



Executive
17 August 2011

**Report from the Director of
Environment and Neighbourhood
Services**

Ward affected:
Stonebridge

**Removal and replacement of contaminated soil from
St Raphael's and Brentfield Estate**

Reason for urgency

An award of grant to meet the costs of this remediation project was made by the Environment Agency on 26 July 2011. The award requires the remediation works to be completed by 31 March 2012. The timetable for the works leaves insufficient time to obtain Executive approval before commencing the tendering process.

1.0 Summary

1.1 Following an Executive decision on 26 July 2010 sixty one properties in St Raphael's and Brentfield estates have been formally determined as contaminated and a remediation statement has been written setting out how the remediation will be undertaken and by when.

1.2 An award of grant to cover the costs of the remediation works has been made by the Environment Agency which requires the works to be completed by 31 March 2012. This report informs the Executive of the procurement process proposed and of an exemption to Standing Orders approved on the grounds of extreme urgency to allow tenders to be invited to meet the demanding timetable and avoid potential loss of grant.

2 Recommendations

2.1 Members agree to proceed with the remediation work at St Raphael's and Brentfield Estates in accordance with the remediation design approved by the Environment Agency using the £1,422,525 grant monies allocated.

2.2 Members note that the grant funding will only cover the cost of basic re-instatement of fencing and turf, and that Brent Housing Partnership (BHP)

proposes to make a contribution from its capital budgets for necessary works outside the scope of the grant such as re-instatement of sheds etc.

- 2.3 Members note the timing issues relating to the works set out in paragraphs 3.11 – 3.16 and that, in view of the urgent requirement to ensure that works are completed by 31 March 2012, an exemption from Standing Orders has been sought and granted from the Director of Finance and Corporate Resources on grounds of extreme urgency pursuant to Standing Order 84(b) after consultation with the Director of Legal and Procurement, exempting the procurement from the requirement to seek Executive authority to go out to tender for remediation works and exempting the requirement to use a single stage or two stage tender process.
- 2.4 Members note the procurement process for remediation works being followed as set out in paragraphs 3.16 and 3.17 and authorise the Director of Environment and Neighbourhood Services to award the contract for remediation works following the identification of a preferred contractor.

3.0 Detail

- 3.1 The Council has a statutory duty under Part II(A) of the Environmental Protection Act 1990 and the Contaminated Land (England) Regulations 2006 to inspect land in the Borough and identify potentially polluted land which could pose a risk to human health. Where such land is identified the council has a further duty to assess whether the pollution poses a significant possibility of significant harm to human health. Where it determines that it does so, the council must act to remove that risk of harm by securing the remediation of the land or otherwise.
- 3.2 A phased soil investigation was undertaken to look for contamination associated with the historic sewage works from October 2008 to June 2010 at St Raphael's and Brentfield Estates.
- 3.3 Benzo-a-pyrene levels that may pose a significant possibility of significant harm have been identified in three areas, two areas of St Raphael's Estate and one in Brentfield estate. Benzo-a-pyrene is a known carcinogen.
- 3.4 Members considered this issue on 26 July 2010 and agreed a number of recommendations including:
1. a safe determination value of 17 ppm for benzo-a pyrene
 2. that further assessment of 138 properties be undertaken in order to identify the exact number of properties which exceed the 17ppm determination value.
 3. the remediation method of replacing 0.6m of contaminated soil with 'clean' soil.

- 3.5 Results from further assessments identified a final total of 61 properties (54 owned and managed by BHP with seven leaseholders) that exceed the 17ppm determination level for benzo-a-pyrene.
- 3.6 In August 2010 all 61 properties were formally determined as contaminated. After consultation with BHP as well as the owners and occupiers of 61 properties, a remediation statement was drawn up by the Council stating the remediation required with an estimation of timescales to undertake this work.
- 3.7 In August 2010, Brent applied for further funding from Defra to undertake structural, utilities, topographical and ecological surveys of all 61 properties in order to estimate the cost of remediation.
- 3.8 In October 2010, Brent received funding from Defra for £50,875 for the survey work as well as remediation design, CDM co-ordinator and tender specification.
- 3.9 The survey and design specification works were completed in December 2010 in readiness for the funding window to open in November /December 2010. The cost of remediation works including contingencies was estimated at £1,422,525.
- 3.10 The anticipated opportunity to bid for funding in late 2010 did not arise because Defra and the Environment Agency did not open the window to bids until May 2011. At that point Brent applied to the Environment Agency for full funding of £1,422,525 for the remediation of all 61 properties.
- 3.11 On 26 July 2011, the Environment Agency allocated Brent Council £1,422,525 for undertaking full remediation works with a proviso that all the works must be completed by 31st March 2012.
- 3.12 The remediation works are estimated to take between 24-26 weeks with 33 weeks remaining of the financial year at grant award. Therefore there were limited options for the procurement of these works due to the tight deadlines imposed by the Environment Agency.
- 3.13 Given that the estimated value of works is less than the EU threshold for works of £3,927,260, the procurement is not subject to the full application of the Public Contracts Regulations 2006 ("the EU Regulations"). The EU Regulations do not therefore determine the procurement process to be followed although the overriding principles of EU law (equality of treatment, fairness and transparency in the award process) continue to apply in relation to the award. The procurement is however subject to the Council's own Contract Standing Orders and Financial Regulations.
- 3.14 Council Standing Orders require that works over £1 million are classed as High Value Contracts and as such require Executive authority to go out to tender. Tendering would generally either be by a single stage tender process or via a two stage tender process. Both processes require advertising in a local newspaper and in a trade journal. In view of the tight deadlines imposed by the Environment Agency for conclusion of remedial works, both seeking

