



Report to:

Northwards Housing Board
12th September 2006

Item No:

12d

Title:	Commissioning of Surveys to collect information on Asbestos and Fire Risk Assessments in the common parts of Northwards Housing stock
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Date:	4 th September 2006
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Confidential:	No
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For: (Please tick action required)	NOTING √	DISCUSSION √	APPROVAL √
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PURPOSE OF REPORT

The report sets out a proposal that Northwards Housing commission via Savills a survey of the common parts of Northwards Housing stock to identify the type, condition and location of asbestos containing materials and also to undertake fire risk assessments to enable Northwards Housing to comply with Control of Asbestos at Work Regulations 2004 part 4 and the Regulatory Reform (Fire Safety) Regulations 2006 (RRO).

RECOMMENDATION

Procurement & Property Sub Committee recommends to the Board of Northwards Housing that:

1. A survey be commissioned from Savills to identify type, condition and location of asbestos containing materials and fire risk assessment in all communal areas of Northwards Housing stock. And, the Director of Property Services be instructed to negotiate the best achievable price for undertaking this survey and of the production of a database fit for the purpose of fully discharging Northwards Housing's obligations under relevant legislation.
2. That a value for money report and confirmation of funding availability for this survey be presented and agreed by the Procurement and Property Sub Committee prior to contracts being let.

IMPLICATIONS	
Equality & Diversity:	There are no implications
Financial:	There are financial implication that were not identified in the business plan
Staffing:	There are no implications on staffing
Decency Target:	Survey is necessary to inform Decent Homes programme
Governance:	There are no implications
Risk Assessment:	This measure is an essential component necessary to manage Health and Safety compliance.

Equality & Diversity Implications (Please tick where relevant):

BME	<input type="checkbox"/>	Lesbian/Gay/Bisexual/Transgender	<input type="checkbox"/>
Elderly	<input type="checkbox"/>	Single Parents	<input type="checkbox"/>
Young	<input type="checkbox"/>	Domestic Violence	<input type="checkbox"/>
Disability	<input type="checkbox"/>	Alcohol / Drug Mis-users	<input type="checkbox"/>

Consultation/Consideration:

	Yes, No or N/A:	Name:	Date:
Sub-Committee:	Yes	Procurement & Property	30.08.06
Area Panel:			
Ward Councillors:			

1. Introduction

1.1 Northwards Housing has a legal duty to manage any known asbestos containing materials (ACM) within its properties under general and asbestos specific health and safety legislation i.e.

- Health and Safety at Work etc. Act 1974 (sections 2, 3 & 4)
- Management of Health and Safety at Work Regulations 1999 (regulation 3)
- Control of Asbestos at Work Regulations 2002 (Regulation 4) (CAWR)

(See Appendix 1 for a resume of applicable legislation)

1.2 On 1st April 2006 changes in legislation (Regulatory Reform (Fire Safety) Order 2005) governing fire safety come into force that rationalise and improve fire safety law. Northwards Housing therefore has a legal duty to ensure it is compliant.

1.3 As an employer, Northwards Housing is the duty holder of purpose of ensuring that Health and Safety Legislation is complied with across all of its activities and workplaces

To ensure Northwards Housing is fully compliant with both asbestos and fire regulations a survey of asbestos containing materials and of fire risk assessment is required to be undertaken to all communal areas of Northwards Housing stock.

2. Background

2.1 Northwards Housing has an asbestos management policy adapted from a preceding Manchester City Council policy which was adopted in 2003. The policy commits Northwards Housing to ensuring that, amongst other things, it will;

- Maintain a computer database to store, in a readily accessible form, survey data, risk assessments and other relevant data to assist persons managing Manchester City Council's buildings (day to day activities plus repair maintenance and building modification works) in order to carry out their responsibilities under Health and Safety legislation to protect staff and visitors from risks to health.

