



BROMLEY CIVIC CENTRE, STOCKWELL CLOSE, BROMLEY BRI 3UH

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DATE: 24 August 2016

To: Members of the
EXECUTIVE

Councillor Stephen Carr (Chairman)

Councillors Graham Arthur, Robert Evans, Peter Fortune, Kate Lymer, Peter Morgan
and Colin Smith

A special meeting of the Executive will be held at Bromley Civic Centre on **FRIDAY**
2 SEPTEMBER 2016 AT 8.30 AM*

***PLEASE NOTE STARTING TIME**

MARK BOWEN

Director of Corporate Services

Copies of the documents referred to below can be obtained from
<http://cde.bromley.gov.uk/>

A G E N D A

- 1 APOLOGIES FOR ABSENCE
 - 2 DECLARATIONS OF INTEREST
 - 3 LAND ACQUISITION - CORNWALL DRIVE, ST. PAUL'S CRAY (Pages 3 - 14)
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Report No.
ES16041

London Borough of Bromley

PART 1 - PUBLIC

Decision Maker: Executive

Date: 2nd September 2016

Decision Type: Urgent Executive Key

Title: LAND ACQUISITION - CORNWALL DRIVE, ST PAUL'S CRAY

Contact Officer: Nigel Davies, Executive Director of Environment and Community Services
Tel: 020 8313 4443 E-mail: nigel.davies@bromley.gov.uk

Chief Officer: Nigel Davies, Executive Director of Environment & Community Services

Ward: Cray Valley West

1. Reason for report

This report is to seek approval to acquire land at the end of Cornwall Drive which has previously been used as a waste transfer station and currently has significant quantities of illegally deposited waste.

Funds have been provided through the Environment Agency to purchase and clear the site, which can then be used for the benefit of the local community.

2. **RECOMMENDATIONS**

The Executive agree that:

1. **The Director of Corporate Services be authorised to purchase land at the end of Cornwell Drive and associated access road at a cost of £120k (see appended plan);**
2. **Members authorise the release of funding in the sum of £2.409m to purchase the land and to secure clearance. Members authorise the Executive Director of Environment and Community Services, with the agreement of the Director of Finance, to apply any further sums received from the Environment Agency to site clearance works;**
3. **Members waive the Council's Contract Procedure Rules to allow the contract to be directly awarded to Veolia;**
4. **The Council's contribution of £300k is allocated from the 2016/17 Central Contingency sum.**

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Quality Environment:
-

Financial

1. Cost of proposal: Approximately £2.709m
 2. Ongoing costs: None
 3. Budget head/performance centre: Waste Services
 4. Total current budget for this head: £2.709m
 5. Source of funding: Funding from Environment Agency & £300k from Central Contingency
-

Staff

1. Number of staff (current and additional):
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: None:
 2. Call-in: Not Applicable:
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: Although Ward Members have in the past expressed the desire to see the future of this site resolved

3. COMMENTARY

- 3.1 The land at the end of Cornwall Drive SPC has been used as a waste transfer station for approximately 15 years. It was originally given planning permission following an appeal despite objections from Bromley Council and the land being designated as green belt.
- 3.2 The site was operated as a well-run licensed waste operation after permission was granted with a minimal impact on local residents and few complaints were received.
- 3.3 In 2011 a lease was granted to Sitec Limited (subsequently assigned to Waste 4 Fuel Ltd) to manage the waste on the site. They quickly exceeded the permitted tonnages and deposited approximately 20,000 tonnes of waste on the site. The Environment Agency as the regulatory body attempted to take formal action, including at the High Court, but had no success.
- 3.4 Sitec Ltd has been wound up and Waste 4 Fuel Limited has ceased trading and is likely to be struck off the register in the near future. The waste remains on the site and is having a significant impact on the local area, including smell, dust, rats and periodic fires, in addition to the obvious visual impact. The EA have removed 2,000 tonnes so that the fires can be managed and therefore the total tonnage in situ is approximately 18,000 tonnes.
- 3.5 The landowner is technically now responsible for the waste, although he has early onset dementia and is in the social care system. His daughters are managing his affairs through a Lasting Power of Attorney. The EA are the enforcement agency responsible for the recovery of any contribution from the landowner and they are of the opinion that the cost of clearing land would not be recoverable from the landowner. The leaseholder is in liquidation and has no assets and it is evident that the resources do not exist for remedial action to be taken.
- 3.6 In the circumstances the landowner has agreed to sell the land and associated access road to the Council for £120k based on an independent valuation of the land based on retaining the green belt status. The land could provide an ideal access for the adjoining lake complex.
- 3.7 The land would be transferred with the liability of the deposited waste which would need to be removed.
- 3.8 The Council would use the incumbent waste contractor, Veolia to undertake the clearance as a variation to the current contract and a quotation has been provided of £2.59m. This does not include contingency sums. The EA previously undertook a comparison of prices provided through their framework and Veolia were the most competitive and so this is considered to be value for money.

