

LONDON BOROUGH OF CROYDON

REPORT:	CABINET	
DATE OF DECISION	24th May 2023	
REPORT TITLE:	Council Approach to Damp and Mould	
CORPORATE DIRECTOR / DIRECTOR:	SUSMITA SEN CORPORATE DIRECTOR FOR HOUSING	
LEAD OFFICER:	JERRY AUSTIN, AND PAUL CONNOLLY INTERIM HEADS OF REPAIRS	
LEAD MEMBER:	COUNCILLOR LYNNE HALE DEPUTY MAYOR & CABINET MEMBER FOR HOMES	
KEY DECISION?	NO	N/A as report for noting.
CONTAINS EXEMPT INFORMATION?	NO	Public
WARDS AFFECTED:	All	

1 SUMMARY OF REPORT

1.1 The present report details the Council’s approach to managing damp and mould in council properties and the private rented sector in response to the directive from the Secretary of State for the Department of Levelling Up, Housing & Communities and the Regulator of Social Housing. The report includes the following

- Regulatory context
- Our approach to assessing damp and mould
- Our targeted approach to identifying damp and mould
- Our approach to addressing damp and mould
- Further developing our approach

2 RECOMMENDATIONS

For the reasons set out in the report, the Executive Mayor in Cabinet is recommended:

- 2.1 to note the Council’s approach to damp and mould in council homes and the private rented sector

3 REASONS FOR RECOMMENDATIONS

- 3.1** To provide the Executive Mayor in Cabinet with an update on the Council's progress in responding to the directive issued by the Secretary of State for the Department of Levelling Up, Housing & Communities and the Regulator of Social Housing regarding the management of damp and mould in council homes and the private rented sector.

4 BACKGROUND AND DETAILS

4.1 Regulatory Context

- 4.1.1** In November 2022, the Secretary of State for the Department of Levelling Up, Housing and Communities (DLUHC) and the Regulator of Social Housing wrote to local authorities and providers of social housing, including Croydon Council, requesting assurance that damp and mould in Council and private rented sector homes is being managed promptly and effectively. The letters followed the tragic death of two-year-old, Awaab Ishak, which coroners ruled to be due to prolonged exposure to damp and mould in his home which Rochdale Boroughwide Housing had failed to address.
- 4.1.2** In February 2023, DLUHC announced the introduction of Awaab's Law which will be implemented as part of the Social Housing Regulation Bill and will require social landlords to fix damp and mould within strict time limits. Awaab's Law will form part of broader legislation introduced by DLUHC to improve conditions in social housing and ensure respect for social housing tenants and leaseholders.
- 4.1.3** In response to the direction from the Secretary of State and Regulator of Social Housing, the Council decided to self-refer to the Regulator in relation to the Regulator's Home Standard. The Home Standard is one of four consumer standards issued by the Regulator which providers of social housing must meet.
- 4.1.4** The direction from the Secretary of State and Regulator of Social Housing requested that the Council complete the following:
- Assess the extent of damp and mould issues affecting Council properties, including the prevalence of category one and two damp and mould hazards
 - Identify actions to remedy any damp and mould issues and hazards in Council properties to ensure the homes meet the Decent Homes Standard
 - Ensure that individual damp and mould cases are identified and dealt with promptly and effectively when raised by tenants and residents
 - Have regard to high scoring (bands D and E) category two damp and mould hazards in private rented sector properties in Croydon
 - Undertake (or have undertaken) an assessment of damp and mould issues affecting privately rented properties in Croydon
 - Assess actions identified that may need to be taken in relation to damp and mould issues affecting privately rented properties in Croydon

4.2 Our approach to assessing damp and mould

4.2.1 Damp and mould are one of 29 hazards listed in the Housing Health & Safety Rating System (HHSRS). The HHSRS is a risk-based approach to assessing conditions.

