

ASBESTOS MANAGEMENT ON COUNCIL HOUSES

Cabinet Member Cllr Ray Stanley
Responsible Officer Head of Housing & Property Services

Reason for Report: To provide Members with an update on the Health and Safety Executive (HSE) investigation into the alleged Asbestos Insulating Board (AIB) asbestos soffit removal by an unlicensed contractor at Brays Close, Crediton.

RECOMMENDATION(S):

That the PDG notes the HSE recommended actions detailed in Appendix 1 of the report and endorses the actions in Appendix 2.

Relationship to Corporate Plan: Corporate Plan priorities and targets are effectively maintained through the use of appropriate performance indicators and regular monitoring.

Financial Implications: The Health and Safety Fees and any cost of recommendations will be funded by the Housing Revenue Account.

Legal Implications: It is our legal responsibility to comply with the Health and Safety Act 1974 and the Control of Asbestos Regulations 2012.

Risk Assessment: If the recommended actions are not carried out, further enforcement action could be undertaken by the HSE.

1.0 Introduction

- 1.1 In July 2014 Members were informed that it had been reported in the press that asbestos containing soffits at Brays Close Flats, Crediton had been removed without due regard to the Control of Asbestos Regulations 2012.
- 1.2 Officers advised the Health and Safety Executive of this potential breach and provided evidence in order for the HSE to carry out an investigation. This included information on other sites where soffits and facias had been replaced.
- 1.3 The Health and Safety Executive has now concluded its investigation into the alleged AIB asbestos soffit removal by an unlicensed contractor which occurred in January 2012 and has written to the Council requesting action to be taken to rectify failings that had been identified.
- 1.4 Although the Council has been found to be in breach of the legislation, the HSE is not proposing any enforcement action. The HSE has made recommendations that need to be in place by 30 November 2015.

2.0 Action Required

- 2.1 During the investigation, the inspector identified contraventions of health and safety law which are listed in Appendix 1 attached (extract from the HSE letter dated 30.10.14), together with a summary of the incident giving relevant legislation and legal requirements. This appendix also details the reasons for the inspectors' opinions in drawing its conclusion.
- 2.2 We have also been notified that under Regulations 23 and 24 of the Health and Safety (Fees) Regulations 2012, the HSE will recover its costs for the examination. At the time of writing this report those costs are not yet known.
- 2.3 There is also a requirement under Section 28(8) of the Health and Safety at Work etc. Act 1974 that requires the HSE to give information to employees about matters affecting their health and safety. We have therefore been asked to provide a copy of the HSE Notification of Contravention letter dated 30 October 2014 to our employees for their information.

3.0 Conclusion and Recommendation

- 3.1 The HSE has noted that officers have already taken action to address some of the matters identified and unless new information comes to light to alter its opinion, the HSE consider the investigation concluded.
- 3.2 Following this investigation and our own internal review of our policies and procedures, a number of actions have been agreed. These are detailed in Appendix 2. It is intended that an independent Health and Safety advisor be engaged to verify that these actions and amendments to our policies and procedures will ensure that we comply in future to the Control of Asbestos Regulations 2012.

Contact for more Information: Nick Sanderson, Head of Housing and Property (01884 234960 – nsanderson@middevon.gov.uk)

Circulation of the Report: Management Team and Cabinet Member

Notification of Contravention

Mark Baglow, Building Services Manager &
Nick Sanderson, Head of Housing
Mid Devon District Council
Old Road Depot
Tiverton
Devon
EX16 4HQ

Reference HA/ 4380180

Helena Allum

HSE
4th Floor, North Quay House
Sutton Harbour
Plymouth
Devon PL4 0RA

Tel: 01752 276323
Fax: 01752 226024
Email:
helena.allum@hse.gsi.gov.uk

<http://www.hse.gov.uk/>

Line manager: Ms J Teasdale

Date 30th October 2014

Dear Sirs

HEALTH AND SAFETY AT WORK ETC ACT 1974

I have concluded the investigation into the alleged AIB asbestos soffit removal by an unlicensed contractor at Brays Close, Credition, which appeared to have occurred mid 2012. I am writing to inform you of my findings in relation to Mid Devon District Council and request action be taken to rectify the failings identified.

Action Required

During the investigation, I identified contraventions of health and safety law, which are listed in **Appendix 1** of this letter. I refer you to this appendix for more information on what the findings were and what action you must take on these matters to comply with the law. It is noted that you have already taken action to address some of the matters identified. Unless new information comes to light to alter my opinion, I consider the investigation concluded.

