the basis of a 50/50 share basis.

During the period of the Contract no payments were made to the Contractor in the form of reward due to the complexity of finalising the arrangements for calculating and agreeing any potential payment.

Since the day to day operation of the Contract has ended final payment to the Contractor has been under negotiation. There are two matters which are outstanding and need finalising as follows:

- **Payment for completed day to day repairs:** At any one time there is a sum of money outstanding to a Contractor for completed work that is being processed through the payment process. The Housing Service has paid all

outstanding invoices in accordance with our previously agreed procedures. However, there are outstanding jobs for which payment has not been made because the Contractor has been unable to provide the paperwork required by our normal procedures. The value of the work from our own records is c£36k, whilst the Contractor advises me the cost to them for the work was c£44k. The problem for the Contractor is that they have been unable to provide the background paperwork we would normally require. I have advised the Contractor I did not want to settle this issue without a conclusion to all outstanding payments.

- **Payment of Risk and Reward:** As mentioned above no reward payment was made during the operation of the Contract which had an estimated value of c£1.2m per annum. The Contractor initially requested a reward payment of £400k based on the financial information they hold and provided to me on the Contract which I did not accept. I have therefore taken legal advice regarding our responsibility to make a reward payment. Legal advice suggests because of the operational arrangements that developed in the management of the Contract no reward payment is due. However, the Contractor does not accept this position and states should it not be possible to agree a settlement figure they will instigate an adjudication process to finalise the figure due to them.

Should the Contractor opt to instigate the adjudication process I am advised the likely cost to the Housing Service would be c£50k in costs. In addition it would involve the time of our Maintenance Manager to assist in the process and have an impact on normal day to day operational arrangements. There would not be an option to recover the £50k even if the Housing Service was able to demonstrate a reward payment was not due.

I have, therefore, continued to negotiate a settlement figure with the Contractor and based on those discussions it would appear closure of the Contract could be agreed with a final one off payment of £120k, including the outstanding payment for completed work.

In summing up the current position I would suggest as it is now sometime since this Contract stopped operating the sooner this matter can be concluded the better. The payment of reward was not satisfactorily resolved during the operation of that Contract, and due to the learning experience of that Contract risk and reward has not been included within the Contract arrangements that are now in place. The proposed settlement should be considered with reference to the outstanding payment due to the Contractor of c£36k and the potential cost of c£50k plus Officers time and distraction from day to day activity. I would suggest it would be appropriate for the Council to pay the £36k which we have identified at the point of any final settlement.

On balance I would suggest to members you recommend a payment of £120k to the Contractor in final payment for this Contract.

(i) Legal Implications

The Contractor could instigate the process of adjudication should a mutually agreed settlement not be agreed.

(ii) Risk Assessment

Not Applicable.

(iii) Financial Implications

Financial resources have been accrued for outstanding completed works of c.£36K. Full payment could be met from the HRA without significant impact to ongoing works.

(iv) Health and Safety Implications

Not Applicable.

(v) Equality and Diversity

Not Applicable.

(vi) Health and Well-being Implications

The recommendation has little impact on the Health and Wellbeing of users of this service.

Background Papers

Nil

EXECUTIVE COMMITTEE	(D) Agenda Item 7
Date of Meeting: 31st October, 2013	
Reporting Officer: Colin Garnett, Housing Manager	
Title: Reconsideration of Request for Vehicle Crossing on Land in front of 6-24 Middleton Avenue	
Summary and Conclusions:	
<p>This report is being presented to reconsider a request from a resident to create a vehicle crossing to allow parking of vehicles within the curtilage of his property.</p>	
<p>This matter was considered by HMF on 13th June, 2013 when the request was turned down. Through a local Elected Representative, the applicant has asked the matter be reconsidered.</p>	
Recommendations:	
<p>Members' instructions are requested.</p>	

Report

This report is being presented to reconsider a request from a resident to create a vehicle crossing to allow parking of vehicles within the curtilage of his property.

This matter was considered by HMF on 13th June, 2013 when the request was turned down. Through a local Elected Representative, the applicant has asked the matter be reconsidered.

Attached at **Appendix B** is a plan showing the layout of properties. As can be seen, between 6 -24 Middleton Avenue is a 'green area' between the frontage of the properties, the pavement and road. The green area is in the ownership of the Council.

I advised the resident I would not agree the request. I did so on the basis he made reference to parking commercial vehicles, loss of green area, it would change the street scene of the area and there are no existing crossings.

The resident did not accept my refusal and asked for it to be reconsidered. I advised him I would bring it to the attention of this Forum.

I would suggest it is understandable why the request has been made. Many Council estates were constructed at a time when vehicle ownership was not prevalent. The layout of estates and access roads has, over the years, become more congested.

It is not uncommon that residents apply for vehicle access to allow in-curtilage parking. In most instances, such accesses involve 'pavement' crossings and are dealt with by the Highways Authority, the County Council. Many properties in Middleton Avenue do have such crossings. There is no doubt this helps ease the congestion where it is possible. In view of the impact on the appearance of the area and loss of green area, I have written to residents who either face the green area or whose properties adjoin it to obtain their views – 19 in total.