Executive authority to tender and tendering using a traditional single stage or a two stage process were considered by Officers to cause difficulties. It was for example considered that there would be insufficient time to place adverts in a trade journal given they are published monthly.

- 3.15 Officers investigated whether there was an appropriate framework that could be used to minimise the time taken to procure a contractor to carry out remedial works but were unable to identify any relevant framework.
- 3.16 Given the tight deadlines to complete works, Officers sought an exemption from Standing Orders on grounds of extreme urgency pursuant to Standing Order 84(b) from the Director of Finance and Corporate Resources following consultation with the Director of Legal and Procurement. The exemption sought was to avoid the requirement to seek Executive authority to go out to tender in accordance with Contract Standing Order 88 and to avoid the requirement to seek tenders using a single stage tender process or a two stage tender process but instead only to seek tenders from a minimum of 5 selected contractors using a shortened procurement process. In view of the need to commence the procurement process as soon as possible and not jeopardise grant funding, the Director of Finance and Corporate Resources granted such exemption.
- 3.17 Following the Director of Finance and Corporate Resources granting an exemption from Standing Orders, Officers have invited at least 5 contractors who are specialist in soil remediation to tender for this work. Contractors have been asked to confirm as part of their tender that they guarantee completion of works by 31st March 2012. Members are asked to authorise the Director of Environment and Neighbourhood Services to award the contract for remediation works following the identification of a preferred contractor

4.0 Financial Implications

- 4.1 There is a risk that the works may not be completed in time in contravention of terms and conditions of the grant. If this were to arise the Council would only be able to claim the grant funding for the proportion of the remedial work which had been completed by 31 March 2012. The Council would then be liable to meet the costs of the proportion of the works which had not been covered by the grant. Officers would seek agreement from the Environment Agency for a further grant in 2012-13 to cover these costs but this cannot be guaranteed.
- 4.2 The grant funding will only cover the cost of basic re-instatement of grass and fencing. Brent Housing Partnership has advised that it proposes to make a contribution from its capital budgets for works outside the scope of the grant such as re-instatement of sheds and the replacement of some garden plants.
- 4.3 As the Council is classed as a Class 'B' appropriate person, it will still be liable to undertake the remediation works if the monies granted by the Environment Agency are not utilised to remediate the 61 contaminated properties.

5.0 Legal Implications

- 5.1 The actions proposed in this report are in line with discharging the Council's legal obligations under Part II(A) of the Environmental Protection Act 1990 and the Contaminated Land (England) Regulations 2006.
- 5.2 The approach to the investigation is in line with the Council's Contaminated Land Inspection strategy published in 2002.
- 5.3 The detailed legal implications with regard to the procurement of a contractor to provide the remedial works are set out in the body of the report.
- 5.4 As detailed in paragraph 3.11, the Environment Agency requires full remediation works to be completed by 31 March 2012. The Minister of State for the Department for Environment, Food and Rural Affairs has the power under section 31 of the Local Government Act 2003 to award a local authority grant monies to assistance in the clean, up of contaminated sites within its area under the contaminated land regime.
- 5.5 Members attention is drawn to the terms and conditions of the Grant, appended to this report. Paragraph 17 therein places an obligation on the Council, to prepare a final report certified by the Director of Finance and Corporate Services which must be submitted to the Environment Agency within 3 months of completion of the works.
- 5.6 Members are advised that if in the event the Grant conditions are breached this would entitle the Environment Agency to seek recovery of the grant monies. Accordingly, strict compliance with the terms of the Grant is essential to avoid repayment.