3.9 A breakdown of the removal costs are shown below: -

	£
Disposal costs of 18,000 tonnes	2,068,416
Logistics/security & traffic management	385,818
Site management & mobile plant	135,150
	<u>2,589,384</u>

- 3.10 The total cost of land acquisition and land clearance is therefore up to £2.709m. Currently the Council has £1.8m deposited in accounts through a transfer from the EA and the EA have given written confirmation that a further £609k will also be released so a total of £2.409m is available to meet 89% of the total costs.
- 3.11 There is an expectation that the Council makes a contribution of £300k to cover the funding gap in accordance with the proposed agreement (see attached).

3.12 The costs are based on 18,000 tonnes and the absence of any hazardous waste, and should only be exceeded if the waste composition or tonnage is not as expected. Officers are negotiating with Veolia to reduce the cost of clearance and any savings will be shared proportionately with the EA. Equally any unforeseen costs will also be shared.

4. POLICY IMPLICATIONS

4.1 This forms part of the Building a Better Bromley aim of a quality environment.

5. FINANCIAL IMPLICATIONS

5.1 The estimated costs and funding are summarised below: -

	£
Estimated costs	
Veolia waste removal costs	2,589,384
Purchase fee for access road	<u>120,000</u>
Total estimated costs	<u>2,709,384</u>
Funding	
Environment Agency funds	2,409,384
LB Bromley contribution	<u>300,000</u>
Total Funding	<u>2,709,384</u>

5.2 The estimated costs are based on the EA summary and the quoted price submitted by Veolia. It should be noted that the EA undertook a comparison of the Veolia prices submitted with their own framework and considered the prices to be value for money.

5.3 The Council is expected to contribute £300k to the overall costs and the expectation from the EA is that reasonable contingencies will be managed within the overall funding available. It is therefore proposed that the sum of £300k be allocated from the 2016/17 Central Contingency.

5.4 Legal costs have been minimised through undertaking the property transaction with in house resources.

5.5 Negotiations continue directly with Veolia in an attempt to try to reduce the overall costs, although the expectation of the EA is that any savings or additional costs will be shared proportionally between the Council and the EA.

5.6 The Council is not responsible for the recovery of any of the site clearance costs.

6. LEGAL IMPLICATIONS

6.1 Best consideration requirements do not apply to the purchase of a property although the general fiduciary duty to invest money wisely does. The Council has taken independent advice on the purchase price for the land.

6.2 Due to the incapacity of the owner it has been difficult to obtain information about the land and his attorneys do not possess a great deal of knowledge about the site. The title includes most of the width of Cornwall Drive. However, a narrow strip on the northern side is not registered and the ownership is unknown. The other properties in Cornwall Drive have rights of way over the road but no obligation to contribute to maintenance. Future maintenance will be the responsibility of the Council as owner.

- 6.3 It is clear that the lease is still extant, although the current tenant is no longer trading. The insolvency practitioner appointed to wind up the company does not have sufficient funds to carry this out, but has confirmed his authority does not extend to dealing with the company's assets so he is not in a position to dispose of the lease to any third party. Steps will be taken to terminate the lease and remove it from the title following completion.
- 6.4 The Environment Agency require the land to be cleared under powers in the Environmental Protection Act since the waste has been illegally deposited and therefore the Council are proposing making use existing waste disposal arrangements to clear the site as the most effective and value for money solution. That being the case, its removal and disposal would appear to be an "Allowable Modification" to our existing Contract with Veolia as envisaged under Clause 72 of the Public Contract Regulations 2015, being allowed specifically under Regulation 72 (B) (i&ii) and (C), noting that the authority will need to issue, in due course, the Notice required under Clause 72 (3).
- 6.5 Additionally, the Council can, under the circumstance identified have recourse to Regulation 32 (2) (c) – "...for reasons of extreme urgency.." given the ongoing threat the abandoned / illegal waste site represents.
- 6.6 Whilst the value of the removal contract is significant, its value is still a modest sum compared to the overall original value of the contact with Veolia and as it is not linked to the previous contract extension, in addition to the points set out above, it may still amount to a non-material modification for the purposes of regulation 72 (1) (e) and (8) and does not contravene regulation 72 (2).