The responses received were:

- 3 - In favour
 - 6 - Against
 - 2 - Did not agree one way or the other but one wanted various assurances before commenting, which I am unable to provide.
 - 1 - Suggested alternative arrangements
-
- 12

In considering the responses, a resident has raised the question of providing additional parking facilities for general use by residents. Whilst a reasonable suggestion, the problem of congestion is common throughout Council estates and it would make it impractical to respond in a way that would be replicated elsewhere.

In summary, whilst recognising the benefit of enabling off-street parking, in this instance the benefits would have to be considered alongside the loss of green area on the avenue.

Members' instructions are requested.

(i) Legal Implications

The recommendation has no legal implications.

(ii) Risk Assessment

The recommendation has no, minor or significant implications.

(iii) Financial Implications

The recommendation has no financial implications.

(iv) Health and Safety Implications

The recommendation has no, minor or significant implications.

(v) Equality and Diversity

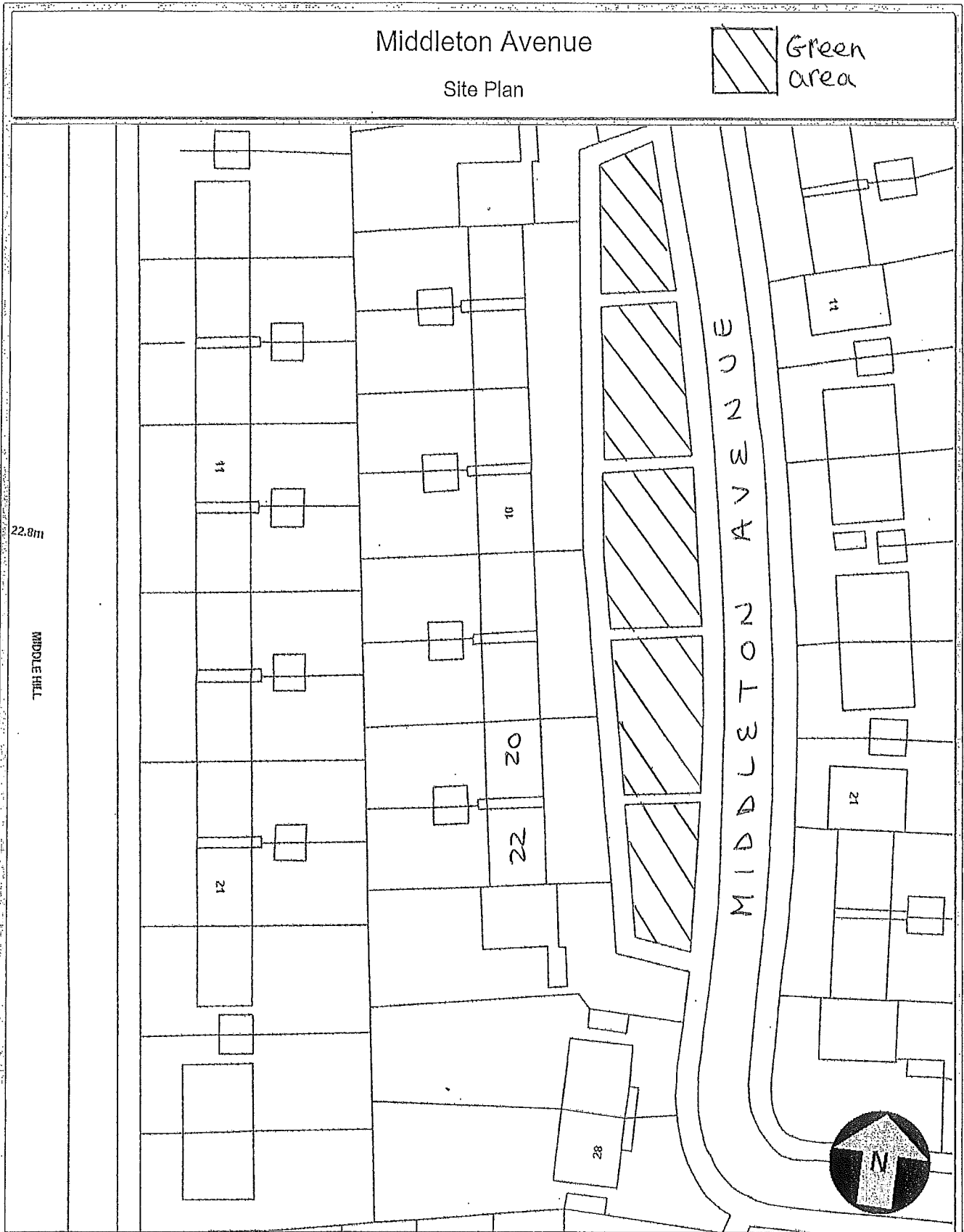
The recommendation has no detrimental impact on service users showing any of the protected characteristics under current Equalities legislation.

(vi) Health and Well-being Implications

The recommendation has no adverse effect on the Health and Wellbeing of users of this service.

Background Papers

Correspondence held by the Housing Manager.



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