6.0 Diversity Implications

- 6.1 The proposals contained in this report have been examined and are not considered to have any equalities implications. Every household affected has been and will be contacted to ensure that they understand the nature and impact of the works and the reasons for it.

7.0 Staffing/Accommodation Implications (if appropriate)

- 7.1 None

Background Papers

Executive Report dated 26th July 2010

Contact Officers

Yogini Patel
Senior Regulatory Service Manager
Tel 020 8937 5262
Email yogini.patel@brent.gov.uk

Michael Read
Assistant Director Environment & Neighbourhood
Tel 020 8937 5302
Email michael.read@brent.gov.uk

Sue Harper
Director of Environment & Neighbourhood Services
Tel 020 8937 5192
Email sue.harper@brentgov.uk

Appendix 1

GRANT CONDITIONS

Introduction

1. This document contains the conditions of a grant by the Environment Agency to a local authority under the Contaminated Land Grants Programme.
2. The Environment Agency reserves the right to refuse to make grant payments, or reclaim any amount paid as part of the grant, if a grant recipient fails to comply with these terms and conditions.

Payment arrangements

3. Subject to the scheme being carried out in a satisfactory manner in accordance with the provisions of the Grant Memorandum¹, the Environment Agency will pay grant on the basis of the actual eligible expenditure during 2011-12 for the approved works.
4. The Environment Agency cannot give any commitment to pay grant for approved eligible works which are not completed by 31st March 2012.
5. Claims must be made on a Payment Claim Form (CL3) on completion of the approved works. The claim must be certified by the Authority's Chief Finance Officer. Claims for costs incurred in 2011-12 must be submitted on or before 31st March 2012.
6. Applications can be made for interim payments of grant to cover costs to date plus estimated expenditure up to three months in advance, provided these estimates are within the current financial year. Advances of grant will only be paid on written confirmation of works having started. Written includes post, fax or e-mail.

Progress Reports

7. The Environment Agency must be notified in writing how much grant is spent in each quarter of the financial year. This should reflect when elements of work are completed rather than when an invoice is paid. A form requesting this information will be issued to all grant recipients.

¹ Environment Agency: Grant Memorandum 2011 for local authorities and internal drainage boards

8. Grant recipients must notify the Environment Agency of any grant underspend (or likely grant underspend) as soon as it is identified.

Amendments to approved projects

9. The Environment Agency acknowledges that amendments to the approved project may be required. If during the course of the project additional works are considered necessary the grant recipient's Senior Project Manager must liaise with the Environment Agency Assessor. Any additional costs incurred that are not a result of agreed additional works on the approved project must be met by the grant recipient.
10. Where agreement is reached on the need for additional works which will increase the total project cost for 2011-12 beyond the maximum amount of grant to be paid, then the Environment Agency may consider an application for such costs.
11. The grant recipient's Senior Project Manager must notify the Environment Agency of any change to the forecasted project completion date as soon as it is identified.

Acknowledgement

12. The Environment Agency as the source of the Grant shall be acknowledged on any construction signboards or permanent commemorative plaques or in announcements or briefings which the applicant or its contractors may make in connection with the approved project.

Appraisal, Monitoring and Financial Systems

13. The authority must maintain reliable, accessible and up to date accounting records with an adequate audit trail for all expenditure funded by grant monies under this Determination.
14. The Environment Agency may audit a sample of grants paid through this programme. Grant Recipients will be expected to comply fully with such an audit and supply any documentation requested. Such audits will not commence less than 30 calendar days from issue of the notice of audit.
15. The Environment Agency reserves the right to commission an independent evaluation of activities relating to the Grant and the applicant shall assist with any such evaluation.

16. The applicant shall make available for inspection by, or on behalf of, the Environment Agency or the National Audit Office all accounting records referred to above or such other information relating to the administration of the approved project as they may, from time to time, reasonably require.

Final Report and Specified Documentation

17. On completion of the approved project the grant recipient must complete a final report certified by the Authority's Chief Finance Officer. This must be submitted to the Environment Agency within three months of the completion date.

Breach of Conditions and Recovery of Grant

18. The Environment Agency reserves the right to reclaim all or part of the grant payment if it identifies or receives notification of grant underspend or evidence that grant has not been spent on eligible costs on the specified project.
19. The Environment Agency reserves the right to reclaim all or part of the grant payment if the grant recipient does not submit a final report within three months of completion of the approved project.
20. If at any time after the award of a grant the grant recipient is able to reclaim all or part of the grant funded costs from a liable party the grant recipient must notify the Environment Agency to enable recovery of those costs.
21. The Environment Agency reserves the right to request receipts relating to the project up to 7 years from the cessation of the project. Grant recipients must ensure these are kept for this period.

***Environment Agency,
July 2011***