Whilst I investigated your activities to assess how you were complying with your legal responsibilities relating to asbestos, I did not examine the whole of your business. There may be additional areas to those I identified which also require your attention. It is your responsibility to ensure the health and safety of your employees and other people, such as members of the public, who may be affected by the way you run your business.

HEALTH AND SAFETY (FEES) REGULATIONS 2012 ('THE FEES REGULATIONS 2012') – FEE FOR INTERVENTION

I am notifying you that the contraventions numbered 1 & 2 in **Appendix 1** are, in my opinion, material breaches for which a fee is payable by you to HSE under Fee for Intervention. My reasons for this are also given in Appendix 1. You should read "**Information on Fee for Intervention**" accompanying this letter for further information on this.

Further Information

For further information about health and safety please visit HSE's website at www.hse.gov.uk. You can view and download HSE guidance online and also order priced publications from the website. HSE priced publications are also available from bookshops.

Information for employees

Section 28(8) of the Health and Safety at Work etc. Act 1974 requires me to give information to your employees about matters affecting their health and safety. I therefore ask you to print out a second copy of this letter to provide to the employees for their information.

Please will you write to me confirming the action you have taken on the matters listed in Appendix 1 by 30th November 2014. If you require any further information or advice please contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Helena Allum', with a small dot at the end.

Helena Allum
HM Inspector of Health & Safety

Enc: Appendix 1
Information on Fee for Intervention

CONTRAVENTIONS OF HEALTH AND SAFETY LAW

I identified the following contraventions of health and safety law during my investigation and these now require your attention. You must take action on them to comply with your legal duties. I have also given you the reasons for my opinion as to why you are contravening or have contravened health and safety law.

Incident - at Brays Close, Credition, mid 2012, soffits in the form of asbestos insulation board (AIB) were mistaken by Phil Squires employees as asbestos cement and removed by them. Phil Squires is not a licensed asbestos removal contractor. That work may have resulted in a release of asbestos fibres. The management survey for Brays Close did not identify the soffits as being asbestos or what type.

Legislation - Control of Asbestos Regulations 2012, reg 4, duty to manage - it is debatable whether the soffit on shared domestic premises would fall under the regulations under common parts. However you do have duties under section 3 of the Health & Safety at Work etc. Act 1974 and CDM and those duties would extend to the provision of sufficient information on presence of and type of asbestos to contractors.

Legal requirements - To avoid the risks associated with disturbance of asbestos fibres, dutyholders should carry out sufficient checks to identify the presence of and type of asbestos before any work takes place which may result in it being disturbed. For activities which involve refurbishment, removal, building work etc. a refurbishment/demolition asbestos survey carried out by a competent person (qualified surveyor) is considered to be suitable and sufficient way of identifying the presence of asbestos. If AIB is identified it should be removed by a licensed contractor.

In determining the form of action to take in relation to these incidents it has been taken into account:

- For Brays Court, though there is sufficient information to indicate legislative breaches have occurred, the identification of the AIB debris occurred over two years after the soffit removal work was complete.
- The AIB debris may be weathered but its link to the soffit boards can only be assumed. The same applies to Sunnymead Flats.
- Additionally, the potential for harm/actual harm created by the method of work cannot be determined, as the work took place too long ago to determine whether the system of work created a risk and the extent of that risk. Again the same applies to Sunnymead Flats.

1. **Issue** - Regardless of when it was received by the contractor, the asbestos survey was lacking for Brays Court as it failed to identify whether the soffit material was asbestos and what type. The Sunnymead flats survey did not clearly identify the soffit as being AIB.
Breach - Health & Safety at Work etc Act 1974 and Construction (Design & Management) Regulations 2007 – failure to provide suitable and sufficient information to the contractor on materials which could cause harm to health.
Action being taken – you are improving your management survey to more clearly indicate the presence and type of asbestos
2. **Issue** - Unclear information was provided in the 'MDDC/Contractor' contract on the asbestos related action to be taken by the contractor when they are asked to carry out refurbishment or demolition work on the exterior of the property. Also the document produced post Bray Close work, 'Management of Asbestos in MDDC properties', does not identify exterior work such as removal of soffits, roof tiles etc. as refurbishment work that requires a refurbishment/demolition asbestos survey.
Breach – Health & Safety at Work etc Act 1974, failure to provide contractors with sufficient information and instructions to avoid the risk of contact with asbestos in MDDC owned/controlled buildings.
Action required – information should be provided to contractors, which clearly states: that for any refurbishment/demolition work, internal or external, where structural changes or removal of objects etc. is to be carried out a refurbishment/demolition asbestos survey must be carried out by a competent person; and whose responsibility the obtaining of that survey is. Unless, building age or other relevant information is available to confidently state that there is no asbestos the property.