4.2.2 The Council has undertaken a stock condition survey of 5% of Council properties to identify cases of damp and mould and gather data which will inform the asset management strategy. The survey found the following:

- 0 cases of category one damp and mould hazards (most severe)
- 13% of properties with category two damp and mould hazards (moderately severe)
- 11% of properties with category three damp and mould hazards (least severe)

4.2.3 We also carried out 100% (191) stock condition survey on Regina Road and Sunny banks properties.

Using the HRHSS We found:

- 0 cases of category one damp and mould hazards (most severe)
- 26% of properties with category two damp and mould hazards (moderately severe)
- 31% of properties with category three damp and mould hazards (least severe)

Due to the results the Damp and Mould team carried out and completed works in 3 properties as an emergency in February 2023

4.2.1 However, it is important to note that just because there were no Cat 1 properties identified, that's not to say that there is no condensation mould withing these properties.

4.2.2 Extrapolating these figures across the Council's properties suggests that there are likely to be approximately 1734 category two and 1467 category three damp and mould hazards in council homes.

4.2.3 A further stock condition survey of 45% of Council properties will be completed by September 2023 to provide a more accurate measurement of damp and mould hazards in Council properties. The Council is improving its data by triangulating the stock condition data with other existing data sources, including:

- Damp and mould disrepair cases
- Complaints regarding damp and mould from tenants and leaseholders
- Tenant vulnerability information
- Local knowledge of the Tenancy Team and residents

4.2.4 In accordance with the Housing Act 2004, local authorities must base their decisions on the enforcement action to take to deal with poor private rented sector housing conditions on the HHSRS.

4.2.5 A survey of conditions in the private rented sector (PRS) was conducted in 2019 using the HHSRS. The survey found that approximately 13,896 private rented sector properties were likely to have at least one category one hazard. With the PRS estimated to then form 35.5% (58,585) of the borough's 164,378 households, this equated in 2019, to an estimated 23.7% of private rented properties likely to have at least one category one hazard. Even though the recent census data estimates the private rented sector to be smaller, forming in 2021 39,442 (25.8%) of all Croydon households, it is still felt likely that a significant proportion of properties will have at least one category one hazard.

4.2.6 At present, hazard-level data to determine the number of damp and mould hazards within the 13,896 category one hazards is unavailable.

4.2.7 The existing private rented sector data will be triangulated with the following data sources to gain a more accurate understanding of damp and mould in the borough:

- Data from proactive inspections of private rented sector properties
- Data from inspections of private rented sector properties following complaints
- Housing and public health statutory notices service on non-compliant private rented sector properties
- Data on properties with an energy efficient rating (EER) below the minimum energy efficiency standard (MEES)

4.2.8 Improvements to recording actions following reactive enquiries will be provide a breadth of data. The data detailed above will be examined to establish a baseline of damp and mould cases across both council homes and the private rented sector.

4.3 Our targeted approach to identifying damp and mould

4.3.1 A cross-Council Damp and Mould Taskforce was established following direction from the Secretary of State and Regulator of Social Housing to coordinate the Council's response to damp and mould across the private rented sector, and council homes. The Damp and Mould Taskforce meets weekly, and coordinates activity across the private sector housing team, tenancy services, repairs service, temporary accommodation service, and resident involvement team.

4.3.2 The Taskforce review a revised set of damp and mould key performance indicators to manage performance and set SMART targets. Risks associated with the management of damp and mould across council homes and the private rented sector are monitored and evaluated by the Taskforce. Best practice the London Councils peer group is also reviewed to gain learning from other boroughs.

