

Midlothian Council

Tuesday 4 November 2014

Item No 14

NOTE of SEMINAR of MIDLOTHIAN COUNCIL held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith on Tuesday, 21 October 2014 at 2.45 pm.

Present:- Provost Wallace and Councillors Bennett, Bryant, Constable, de Vink, Johnstone, Milligan, Montgomery, Pottinger, Rosie, Russell and Thompson.

In Attendance:- Mr Andrew Kram, Fairhursts.

Apologies for Absence:- Depute Provost Coventry and Councillors Baxter, Beattie, Imrie and Muirhead, Mr V Bourne, Mr P Hayes and Mrs M Harkness.

1 Declarations of Interest

No declarations of interest were intimated.

2 Newbyres Crescent, Gorebridge – (a) Working Draft of Report to Midlothian Council on 4 November 2014

With reference to paragraph 3 of the Minutes of the Special Council of 17 June 2014, there was submitted draft report, dated 13 October 2014, by the Chief Executive providing an update on issues in relation to the gas penetration into 64 properties at Newbyres Crescent, Gorebridge.

In addition, the draft report also explored the two options for rectification, following demolition of all 64 properties, approved by the Council, to ensure the protection of public health of the residents and long term resolution for the site, viz:-

- Option A - Market the Site for Sale (Option 5, June 2014 Council Report); and
- Option B - Build direct by Council (Option 2, June 2014 Council Report).
-

(b) Introduction, Purpose and Aims of Seminar

The Director, Resources, having introduced Andrew Kram from Fairhursts, the Council's independent advisers to the meeting, explained that the purpose of the seminar was to provide Members with an update and to allow the options following demolition to be considered so that a view could be reached to allow matters to be taken forward by the Council.

(c) Presentation

Thereafter, the Seminar received ² presentation from the Head of Property and Facilities Management in which he highlighted the following, viz:-

- Discussions were ongoing with external legal advisors, Shepherd and Wedderburn and independent advisers Fairhursts with a view to considering the legal liability for the cause of ground gases leaking into the houses and the possible remedies available to the Council. Given the recommendation from Fairhursts and the Incident Management Team's (IMT) subsequent recognition of the Council's decision to demolish the affected properties, Shepherd and Wedderburn's view was that there were good prospects of persuading a court that the Council would be acting reasonably in demolishing the properties built at Gore Avenue and Newbyres Crescent, Gorebridge in order to remedy the absence of a gas membrane and that therefore the costs incurred in following either option 2 or 5 in the report to Council dated 17 June 2014 should be recoverable from those parties who were found to be at fault;
- The Council's independent advisers, Fairhursts, had produced their final report on the planned monitoring cycles, a copy of which had been placed in the Member's Library. Following the last Core Group Incident Management Team meeting, it had been recommended to continue monitoring CO₂ in the houses until all the residents had been re-housed. A further monitoring cycle of 20 weeks had subsequently commenced on 15 September 2014;
- The geotechnical report by Fairhursts had concluded that *"It is our considered opinion, however, that the site could be safely and successfully re-developed in the future"* and had help to provide a clearer understand of what would be required in order that the site could be redeveloped;
- The Incident Management Team had *"welcomed the Council's decision to demolish the affected properties as it will eradicate exposure of current residents to the risk of CO₂"*. However, the IMT remained concerned

regarding the long term future of the site and had asked that
“*consideration be made to designating it a ‘contaminated site’*”;

- Any declaration of statutory contaminated land, under Part IIA of the Environmental Protection Act 1990 (as amended), for a site of this nature, was a matter for consideration by the Local Authority. In relation to this location, the Council had determined that the land did not meet the statutory definition of Contaminated Land;
- All 64 households (including the 2 originally vacated households from September 2013) required to be moved into alternative accommodation. A range of appropriate housing options had been made available to the affected tenants. To date 29 families had been successfully decanted;
- A summary sheet, as contained in the **Appendix** hereto, detailing the positives and negatives of the two options – Option A (Sale) and Option B (Rebuild), had been tabled. It also highlighted the costs and risks associated with both options;
- The possibility of utilising the former Greenhall High School site for the Newbyres Crescent/Gore Avenue tenants to remain in the Gorebridge area had been explored as requested by Council and designs for the site had been drawn up. However, as a number of the tenants who had already made a permanent move to their preferred choice of alternative housing either within Gorebridge or elsewhere in Midlothian, it did not appear that a new build development at Greenhall would be required to accommodate them.

Provost Wallace thanked Mr Sheret for his presentation and invited questions and comments from Members.

(d) Question and Answer Session

Arising from Members questions and comments, the following issues were discussed by the Seminar:-

- The support being given to tenants to assist them in relocating from the affected properties;
- The “stress” caused by the incident and the effects that it had had on all concerned;
- The potential timeline for the development of the former Greenhall site;
- The impending legal action;
- The options for the redevelopment of the Newbyres site following demolition;
- The measures likely to be necessary to allow redevelopment of the site to take place and the implications in terms of the IMT’s request to consider designating it a ‘contaminated site’;
- Role of the Public Inquiry;

(e) Decision

After further discussion, the Seminar agreed:-

- (a) To note the update on the gas penetration into 64 properties at Newbyres Crescent, Gorebridge;
- (b) To note the intention to provide an update report to the Council meeting on 4 November 2014; and
- (c) To recommend to Council that in taking matters forward Option B (Rebuild) should be pursued.

(Action; Chief Executive).

The meeting terminated at 3.51 pm.

NEWBYRES CRESCENT – OPTIONS TO RESOLVE GAS MIGRATION

OPTIONS	PROPOSAL	POSITIVES	NEGATIVES	COSTS	RISKS
OPTION A (sale)	Market the Site for Sale/ Design, build, finance, maintain and leaseback.	Market tested Land value. Removes stigma. Protects Public Health. Capital receipt to offset some of the Council's loss Gorebridge centre amenity retained. Specific Council specification in Sales Particulars. Minimal Capital outlay.	Potential to lose out on Council stock. Loss of rental income. Reduces Council's landbank. Potential long leaseback period. Revenue impact. Cost of lease outweighs cost of debt. Residual debt charges.	Capital - £5.65M Revenue - £1.373M	1. Dependent upon the current Market situation. 2. Potential higher rent than other Council tenants. 3. Leaseback targeted mainly at first time buyers. 4. Right to buy may incur penalties. 5. Legislation change during the leaseback may require the Council costs for any modifications. 6. Procurement risk on cost/benefit/equality issues. 7. Affordability issues (higher rental cost).
OPTION B (Rebuild)	Build direct by Council	Incorporated in Phase 2 Social Housing Programme. Consistent specification. Protects Public Health. Reputational stability. Retention of Council's landbank. Maintains rental income. Meets social housing need in area. Management costs maintained. Quicker solution.	Government or Council- supported intermediate rent schemes may be withdrawn. Cash Flow – unplanned Capital outlay. Stigma remains. Less overall units from Phase 2 budget. Residual debt charges.	Capital - £10.155M Revenue - £1.376M	1. Council having to cover this cost alone. 2. Associated impact on future spending.