

OVERVIEW & SCRUTINY BOARD

10 JANUARY 2012

LIABILITY FOR ASBESTOS REMOVAL IN HOUSING STOCK

PURPOSE OF THE REPORT

1. Regeneration and Erimus Housing provided written reports to the previous Overview and Scrutiny Panel. Members of the Panel requested that further clarification be sought from Legal Services regarding the legal interpretation of contractual liabilities in the Stock Transfer Agreement between Erimus Housing and the Council, with regard to the managing or removal of asbestos pre and post the 10 year term.
2. Principal Solicitor Steve Vickers has provided the following detail to address the matters raised and will be in attendance with Regeneration.

BACKGROUND

3. In 2004 Middlesborough Borough Council transferred its housing stock and its housing responsibilities to Erimus Housing. The agreement between the parties is contained in a lengthy document dated 15th November 2004 and was originally for a five year term with provision to run on thereafter from year to year until terminated by either party. It thus continues to this day.
4. When the agreement was drawn up it was recognised that there was a risk that parts of the stock transferred may have asbestos within them or as part of their construction. MBC and Erimus agreed that liability for the treatment of any problems arising from the appearance of asbestos should be transferred to Erimus on terms.
5. To establish the degree of risk that Erimus faced a survey was carried out on what was deemed to be a representative sample of the stock. Thereafter the cost of carrying out remedial work to that sample was calculated , this in turn being

extrapolated to produce a figure to cover the anticipated cost of remedial work across all the housing stock. This figure was assessed at £13,129,000.

6. It was further agreed that Erimus should carry out such works as and when required they maintaining the budget for a ten year period ie until November 2014. If works were required that resulted in the budget being exceeded within the 10 year period then MBC would make up the difference. Any works carried out after the same period would be paid for by Erimus.
7. It was never part of the agreement that Erimus were required to attend to all properties within the housing stock over a given period of time or at all. This is entirely a matter for them to attend to as and when the situation arises.

CURRENT SITUATION

8. Erimus are required to report annually on the spend on asbestos treatment and that figure has currently reached £3,000,000 +.
9. On the face of it the figure spent over 7 years would appear to be well below that which would have been anticipated but there are several factors which may account for the same including:-
 - a. the original sample was not truly representative.
 - b. the budgeted cost was therefore too high.
 - c. the nature of the works undertaken by Erimus in the 7 years to date have not required the anticipated expenditure whilst those in the next three years may do so.
 - d. demolition rather than remediation of properties has reduced the anticipated cost of dealing with the asbestos.

CONCLUSION

10. Whatever the reason may be and those quoted at [9] above are not meant to be exclusive, the position can be summed up by saying that Erimus Housing is complying with the terms of the agreement which contains no provision for MBC to intervene by requiring additional attention to properties or accelerated expenditure. Any such requirement would call for renegotiations.
11. It should be borne in mind that MBC have been and continue to be protected by the terms of the Agreement from any liability arising from the presence of asbestos in the housing stock since November 2004 and until the agreement is terminated. It also follows that if the liability has been transferred to Erimus, it is in their own best interests to resolve any asbestos related problems without delay.

AUTHORS

S.G.Vickers Principal Solicitor, Legal and Democratic Service
Tel: 01642 729748

Janine Turner, Housing Services Manager, Regeneration
Tel: 01642 729151