2.2 Northwards Housing inherited the current housing management IT system this being the House 90 system. This was augmented, in the recent past, with additional pages which constituted a rudimentary asbestos database. Whilst this database has been populated with information resulting from individual responsive repairs, the inherent technical limitations has made it difficult to input the large volume of data generated by capital programme schemes.

2.3 Asbestos regulations state;

Buildings effected:-

- All non-domestic buildings, whatever type of business is carried in them.
- It also covers the common areas of residential rented properties, including halls, stair wells, lift shafts and roof spaces.

Northwards Housing as a duty holder must:-

- Find out whether the building contains asbestos, and what condition it is in. This is the reason why Northwards Housing has to undertake a survey.
- Assess the risks, e.g. If ACM is likely to release fibres.
- Make a plan to manage that risk.

2.4 An examination of the data held within House 90 reveals gaps in data coverage on common parts within Northwards Housing stock and is often held in a form which makes it difficult for colleagues and contracting partners to identify what risks exist and what action should be taken.

2.5 The recent Audit Commission inspection judged Northwards Housing to be only partially compliant with CAWR 2002. It will be a recommendation of the Audit Commission that Northwards Housing fully complies with the statutory requirements on asbestos. Northwards Housing must ensure that it is fully compliant with Health and Safety Law and that effective policies, procedures and measures are taken to properly discharge its responsibilities. Given the:

- Limitations of data held within House 90
- The significant gaps in available data
- The lack of any of comprehensive sample survey to have been completed

It is now imperative that data is collected in such a form that Northwards Housing can fully discharge its responsibilities with regard to the Control of Asbestos at Work Regulations 2002 part 4.

3. Commissioning and Value for Money

3.1 Given Northwards Housing's status of partial compliance with Control of Asbestos at Work Regulations, it is advisable that the survey be completed as quickly as practicably possible, subject to value for money and procurement considerations. It is recommended therefore that a negotiated contract with Savills Ltd offers both speed and compliance with OJEU procurement rules.

3.2 Value for money will be demonstrated via a fully structured costing of Savills costs including overhead and profit for all component aspects of the survey (eg. Surveyor resources, surveyor productivity per day, time spend on information gathering, collection of photographic records, materials identification, sampling of materials, laboratory analysis and results production related to all type two testing). Costs will be benchmarked using data from both within the Council and from other organisations to reference and negotiate firm prices for the survey.

3.3 It is proposed, to engage Savills to undertake and manage a programme of Type 2 surveys (A Type 2 survey is physical sampling and laboratory analysis of material to confirm the presence (or not) of asbestos and its type and condition. See Appendix 2) of our communal areas. They have submitted an outline fee proposal of £270,000.00 exclusive of VAT, based on their estimation of 1200 such areas for survey. This is a maximum estimate, based on the information supplied by ourselves and the actual number of properties to be surveyed, may change when on site. It is expected that this fee will be reduced further as a result of contract cost scrutiny and negotiations.

3.4 **Procurement Considerations**

Board will be aware through recent discussion regarding the 20% stock condition survey that is being commissioned from Savills, of the arguments why a negotiated contract can be procured through Savills using the original tender submitted for the 2001 survey. Advice from the City Treasurer confirms that this procurement route meets value for money criteria. Any opportunity to achieve cost efficiencies within the asbestos and RRO risk assessment surveys will be taken in light of any opportunities that arise from the commissioning of Savills to undertake the 20% stock condition survey.

3.5 **Outcomes**

By 31st March 2007 relevant information and data will be collected, risk assessments undertaken and an asbestos materials register constructed and tested to enable Northwards Housing to issue advisory warnings automatically on any job ticket issued to Manchester Working or any other contractor in relation to the common parts of its stock. In this way, Northwards Housing will be able to demonstrate its full compliance with the Control of Asbestos at Work Regulations and implementing a key recommendation of the Audit Commission

3.6 **Financial Implications**

The need to undertake the survey of common parts for asbestos containing materials had not been identified ahead of Northwards Housings budgets being set. The Director of Property Services is currently seeking to identify a funding route for this necessary work and is exploring with colleagues at Manchester City Council a source of assistance on this exceptional item. Whilst this paper seeks consent to work up a client brief and negotiate a cost with Savills, no survey will be commissioned until such time as a source of funding consistent with Northwards' Business Plan has been identified and secured.

