

Item No. 24.	Classification: Open	Date: 16 July 2013	Meeting Name: Cabinet
Report title:		Investigation into asbestos incident – Westonbirt Court	
Ward(s) or groups affected:		Peckham	
Cabinet Member:		Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Management	

FOREWORD – COUNCILLOR IAN WINGFIELD, DEPUTY LEADER AND CABINET MEMBER FOR HOUSING MANAGEMENT

This report sets out the background and subsequent investigation into an asbestos incident at Westonbirt Court, which came about during a repair to a leak. Incidents of this kind are unusual but when they arise are always a concern. A thorough investigation into the incident has now taken place. It found that the right systems and processes were in place but clearly not followed by the operatives involved.

The first and most important priority is the health and safety of the residents involved, who have been supported through the investigation by council staff and thankfully have now been able to return to their homes.

The council demands the very highest standards of health and safety from its contractors and it is important that lessons are learned from this incident and the necessary steps are taken by all contractors working in the council's stock to avoid any future recurrence.

RECOMMENDATIONS

1. That the Cabinet note the contents of the two investigation reports into the asbestos incident at Westonbirt Court included as appendices to this report.
2. That the Cabinet agree to receive a further report at a Special Cabinet meeting regarding the award of the repairs and maintenance contract for the south of the borough.
3. That the Cabinet note officers' recommendations in the internal investigation report at Appendix 1 and the Leader of the Council delegate the monitoring of the implementation of these to the Deputy Leader and Cabinet Member for Housing Management

BACKGROUND INFORMATION

4. Following the termination of the repairs and maintenance contract with Morrison Facilities Services Limited on 2 October 2012, the council put in place interim arrangements to deliver the service for 12 months from 3 October 2012. Following competition, Mears Ltd were appointed from the Watford Community Housing Trust repairs and maintenance framework.

5. Putting in place this 12 month interim contract provided the council with the space and time it required to work through the options available for the long-term delivery of the repairs service. The procurement strategy for the long-term repairs and maintenance contract was approved by Cabinet on 17 July 2012.
6. The Gateway 2 report recommending the award of the long term contract for Repairs and Maintenance was due to be considered by Cabinet at their meeting on 14 May and subsequently on 26 June 2013. This report was to recommend the contract be awarded to Mears Ltd.
7. On 19 June 2013, a Mears Ltd operative (working under the interim contract) displaced some asbestos at two leasehold properties in Peckham while trying to trace the source of a leak. This meant that eight adults living in the two properties were exposed to asbestos, although the exposure in one of the properties was limited to one unoccupied bedroom.
8. Although the incident occurred on 19 June, it took six days for the asbestos exposure to be confirmed, initially because the Mears Ltd operative did not identify the material as asbestos. The council's heating contractor, T. Brown, attended on 20 June to remedy the cause of the water penetration and did correctly identify the damaged panel as being asbestos. However, the T. Brown operative advised the resident and his own back-office, who failed to notify the council immediately.
9. Staff at the customer service centre (CSC) took at least three calls from the concerned resident on 20 June but did not alert the council's asbestos team immediately, nor seem to appreciate the urgency and priority required. Three service requests were raised at the CSC on 20 June but only the last one translated into a request for an asbestos survey to the asbestos team.
10. On 21 June the asbestos team raised an order for the asbestos bulk sample consultant, Pennington Choices, to undertake a management survey, but because the resident's phone number was not passed to the consultant on the works order, a letter was sent to the resident requesting an appointment. This was subsequently agreed by telephone with the resident for 25 June. Pennington Choices attended on 25 June and the incident was confirmed.
11. Once the possible asbestos exposure was confirmed, the Council immediately took steps to protect the welfare of the residents at the two properties and elsewhere in the building. The residents directly affected were immediately moved to temporary accommodation where they were housed and provided with clothes and food while their homes were made safe. The two bedrooms were sealed and satisfactory air tests taken throughout the rest of the dwellings and the common area corridor. On Friday 5 July, the residents were able to return to their homes following remedial works by Franklyn Shaw, one of the Council's asbestos contractors, and satisfactory air test results carried out by Armstrong York, the Council's air test and monitoring consultant.
12. The decision on the award of the long-term repairs and maintenance contract was deferred from 26 June Cabinet meeting in order to allow officers to fully investigate the incident and establish whether there were any issues which might affect the recommendation to award the contract to Mears Ltd.
13. This report sets out the events surrounding the incident.