7. PERSONNEL IMPLICATIONS

- 7.1 The land acquisition and delivery of the contract will be managed through existing resources.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	

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Mr Doug Patterson
London Borough of Bromley
Civic Centre
Stockwell Close
Bromley
BR1 3UH

Our ref: DWR/slj/0816_01

Your ref:

Date: 5th August 2016

Dear Doug,

Remediation of Waste4Fuel waste transfer station at Cornwall Drive, Orpington, Kent, BR5 3JB.

This letter is supplementary to the agreement reached between us on 18 March 2015, which, except to the extent amended by this letter, remains in force. [A copy of that agreement is enclosed for ease of reference.] I am writing to confirm the Environment Agency's (EA) position regarding the remediation of the Waste4Fuel (W4F) transfer station at Cornwall Drive, Orpington (the site).

The costs associated with clearing the site have increased since the original agreement. Additionally I also recognise that it has become necessary for LBB to acquire Cornwall Drive in order to facilitate access to the site.

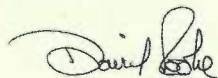
We will pay LBB an additional £609,384 in recognition of these increased and additional costs. These additional funds are to be used by LBB as a contribution towards the costs associated with acquiring Cornwall Drive and for LBB to hold the remaining funds on trust until it has acquired the freehold of the W4F site. At which point the remaining funds, including the £1,800,000 already held on trust by LBB, are to be used towards the costs associated with LBB clearing the illegally deposited waste from the site.

LBB will remain responsible for the cost of clearing the lawfully deposited waste from the site and increase the amount it contributes to clearing the site to achieve that aim.

If the cost of clearing the site is less than the expected £2,589,384 the actual costs will be shared in the proportion of 2.3:0.3.

This will be the final payment from the EA regarding this site. Any additional expenditure associated with the remediation of the site will be covered by LBB.

Yours sincerely,



David Rooke
Deputy Chief Executive

Waste4fuel briefing: spending approvals

Summary

Purpose	Treasury Approval	Defra Accounting Officer Approval	Sum Approved	Date of Approval(s)	Note
Clearance of the site	Yes	No	Not specified	9 March 2015	Conditions applied by HMT
Purchase of the access road	Yes	Yes	£120,000	19 January 2016 (HMT) 5 February 2016 (Defra AO)	Conditions applied by HMT

1. Spending approval for clearance of waste at the former Waste4fuel site.

Defra officials first approached Treasury officials to obtain approval for the use of Defra funds to clear waste abandoned at the former Waste4fuel site in January 2015.

The briefing note attached at **Annex A** was supplied by Defra to Treasury officials in January 2015 to inform the discussions between officials. The briefing note makes clear that the estimated total clearance cost for the site fell within a range of £2.05 million to £2.66 million plus VAT.

HMT officials briefed the Exchequer Secretary to Treasury (XST) on the Waste4fuel case and Defra's request for approval of the use of Defra funds to clear the site.

On 9 March 2015 the XST wrote to the Defra Secretary of State (see **Annex B**) approving the use of Defra funds to clear the site. The approval provided by XST to Defra was on the principle of using Defra funds to clear this site and did not specify a financial limit on the use of Defra funds for this purpose.

Subsequent to approval provided by the XST on the 9 March Treasury officials applied a further condition to the approval provided for the use of Defra funds to clear the site on the 17 March 2015 (**See Annex C**). Treasury Officials specified that the use of funds to clear the site should be linked to the transfer of the site's freehold.

On 18 March Paul Leinster (Chief Executive of the Environment Agency(EA)) wrote to Doug Patterson (Chief Executive of the London Borough of Bromley (LBB)) (see **Annex D**) agreeing to the payment by the EA of £1.8m to LBB to contribute to the cost of clearing the site. LBB committed in the same agreement to give due consideration to a contribution of £300,000. It would have been clear at that point that there was a potential funding pressure if it transpired that actual clearance costs were closer to the upper range of the estimated figure.

Regardless of any current funding pressure associated with clearing the site it is clear that the approval provided by Treasury on the use of Defra funds to clear the site was not linked to the initial payment made by the EA to LBB of £1.8m and that consequently no further Treasury approval is required for the use of Defra funds for this purpose.

