

**NORTH LANARKSHIRE COUNCIL
REPORT**

To: POLICY AND RESOURCES (REGENERATION AND INFRASTRUCTURE) SUB-COMMITTEE		Subject: SITE AT WOODROW AVENUE, CARFIN CARFIN DEVELOPMENTS LIMITED (IN ADMINISTRATION)
From: HEAD OF LAND SERVICES		
Date: 5 September 2013	Ref: WP X8893432 W17	

1. INTRODUCTION

1.1 This report concerns the voluntary discharge of a standard security held by the Council over land sold for mixed use development to Carfin Developments Limited off Woodrow Avenue, Carfin.

2. BACKGROUND

2.1 In 2005 Committee approved the sale of 5.6 hectares of land at Woodrow Avenue, Carfin to Carfin Investments Limited. Following a change of company name, the sale proceeded in the name of Carfin Developments Limited and the transaction was settled in December 2006 for the sum of £3,200,000 but generating an immediate capital receipt of £1,600,000.

2.2 Reports went to the Policy and Resources (Property) Sub Committee on 26th May and 3rd November 2005. Part of the decision on 3rd November 2005 related to the cost of grouting works to consolidate shallow mine workings across the site. A total deduction of £1,600,000 was allowed on the purchase price in order to reflect abnormal development costs and it was further agreed that "in the event of the final costs of grouting works being less than indicated in the report then the council would be entitled to a clawback of one third of the saving."

2.3 This foregoing condition was provided for in the conveyancing by way of a standard security which was registered over the title of the property with reference to a Minute of Agreement. The Council's Standard Security ranked third on the title after two securities in favour of the Clydesdale Bank. The bank called in their securities, which resulted in the appointment of Administrators.

2.4 The grouting works over the entire development site, which extended beyond the land sold to the developer by the Council, had been competitively tendered, and information in this regard was disclosed to the Council when the abnormal development costs were being assessed. The most competitive tender based on information supplied to the Council was £1,695,000 although there was scope for potential savings, hence the reason for making provision for a clawback arrangement.

- 2.5 The terms of the Minute of Agreement required Carfin Developments Limited to confirm the actual final amount of the grouting works. When pressed to confirm the actual final amount, the developer failed to vouch actual costs and stated that not all of the works had yet been completed. The actual final amount paid to the grouting contractor has never been established, despite all efforts to gather this information.
- 2.6 The Administrators have been asked to confirm the final sum paid for the grouting works, however they have been unable to confirm this. It therefore was not possible to calculate the exact sum that was due to be repaid to the Council, however, it appears to be somewhere between £186,158 and £258,445 based on limited information obtained from the Administrators and a reported court case between the developer and the grouting contractor. A claim was submitted to the Administrators on this basis.
- 2.7 The land sold to Carfin Developments Limited in 2006 is highlighted on the attached plan.

3. CURRENT POSITION

- 3.1 In May 2013, Dundas & Wilson, solicitors acting for the Administrators, contacted the Council asking the Council to voluntarily discharge the Standard Security over the land in order that they could dispose of the heritable land and property owned by the company. An inducement of £3,000 was offered to the Council in this regard.
- 3.2 The initial response, issued through Legal Services, was to advise that we would not agree to a voluntary discharge given that there may be a sum of money still due to be repaid to the Council. However, the acting solicitor then advised that the first ranking creditor – the Clydesdale Bank – would be suffering a shortfall in excess of £10M on the sum due to be paid to them. In these circumstances, there would be no money for any payment to the Council in terms of the ranking of the various securities.
- 3.3 Consideration was given to the matter by Legal Services and Land Services. It was noted that in the event that the Council did not consent to the discharge of the standard security, then the Administrator would be able to obtain a court order to discharge the security.
- 3.4 Dundas & Wilson approached the Council again asking for agreement to discharge the standard security with immediate effect as the Administrators were proposing to sell part of the company's heritable property on Friday 26th July 2013.
- 3.5 There appeared to be two options open to the Council. The first was to agree to discharge the Standard Security. The Council had been offered the sum of £3,000 as a contribution towards the Council's costs in this matter. Also, if it was agreed to discharge the Standard Security, the Council would then become an unsecured creditor. In this administration there is an unsecured creditor's fund. This means that a sum advised by the Administrators of approximately £46,000 which will be distributed between the unsecured creditors. This means that the Council should receive a sum of money from this fund, although it will be less than one pence in every pound due.

3.6 The other option was not to agree to discharge the Standard Security. In that situation, it was anticipated that Dundas & Wilson would petition the Court for an Order to discharge the security. The Council would not have any valid grounds to oppose a motion for this Order and so it seemed likely that the court order would be granted. The Council would not then receive any payment and would not become unsecured creditors.

4. CORPORATE CONSIDERATIONS

4.1 In the circumstances of the Administration, the Council stood to receive no monetary compensation owing to the ranking of the various standard securities, and the standard security held by the Council did not present an insurmountable obstacle in the ultimate sale of the heritable land/property assets. Agreeing to a voluntary discharge would change the status of the Council in the Administration, with the potential for a modest dividend from the Unsecured Creditor's Fund.