KEY ISSUES FOR CONSIDERATION

The investigation

14. Consistent with incidents of this nature an internal specialist manager from the Council's Compliance Operations Team was asked to undertake an investigation into the full circumstances surrounding this incident. The investigation commenced on 26 June 2013 and has been completed.
15. The investigation included interviews with the plumbing operative who had attended the leak and had removed and damaged the panels, and his supervisor, who attended the properties following the removal and damage. The residents of the two flats in Westonbirt Court were also interviewed. Pertinent organisational information has been obtained from Mears Ltd, along with some training records, the Riddor report submitted to the Health and Safety Executive, and procedural information, all of which have been reviewed. The final report from the Compliance Operations Team's investigation is attached at Appendix 1.
16. Mears Ltd have undertaken their own internal investigation into the incident. They have also taken action to suspend the two members of staff involved while the investigation was undertaken. The final report from Mears Ltd's investigation is attached at Appendix 2.

The findings of the investigation

17. The investigation carried out by the Compliance Operations Team has found that the Mears Ltd plumbing operative failed to properly identify the material of the panel as asbestos insulating board, and did not give adequate consideration to possible presence of asbestos within the dwellings, despite council generated asbestos warning flags on the works order and the operative's handheld computer.
18. The supervisor who attended subsequent to the removal and damage of the panels also failed to identify or consider the material as asbestos.
19. Mears Ltd has clear organisational Health and Safety policies and procedures in place, and while there is no evidence of poor organisation or cultural issues in relation to the application of Health and Safety standards and practices, it is considered that the organisation must ensure that all operatives, supervisors and managers are fully and properly trained in asbestos awareness and that annual refresher training is undertaken.
20. Given the aforementioned, it remains inexplicable that the operatives involved failed to recognise the material as asbestos. It does, however, seem to point to individual incompetence rather than corporate or structural failings within Mears Ltd. It is worth saying again that the investigation found that the right policies, procedures and systems were in place (including warning flags on the operative's handheld computer).
21. The investigation identifies four immediate and two medium/long-term recommendations for Mears Ltd in relation to asbestos awareness training. This report seeks Cabinet's approval to delegate responsibility for the monitoring of the implementation of these recommendations to the Deputy Leader and Cabinet Member for Housing Management.

22. The Mears Investigation is attached at Appendix 2. In essence it arrives at the same conclusions as the officer investigation.
23. Following receipt of both investigation reports, the Strategic Director of Housing and Community Services and the Head of Maintenance and Compliance met with the Managing Director of Mears Ltd on Monday 8 July 2013. Mears Ltd were open, honest and apologetic about the incident and set out their determination to avoid any future repeat. Mears Ltd have agreed to fully compensate and fully indemnify the council against any claims from the residents. Mears Ltd have confirmed that further asbestos awareness training will commence shortly.
24. On this basis, officers are satisfied that there are no systematic failings within Mears Ltd and they continue to adhere to high standards of health and safety.
25. The investigation also identified a number of failings in relation to the time it took for the asbestos exposure to be reported and dealt with appropriately once the T Brown operative identified the material as asbestos on 20 June and includes a recommendation to investigate this further. The six day gap between the incident occurring and Pennington Choices confirming that asbestos had been exposed was caused by delays in T Brown and Southwark Council reporting and responding to the incident in the correct way. Further investigations are being carried out to establish how such a delay can be prevented in future. Recommendations for further action will be made to the Strategic Director for Housing and Community Services and the Cabinet Member for Housing Management once these investigations have been completed.

The contract award

26. With the investigation in to the incident now complete, the decision to award the long-term repairs and maintenance contract can now be considered. In order to allow time for Cabinet to fully consider the findings of the investigation, a Special Cabinet will be arranged for later in July for this report to be presented.