2. Spending approvals of payment to the landowner of the Waste4fuel site

A. Treasury approval

Defra officials submitted a business case to Treasury officials on the 23 December 2015 (see **Annex E**) to obtain Treasury approval on a proposal to use of Defra funds to make a payment to the landowner of the Waste4fuel site to enable purchase of the site's access road. Approval was sought for a maximum spend of £120,000.

Treasury officials gave approval to the proposal on the 19 January 2016 (see **Annex F**) subject to the following conditions:

- (i) the Defra Accounting Officer is satisfied that the proposal meets the key public sector principles set out in Chapter 1, box 1.1 of Managing Public Money;
- (ii) the approval does not set a precedent for expenditure on any such sites in the future;
- (iii) that the proposal does not include any element of ex-gratia payment;
- (iv) that the conditions in the XST letter of 9 March 2015 stand, where applicable; and should development take place at this site, any proceeds should be split between those funding site clearance.

B. Defra Accounting Officer approval

Officials sought the views of the Defra Accounting Office in a submission dated 4 February 2016 (**Annex G**).

The Defra Accounting Officer was asked to note the conditions set by Treasury on their approval of the proposed purchase of the access road and to confirm that the Defra Accounting Officer was content with the Waste Regulation and Crime team's assessment that the Accounting Officer tests were met in respect to the proposal.

The Defra Accounting Officer confirmed on the 5 February (see **Annex H**) that she had noted the Treasury conditions and that she was satisfied the Accounting Officer Tests had been met.

Subsequent to this approval the Defra Accounting Officer was briefed on the 7 April and the 12 April regarding a proposal to increase the amount of the offer to the landowner for the purchase of the access road to the sum of £120,000. The Defra Accounting Officer confirmed that she was content for a settlement up to £120,000 to be pursued (see **Annex I**).

The approvals provided by Treasury and the Defra Accounting Officer in respect of the proposal to purchase the access road approve the use of a maximum of £120,000 for this purpose.

These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

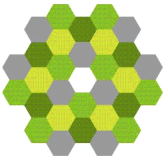
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This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from Land Registry.

This official copy is issued on 27 June 2016 shows the state of this title plan on 27 June 2016 at 14:44:50. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. This title is dealt with by the Land Registry, Croydon Office .

Land Registry
Official copy of
title plan

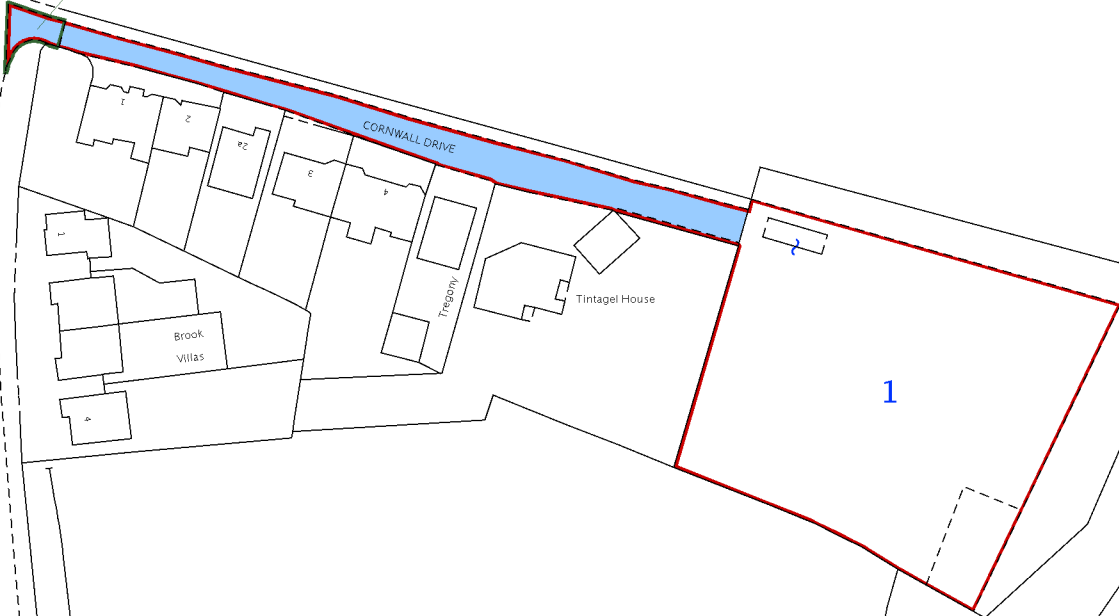
Title number **SGL239507**
Ordnance Survey map reference **TQ4770SW**
Scale **1:1250**
Administrative area **Bromley**



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