3.7 **20% Stock Condition Survey**

There is a separate stock condition survey under consideration that will allow Savills to carry out Type 1 (See Appendix 2) surveys of a representative number of differing house types, as part of the future stock condition exercise. This will have the benefit of producing some relevant, presumptive data on our domestic properties, without alarming tenants. We will then focus our attention on those property types that should have follow-up Type 2 surveys.

4. **New Fire Safety Legislation**

- 4.1 This year will see changes in legislation governing fire safety in an attempt to rationalise and improve fire safety. At present, fire safety provisions are set out in many separate pieces of legislation, the most significant being the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997.
- 4.2 This piecemeal development of fire safety legislation led to confusion in respect of compliance and enforcement and resulted in the introduction of the Regulatory Reform (Fire Safety) Order (RRO) which fully became law on 1st April 2006.
- 4.3 For Northwards Housing the major change under the new regime will be the removal of all Fire Certificates, as all fire management measures will now have to be determined from the risk assessment process. This will require;

- i. Each individual company will be responsible for their own fire safety.
- ii. The employer must conduct a fire risk assessment regardless of the size of the risk, provide Staff Fire Training, Fire Marshall Training and the provision of fire safety management plans, log books and maintenance of fire safety precautions.
- iii. The identified responsible person would therefore take full corporate liability.

All Northwards Housings' offices are governed by the new legislation, as are all communal areas and common parts of our domestic properties (thus replicating the approach to asbestos management).

- 4.4 To ensure Northwards Housing can be fully compliant, it will be necessary to carry out fire risk assessments of all our offices and residential communal areas. It is proposed to integrate these risk assessments into the programme of Type 2 asbestos surveys, thereby minimising the disruption to our tenants and offering better value for money.
- 4.5 Once all the information is collected it will be stored on the Promaster database, the new housing management system. This information will be readily accessible to staff and contractors providing them with the relevant information on asbestos in the building. The survey will also allow an asbestos risk register to be stored on site to provide a physical back up to the Promaster information.

4.6 Data Management and Use

Each common area will therefore need a fire risk assessment to be conducted by qualified persons with results recorded and placed into a register of fire risk assessments that can be accessed by any persons who require information in order to manage the organisations health and safety responsibilities. The capture of this information within a database will create a tool for the discharge of responsibilities and also an audit trail to demonstrate Northwards Housing's compliance with this new legislation. Initial negotiations are taking place at present to assess if Savills can undertake this work in line with the asbestos surveys to the communal areas.

- 4.7 Once the data is collected, verified and tested it will be imported into the Promaster Stock Condition database. This will then enable the information to be easily available to all colleagues who need access to it, including service provider partners. In particular, it will enable every day to day job ticket to be issued with a notification of any potential risk arising from the presence of an asbestos containing material. This warning flag will trigger safe working practise procedures on part of JVCo and will help create a fail safe mechanism to help protect operatives, staff and residents and ensure that asbestos containing materials are left undisturbed and in a safe condition.
- 4.8 This will enable Northwards Housing to demonstrate that it can properly manage Health and Safety and demonstrate via an audit trail of our discharging of duty under this legislation.

5. Duty of Board and Officers

- 5.1 Enforcement of Health and Safety Law is undertaken by the Health and Safety Executive (HSE). Using the statutory powers of investigation and prosecution the HSE may prosecute duty holders for any breaches of Health and Safety Law where discovered or where it results in loss of life, injury or a near miss. Following investigation prosecution is undertaken within the criminal courts. The Director of Property Services has a particular obligation to ensure that both Board and staff comply with Northwards Housing's Health and Safety Policy and Procedures and to discharge all responsibilities arising so as to ensure full compliance and safe working practise.

