

NORTH LANARKSHIRE COUNCIL

REPORT

To: ENVIRONMENTAL SERVICES COMMITTEE		Subject: REMEDIATION OF CONTAMINATED LAND AT 11 AND 12 SELKIRK WAY, CARNBROE, COATBRIDGE
From: HEAD OF PROTECTIVE SERVICES		
Date: 21 April 2015	Ref: AM/CM	

1. Purpose

1.1 The purpose of this report is to seek approval for the proposed remediation of the garden areas affected by contamination at 11 and 12 Selkirk Way, Carnbroe and to develop a Council policy which will cover all similar incidents in the future.

2. Background

2.1 North Lanarkshire has a history based on heavy industry. Unfortunately this industry has all but disappeared and has left in its place a legacy of contamination. In terms of Part 2A of the Environmental Protection Act 1990 North Lanarkshire Council has a statutory duty to "cause its area to be inspected from time to time for the purpose of identifying contaminated land." This duty is delivered for the Council by the Pollution Control team within Protective Services.

2.2 North Lanarkshire Council has an estimated 9,000 potentially contaminated sites. Due to the significant number of sites to be investigated, Protective Services adopt a risk based approach towards identifying which sites are investigated ensuring that those sites which are perceived to show the highest risk are investigated first.

2.3 One such site that was identified for investigation was the housing development at Selkirk Way, Carnbroe, Coatbridge. A number of the houses within Selkirk Way sit adjacent to a former quarry which was infilled with unknown material sometime in the early 1900's - some 50 or 60 years prior to the development of the properties at Selkirk Way.

2.4 In light of this information it was considered necessary to undertake a ground investigation within the residential properties along Selkirk Way to determine if the contaminated materials from the quarry had extended into the garden areas of the houses, and if so, whether they were present at a level which would constitute a risk to health.

2.5 An extensive ground investigation within a total of 18 properties over a period of several months was therefore undertaken by one of the Council's Framework contractors WSP.

3. Proposals/ Considerations

3.1 The final report received from WSP concluded that contaminants similar to that found within the quarry area were present in most gardens but at varying levels of concentrations. Six properties had levels of the contaminants that were considered low risk and required no further action; and ten properties had levels of contaminants that were considered to be above low risk but still below a level which would satisfy the legal definition of contaminated land.

- 3.2 In response to the above, detailed individual reports were issued to every property which summarised the findings of the investigation and provided simple advice on how any risk associated with the contamination in the garden areas could be reduced to as low a level as possible without the need for any expensive remediation. Each of these reports was hand delivered and explained by staff from the Pollution Control team and ongoing advice shall continue to be offered to any resident who has any further concerns regarding the use or works allowed within the garden areas.
- 3.3 In addition however, two properties at 11 and 12 Selkirk Way were found to have such high levels of contamination that they would satisfy the legal definition of contaminated land in that the level of contaminants represented a “significant possibility of significant harm”. This would require the garden areas within the two properties to be fully remediated. A similar summary report was issued to the residents at 11 and 12 Selkirk Way but the conclusion in this report was that the gardens would require to be fully remediated.
- 3.4 In situations where contaminated land has been identified, the Council would apply the “polluter pays” principle to ensure the affected land is suitably remediated. Essentially what this means is that the company or person responsible for the pollution would be held liable for all costs associated with cleaning up the pollution. This person is commonly referred to as the “Class A” person. However, due to the infilling of the quarry being undertaken in excess of 100 years previous to the investigation, extensive searches undertaken by the Council’s Democratic and Legal Services have not been able to identify any “Class A” person.
- 3.5 Where no “Class A” person can be established the legislation is clear that the responsibility for cleaning up the pollution must then rest with the owner of the land or “Class B” person – in this case the owners of the properties at 11 and 12 Selkirk Way.
- 3.6 There is a definite unfairness associated with this approach and accordingly the guidance to the legislation is also quite clear that where the owner of the land:
- did not cause or knowingly permit the contamination;
 - took all reasonable steps prior to purchasing the land to satisfy themselves as to the presence of any contamination; and
 - relative to the value of the properties and the assessed income, capital and out-goings of the appropriate persons, the cost of remediation is likely to cause hardship to the appropriate persons
- the Council can choose to undertake the remediation works on behalf of the owners and waive up to 100% of the associated costs.
- 3.7 From discussions with the owners and the undertaking of appropriate financial checks, Protective Services are satisfied that all of the above criteria are met and accordingly it is proposed that Protective Services would undertake all of the remediation works at the two properties and waive 100% of the associated costs.
- 3.8 Whilst it is possible in this instance for a relatively minor remediation project to be addressed in this manner, it is accepted that a more significant contamination incident similar in nature to Selkirk Way may arise in the future. Accordingly it is also proposed that Protective Services develop an appropriate formal policy for the Council which can then be utilised in any future incident. Democratic and Legal Services have confirmed that undertaking the proposed action at Selkirk Way would not set a precedent for any similar cases that may arise – provided that an appropriate policy is put in place.

4. Corporate Considerations

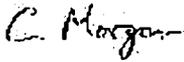
- 4.1 Democratic and Legal Services have been consulted in detail throughout this process and are in agreement with the proposed course of action.

5. Financial Considerations

- 5.1 An options appraisal exercise has been undertaken on the possible remediation options available. The outcome from this exercise is that the most appropriate remediation method will result in a total cost of approximately £70,000.
- 5.2 It is anticipated that all costs associated with this project shall be met from within the revenue budget of Protective Services.

6. Recommendation

- 6.1 That Committee approves the proposal to remediate the gardens at 11 and 12 Selkirk Way in the manner detailed above and that all costs associated with the remediation are met by the Council.
- 6.2 That Committee approves the development of a formal Council policy to cover any future incidents of contaminated land remediation and that this is referred to a future Committee for approval.



CRAWFORD MORGAN
Head of Protective Services

Local Government Access to Information Act: For further information please contact Andrew McPherson, Environmental Health Manager, on 01236 638575.