4.2 Following detailed consideration and consultation with the Convener of the Policy and Resources (Regeneration and Infrastructure) Sub-Committee, the Head of Central Services approved the principle of immediate voluntary discharge of the Council's Standard Security in exchange for a payment to the Council and authorised further discussion with Dundas & Wilson with a view to increasing the payment offered. Those discussions resulted in an increased offer to a payment of £5,000 and the Head of Central Services on that basis authorised voluntary discharge of the Council's Standard Security.

5. RECOMMENDATIONS

5.1 It is recommended that committee note the position and homologate the action taken by the Head of Central Services.



KENNETH WILSON
Head of Land Services

Members seeking further information on the contents of this report are asked to contact Mary Anne Robb on 01236 632667.

LOCATION PLAN - For Information Only

Title: Land at Woodrow Avenue

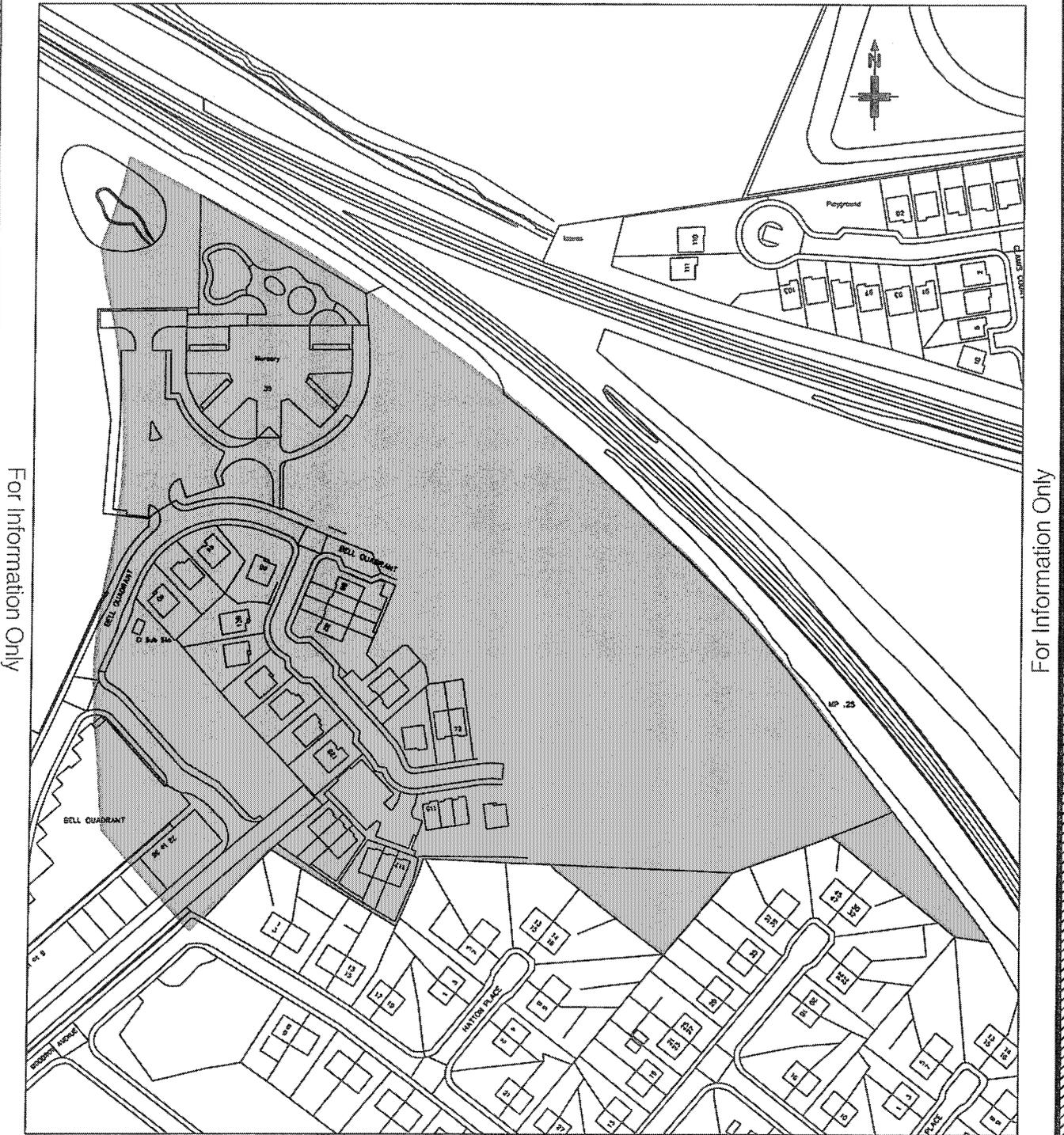
Scale 1:NTS



Town: Carfin

Date: 08/08/13

LAND SERVICES



For Information Only

For Information Only

CARTOGRAPHIC SERVICES

Reproduced from or based upon Ordnance Survey Mapping
 with the permission of the Controller of H.M. Stationery Office.
 Crown Copyright Reserved. Unauthorised reproduction infringes
 Crown Copyright and may lead to prosecution or civil proceedings.
 O.S. Licence Number LA 100023396

Head of Land Services
 North Lanarkshire Council
 Fleming House
 2 Tryst Road, Cumbernauld, G67 1JW