Policy implications

27. The Councils Policy for the Management of Asbestos in the Workplace and the departmental Asbestos Management Plan provide detailed processes for the effective management of asbestos, ensuring the requirements of the Control of Asbestos Regulations 2012 are adhered to. Both are regularly reviewed and shared with the Council's contractors.

Community impact statement

28. As stated in paragraph 11 of this report, once informed of the possible asbestos exposure, the Council immediately took steps to protect the welfare of the local community. Specialist contractors were brought in to make the properties safe and prevent the risk of exposure elsewhere in the building.
29. The decision on the contract award for the long-term repairs and maintenance contract for the south of the borough has been deferred to allow Cabinet the opportunity to consider the outcomes of the investigation and any implications for the future of delivery of the service.

Financial implications

30. The Council's response to the incident has had short-term financial implications, but all costs will be reclaimed from Mears Ltd. This includes the cost of the temporary accommodation for the affected residents, the replacement of personal effects damaged as a result of the incident, and comprehensive health screening for the affected residents. Officer time for the investigation of the incident has been contained within existing budgets.
31. The Council has liability insurance in place subject to a self-insured excess. If a claim was to arise as a result of this incident then the Council would seek to re-direct any claim to Mears in line with normal practice.

Legal implications

32. Please see concurrent from the director of legal services

Consultation and communication

33. Since being alerted to the incident, council staff have communicated daily with the residents to offer support and advise them as to when they can move back to their properties.
34. Local ward councillors were also advised of the situation and a statement released to the press.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

35. The interim contract provides that the parties must notify each other of any incident affecting the delivery of the service, and make proposals for remedying the position. This has led to dialogue between the Council and Mears Ltd following their internal investigations, and the meeting on 8 July 2013 between representatives of Mears Ltd and the Council at which this issue was discussed.
36. The council has also written formally to Mears Ltd to notify them of the results of our investigations. The council also reserves all of its rights under the contract, including under the indemnity for all loss and damage caused to the Council as a result of Mears' negligence or breach of contract.

Strategic Director of Finance and Corporate Services

37. The Director of Finance and Corporate Services notes the costs arising from this incident, which are related to the comprehensive health screening of the affected residents, replacement of personal effects and costs of temporary accommodation. The Director of Finance and Corporate Services also notes that these costs will be reclaimed from the contractor and the overall impact on the HRA Repairs and Maintenance will be neutral.

REASONS FOR URGENCY

38. The interim contract for repairs and maintenance for the south of the borough expires on 2 October 2013. A decision to award a long-term contract, or to pursue an alternative option, is required as soon as possible in order to allow a

smooth transition and continuity of service to tenants and residents. The decision to award the contract was deferred from 26 June 2013 in order to allow a full investigation in to the asbestos incident. A Special Cabinet meeting will be arranged for later in July to allow Cabinet time to consider the findings of the investigation before considering a report on the long-term contract award. Delaying a decision on the future of the repairs and maintenance contract beyond July 2013 would seriously jeopardise the Council's ability to deliver the service to local residents, resulting in significant operational, financial and legal implications.

REASONS FOR LATENESS

39. The report was not available for circulation five clear days before the meeting of Cabinet because the Compliance Operations Team investigation was not completed until Tuesday 9 July. The report has been dispatched at the earliest available opportunity.

BACKGROUND DOCUMENTS

Background documents	Held At	Contact
Gateway 1 Long-term Repairs and Maintenance Contract http://modern.gov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MId=4245&Ver=4	Maintenance and Compliance, 160 Tooley Street	David Lewis 0207 525 7836

APPENDICES

No	Title
Appendix 1	Compliance Operations Team investigation report
Appendix 2	Mears Ltd investigation report

AUDIT TRAIL

Cabinet Member	Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Management	
Lead Officer	Gerri Scott, Strategic Director of Housing and Community Services	
Report Author	David Lewis, Head of Maintenance and Compliance	
Version	Final	
Dated	16 July 2013	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		11 July 2013