6.0 Recommendations

- 6.1 Procurement & Property Sub Committee recommends to the Board of Northwards Housing that:
1. A survey be commissioned from Savills to identify type, condition and location of asbestos containing materials and fire risk assessment in all communal areas of Northwards Housing stock. And, the Director of Property Services be instructed to negotiate the best achievable price for undertaking this survey and of the production of a database fit for the purpose of fully discharging Northwards Housing's obligations under relevant legislation.
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Appendix 1

Legislation Applicable to Asbestos Management:

1) Health and Safety at Work etc. Act 1974 (HSWA).

Section 2 of HSWA imposes a general duty on employers to ensure the health and safety at work of their employees.

Section 3 of HSWA further extends this duty on persons who may be affected by their work, such as our tenants and other third parties.

Section 4 of HSWA imposes a general duty on persons concerned with premises to persons other than their employees to ensure the safe state of those premises.

Throughout HSWA, the term “reasonably practicable” requires that the magnitude of risk must be balanced against the time, money or inconvenience required to avert that risk.

The onus of proving that compliance was not reasonably practicable rests with the person who has that duty.

2) Management of Health and Safety at Work Regulations 1999 (MHSWR).

Regulation 3 of MHSWR requires employers to make a suitable and sufficient assessment of:

(a) The risks to the health and safety of their employees to which they are exposed whilst they are at work.

(b) The risks to the health and safety of persons not in their employment, arising out of or in connection with their undertaking.

3) Control of Asbestos at Work Regulations 2002 (CAWR).

Regulation 4 of CAWR introduced a new “duty to manage” asbestos in non-domestic premises.

It should be noted that non-domestic premises includes the common parts (e.g. foyers, corridors, lift shafts, boiler houses etc.) of premises such as housing developments and blocks of flats but does not include individual houses or flats.

Parties who have duties under regulation 4 are required to:

(a) Take reasonable steps to ensure that a suitable and sufficient assessment is carried out to determine whether asbestos is or is liable to be present in the premises.

(b) Presume that any material contains asbestos unless there is strong evidence to the contrary.

(c) Keep an-up-to date written record of the location and condition of asbestos and presumed asbestos materials.

(d) Determine the risks associated with any asbestos identified by the assessment as being present or liable to be present.

(e) Prepare a written management plan identifying the parts of the premises concerned and how the risks are to be managed, particularly how the information is to be made available to every person liable to disturb it and also to the emergency services.

(e) Review the management plan at regular intervals if there is a reason to suspect that it is no longer valid or there has been a significant change to the premises.

Appendix 2

Categories of Asbestos Surveys as defined by MDHS 100 (Surveying, Sampling and Assessment of Asbestos Containing Materials):

(a) Type 1 Survey:

“Location and Assessment Survey” (Presumptive Survey).

This is basically a “walk-through” survey. Any materials which can reasonably be expected to contain asbestos must be presumed to contain asbestos. Sampling is not usually carried out.

The results from this type of survey are naturally very restricted and the limitations must be clearly stated in any report.

(b) Type 2 Survey:

“Standard Sampling, Identification and Assessment Survey” (Sampling Survey).

This is the normal type of survey, appropriate for the routine maintenance of a building or site. It locates samples and assesses all asbestos containing materials, so far as is reasonably practicable.

The information produced can more confidently be used as an action plan to minimise the risk of exposure to asbestos for occupants and maintenance operatives.

These surveys are appropriate for occupied premises but they cannot locate asbestos within any area that has not been accessed and these areas must therefore be presumed to contain asbestos.

(c) Type 3 Survey:

“Full Access Sampling and Identification Survey” (Pre-Demolition or Major Refurbishment Survey).

This is an invasive survey which is necessarily more destructive and disruptive and, as such, not deemed appropriate for occupied premises.