- 4.3.3 Joint-working across the Council has enabled the development of a proactive, data-led approach. Repairs contractors and tenancy officers conduct proactive checks of council properties based on the following:
- Data on estates where reports of damp and mould are higher
 - Building types associated with higher reports of damp and mould
 - Data on areas of council homes with a higher number of damp and mould related complaints
 - Data on areas of council homes with a higher number of damp and mould related disrepair cases
 - Data on vulnerable council tenants and leaseholders
- 4.3.4 As of 31 March 2023, approximately 500 damp and mould visits to council properties have been conducted. Letters have been issued to households where tenancy officers have been unable to enter properties to raise awareness of the damp and mould visits.
- 4.3.5 A damp and mould specialist has been commissioned to provide training to staff, including call centre staff and tenancy officers, to ensure damp and mould is appropriately and effectively reported. The damp and mould specialist is key to enabling culture change to ensure damp and mould is viewed by both council staff and contractors as a serious risk to the health and safety of residents. The damp and mould specialist has reviewed the damp and mould information on the Council's website and has run an information session with staff to initiate culture change.
- 4.3.6 Damp and mould cases in private rented sector properties are responded to by the Private Sector Housing Team. The process follows the following seven steps:
1. Complaint received by the Private Sector Housing Team
 2. Complaint recorded as either urgent or non-urgent. Urgent cases receive an enforcement officer response within 24 hours, and non-urgent cases receive a response within three working days
 3. Inspection of the property is undertaken
 4. Advice provided to both the tenant and landlord on condensation and actions that can be taken to prevent damp and mould
 5. A schedule of works deemed necessary by the inspection officer is shared with the landlord
 6. Formal enforcement action is undertaken if informal schedule is not completed or significant damp and mould conditions are identified at step three.
 7. Financial penalty issued to or prosecution of landlord if works are not completed. The Council may complete the works at the default of the landlord.
- 4.3.7 At present, the Council holds vacancies in the Private Sector Housing Team, which will be recruited to during 2023. Accelerating the Council's response to damp and mould will require an assessment of how best to resource this activity.

4.3.8 Private Sector Housing Team seeks to empower landlords and property agents to become proactive in identifying and resolving damp and mould issues. The Council's Enforcement Team will take a zero-tolerance approach to high levels of damp and mould and will expect immediate action from the landlord to remove the identified risk. The approach and the provision of advice and guidance was met with support from landlords and property agents at Croydon's Landlord & Property Agent Forum in March. The damp and mould specialist has devised an action plan template to enable landlords and property agents to identify the causes of damp and mould and determine necessary actions.

4.4 Our approach to addressing damp and mould

4.4.1 A dedicated Damp and Mould team has been established, led by a Damp and Mould manager, to lead the Council's response to damp and mould in council properties. The Council has also increased the number of contractors and officers responsible for responding to reports of damp and mould.

4.4.2 The Council has adopted a five-stage approach to addressing damp and mould in council properties and prevent reoccurrence. The process is as follows:

1. Damp and mould case is reported
2. Stage One visit held to ensure property is safe, provide a mould wash, and identify any follow-up works
3. Stage Two visit held to conduct identified follow-up works
4. Follow up check conducted three-months after Stage One visit
5. Follow up check conducted six-months after Stage One visit

4.4.3 The Council has taken steps to enable residents to report cases of damp and mould effectively including:

1. Establishing a priority email address for the Damp and Mould team
2. Updating damp and mould information on the Council's website
3. Raising awareness of damp and mould reporting channels with resident bodies

4.4.4 Key performance indicators are reviewed on a weekly basis to ensure incoming cases of damp and mould are continuously monitored.

4.4.5 The Private Sector Housing Team will undertake the following actions to improve the Council's response to cases of damp and mould in private sector properties:

- Review the jobs and roles of the Private Sector Housing Team to ensure the team has the resources to meet its responsibilities
- Introduce a single method for recording inspections which will improve the data on damp and mould related complaints in the private sector
- Ensure all inspection officers use the HHSRS inspection tool to assess damp and mould hazards
- Model the proportion of private rented properties in Croydon with category one and two damp and mould hazards based on existing data

4.4.6 Improvements to the Council's data on category one and two damp and mould hazards in the private rented sector will enable an accurate assessment of the resource required to respond to the Secretary of State's directive.

4.5 Further developing our approach

4.5.1 The Council's approach to damp and mould will be iterated and strengthened as the accuracy of our assessment of damp and mould in the borough is improved.

5 ALTERNATIVE OPTIONS CONSIDERED

5.1 The alternative to the recommendation listed in the present report would be to not update the Executive Mayor in Cabinet on the Council's approach to managing damp and mould in council homes and the private rented sector. The Regulator of Social Housing has highlighted the importance of the organisation's leadership in overseeing the management of damp and mould, and therefore, this option is not appropriate.