INFORMATION ON FEE FOR INTERVENTION

Under regulations 23 and 24 of the Health and Safety (Fees) Regulations 2012, HSE will recover its costs for the work it does in relation to certain contraventions of health and safety law. These contraventions are known as 'material breaches'. This cost recovery is called 'Fee for Intervention' or 'FFI'.

A material breach is when, in the opinion of the HSE Inspector, there is or has been a contravention of health and safety law that requires the Inspector to issue notice in writing of that opinion to the dutyholder. This Notification of Contravention is written notice of my opinion. The reasons for my opinion are set out in **Appendix 1**.

HSE will recover from you the costs that it incurs in consequence of any contravention that is a material breach. The costs for the whole visit where a material breach is first identified are recoverable, along with other associated work.

HSE will send you an invoice for the costs incurred.

There are exemptions and disapplications, where HSE cannot recover its costs for carrying out its functions. These exemptions and disapplications are detailed in HSE 47 - *Guidance on the Application of Fee for Intervention* at <http://www.hse.gov.uk/pubns/hse47.pdf>.

Under regulation 25(5) of the Fees Regulations 2012 you have the right to dispute the invoice. You can find further information about Fee for Intervention and details of the terms on which you can dispute an invoice in the leaflet HSE 48 - *Fee for Intervention: What you need to know* at <http://www.hse.gov.uk/pubns/hse48.pdf>. More detailed information is given in HSE 47 - *Guidance on the Application of Fee for Intervention* at <http://www.hse.gov.uk/pubns/hse47.pdf>.

Actions following Investigations into the claim that asbestos soffits were replaced without regard to Health & Safety Legislation

- An internal investigation was carried out and appropriate action undertaken
- We ensure that an Refurbishment and Demolition (R&D) survey is carried out before major works start in order to ascertain whether there is any Asbestos Containing Materials (ACM's) present and the risk attached to them so that appropriate action can be taken
- When carrying out minor works we check the asbestos register first, and where information is thought to be missing or there is any doubt we always presume the worst case
- We check the risk assessments provided by the contractor against the results of the R&D survey
- Asbestos Awareness refresher courses have been brought forward for all operational and support staff
- Asbestos Task training refreshers have been brought forward for all operational staff
- Asbestos Management training has been brought forward for all supervisory staff
- 'Asbestos Essentials' task manuals are being reissued to all operational and supervisory staff
- The HSE asbestos mobile phone application (app) is being installed on the operative's smart phones
- A hard copy of the HSE app 'How to Asbestos Guide' is being issued to all operatives
- The HSE app 'How to Asbestos Guide' is being promoted to our contractors
- We downloaded a list of all sites where the same contractor has completed similar works involving ACM's and carried out an initial survey.
- We quarantined all loft spaces where we feel there may have been a risk until a specialist survey could be carried out
- We have employed the services of Ron Boyd - Partners in Safety, to initially carry out a full review of our policies and procedures, make recommendations, and spot check sites going forward to ensure compliance.

- We are reviewing our Construction Design and Management Coordinator role (CDMC) with a view to potentially outsourcing this
- Increased site inspections for all high risk tasks such as asbestos removal and working at height
- The asbestos management policy has been reissued to all supervisory staff
- A copy of The Control of Asbestos Regulations has been reissued to all supervisory staff
- We will be improving the quality of our management surveys to include the type of asbestos rather than just their elemental composition.
 - Examples - Asbestos insulation board, Asbestos cement, Sprayed lagging, Textured Coatings, Woven cloth etc
- We will ensure that the information recorded on the Asbestos Register is complete and includes the type of the asbestos found as per above. Where no asbestos is detected this needs to be recorded as such.
- Amend the 'Management of Asbestos in MDDC Properties' policy to ensure it identifies exterior work such as removal of soffits, roof tiles etc. as refurbishment work that requires a refurbishment/demolition asbestos survey.
- Provide information ideally via the contract documentation, or before starting works, to contractors, which clearly states:
 - Any refurbishment/demolition work, internal or external, where structural changes or removal of objects etc. is to be carried out a refurbishment/demolition asbestos survey must be carried out by a competent person
 - Whose responsibility the obtaining of that survey is
 - This will apply in all cases unless the building age or other relevant information is available to confidently state that there is no asbestos the property