6 CONSULTATION

6.1 The recommendations within the present paper do not require consultation with residents.

7. CONTRIBUTION TO COUNCIL PRIORITIES

7.1 The implementation of a targeted approach to damp and mould in council and private rented sector properties addresses the following Mayor's Business Plan 2022-2026 priorities and outcomes:

- Priority: Invest in council homes to drive up standards and develop a more responsive and effective housing service.
- Outcome: Develop an asset management strategy to invest in our council homes, modernise and bring them up to a standard fit for the 21st century.

8. IMPLICATIONS

8.1 FINANCIAL IMPLICATIONS

8.1.1 The work on damp and mould has been responsive to directions from the Secretary of State and Regulator of Social Housing and as such has not been included in previous budget planning.

8.1.2 A damp and mould team has been established made up of a manager and four staff members who are currently contracted to July 2023. There is currently no budget for the team. This can be addressed as part of the wider housing restructure anticipated to begin within 2023. Indicatively this team will cost £293,000 per annum and are additional to the existing establishment. The new staffing budget will be set within

the ringfenced Housing Revenue Account funded from tenant rent and service charges.

8.1.3 Capital and repair work related to damp and mould has already commenced with an estimated cost of £817,000 within 2022-23. Work will continue in 2023-24 at an estimated revenue cost of £2,573,532 and estimated capital cost of £3,990,000. It is estimated that £3,397,000 of this work will be additional to the planned capital programme for 2023-24 and £592,000 is within the planned programme. The additional costs in particular will need to be managed across the year via the financial monitoring and reporting process.

8.1.4 The HRA asset management strategy and business plan will incorporate this work beyond 2023-24 including any increases or decreases to future management and maintenance costs as a result of the higher standards expected of LBC.

8.1.5 There is no budget provision for additional monitoring and enforcement activity within the general fund for damp and mould related activity.

8.1.6 No such activity has commenced to date. Costs relating to the general fund will potentially be recharges of damp and mould team staff time initially. There is a possibility that increased resource will be required within the general fund private sector housing team to monitor and enforce health and safety recommended actions. Any such changes will be subject to future decision.

8.1.7 Revenue and Capital consequences of report recommendation

The table shows the estimated costs for 2023-24, including staff costs. No estimation of the ongoing work programme has been made but will be addressed as part of the MTFs budget setting process for 2024-25.

	Current Year	Medium Term Financial Strategy – 3 year forecast		
	2023/24 £'000	2024/25 £'000	2025/26 £'000	2026/27 £'000
Revenue Budget Available	N/A			
Expenditure				
Income				
Effect of decision from report				
Expenditure	2,866			
Income				

Remaining Budget	0			
Capital Budget available				
Expenditure Income	592			
Effect of decision from report				
Expenditure Income	3,990			
Remaining Budget	0			

Approved by: Sarah Attwood, Head of Finance 04/05/23

8.2 LEGAL IMPLICATIONS

- 8.2.1** Generally, repairing obligations are implied into the Council's tenancy agreements pursuant to a range of legislation such as the Defective Premises Act 1972 and the Landlord and Tenant Act 1985. In particular, the existence of rising damp in a property has been held to be the result of a breach of the landlord's duty to repair the structure and exterior of the property under Section 11 of the Landlord and Tenant Act 1985. Failure to comply with these implied terms can result in a civil claim for damages and specific performance. A claim for compensation can also be made under the Housing Act 1985. Claims in common law nuisance or negligence can similarly arise. Allegations of statutory nuisance can also be pleaded in the Magistrates' Court under the Environmental Protection Act 1990 where this is evidence to support such a claim. A housing conditions claim may also include a personal injury element
- 8.2.2** Under the Homes (Fitness for Human Habitation) Act 2018, the Council also has a statutory duty to ensure their properties are fit for human habitation at the start and throughout the tenancy. One of the factors considered in determining if a property is unfit is "freedom from damp". Properties must also be free of "prescribed hazards" as defined by the Housing Health and Safety Rating System, and these can include damp and mould. Again, tenants can take legal action against the Council for breaches of this statutory duty.
- 8.2.3** The Housing Ombudsman (THO), established under the Housing Act 1996 (as amended by the Localism Act 2011), is responsible for investigating complaints about member landlords in accordance with a scheme approved by the Secretary of State and will assess whether the landlord has failed to keep to the law, followed proper procedure, followed good practice, or behaved in a reasonable and competent manner resulting in maladministration. For example, there was a recent decision against Lambeth LBC in relation to an ongoing leak for a period of six months, and associated damp and mould for the entirety of this period. There

was a finding by THO of “severe maladministration” arising from (1) poor oversight and handling of resident’s reports of a leak, damp and mould (2) failure to assess and take action on resident’s vulnerabilities (3) poor complaints handling and (4) poor record keeping.

- 8.2.4** In addition, the Housing and Regeneration Act 2008 established the Regulator of Social Housing (RSH,) an executive non-departmental public body of the MHCLG. The RSH sets regulatory standards, codes of practice and guidance for registered providers of social housing. The regulator considers complaints and referrals to determine whether there is evidence of a breach of its regulatory standards.
- 8.2.5** In November 2020, The Charter for Social Housing Residents – the Social Housing White Paper was published which set out actions the government proposed to take to include a Charter for Social Housing Residents, plans for new regulation, a strengthened Housing Ombudsman to speed up complaints, and a set of tenant satisfaction measures those social landlords will have to report against
- 8.2.6** Also, the Local Government Act 1999 imposes a duty on all local authorities to deliver “best value” which requires the Council to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 8.2.7** More recently, the Social Housing (Regulation) Bill now proposes to make a number of changes to the obligations affecting the Council about the regulation of social housing; about the terms of approved schemes for the investigation of housing complaints; and for connected purposes. The Bill is likely to include the following additional obligations on the Council:
- 8.2.8** Awaab’s Law which will require landlords to fix reported health hazards including damp and mould within specified timeframes.
- Time limit to fix repairs/update to tenancy agreements. The Bill includes provisions which will require the Council to investigate hazards and fix repairs including damp and mould in their properties within strict new time limits. The new rules will form part of the tenancy agreement, so tenants can hold landlords to account if they fail to provide a “decent” home. Further powers are also proposed to bolster the Housing Ombudsman’s powers in ensuring landlords comply.
 - RSH Powers. The RSH will also have new and stronger powers to “proactively assess” social landlords against the consumer standards. The Bill will give the RSH new powers which will allow them to enter properties with only 48 hours’ notice and make emergency repairs with landlords footing the bill.

Comments approved by Sandra Herbert, Head of Litigation & Corporate Law, on behalf of the Director of Legal Services and Monitoring Officer. Date: 27/04/2023

8.3 EQUALITIES IMPLICATIONS

8.3.1 The Council has a statutory duty to comply with the provisions set out in the Equality Act 2010. In summary, the Council must in the exercise of all its functions,

“have due regard to” the need to comply with the three arms or aims of the general equality duty. These are to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it.

8.3.2 Having due regard means to consider the three aims of the Equality Duty as part of the process of decision-making. This means that decision makers must be able to evidence that they have considered any impact of the proposals under consideration on people who share the protected characteristics before decisions are taken.

8.3.3 An EQIA has been developed and identified a positive impact for younger and older people and disabled people who are potentially more affected by damp and mould. There is also a positive impact on race, identified by the breakdown by race of council tenants and leaseholders below:

Black: 38%
Asian: 9%
Mixed: 4%
White: 46%
Other: 3%
Unknown: 22%

Approved by: Denise McCausland Equality Programme Manager 05/05/23

8.3 CRIME & DISORDER IMPLICATIONS

8.3.1 There are no crime and disorder implications from this report.

8.3.2 Approved by: Kristian Aspinall Director of Culture & Community Safety 10/05/23

8.4 HR IMPLICATIONS

8.4.1 Agency staff has been appointed to carry out this work. This has been managed under the Council’s guidelines for employing temporary staff. If and when it is decided to recruit permanent staff this will be managed under the Council’s Recruitment procedure.

8.4.2 There are no other immediate HR impact as a result of this report.

8.4.3 Approved by Jennifer Sankar Head of HR Housing Directorate and SCRER Directorate, for and on behalf of Dean Shoesmith, Chief People Officer 05/05/23

9. Background Documents

N/A