

Report subject	Recladding of Sterte Court blocks - HRA
Meeting date	11 November 2020
Status	Public
Executive summary	<p>This report brings forward the recommendation of the award of a contract modification to the current contract with United Living in order to progress the timely removal and replacement of the cladding system at Sterte Court.</p> <p>The work will deliver the removal of the current cladding system in response to the most recent Fire Risk Assessment. It will address issues with poor workmanship and other identified fire safety issues.</p> <p>The works will replace the current cladding with a new system that is compliant with technical and legal requirements, remove the current fire risks presented by the cladding and remove the need for other ongoing mitigation actions currently in place.</p> <p>The works will importantly address our local priority to deliver the national fire safety agenda of improving fire safety standards across homes for residents in the BCP area.</p>
Recommendations	<p>It is RECOMMENDED that Cabinet and Council:</p> <ul style="list-style-type: none"> (a) Approve the award of a contract modification to United Living to the value of £3.384m in order to deliver the removal of the current cladding system and installation of a new cladding system at Sterte Court, together with a budget of £0.25m for unexpected remediation works and a 5% project contingency allowance, and delegate authority to the Director for Housing to agree the detailed terms in liaison with the Section 151 Officer and Monitoring Officer and to enter into the relevant agreements; (b) Approve the waiver of the right to charge leaseholders the cost of the works which may otherwise be recoverable for the reasons set out in Appendix B; (c) Approve the budget virement of £3.816m within the HRA in order to support the delivery of the works; (d) Approve the delegation to the Section 151 Officer to finalise the details and authorise submission of a bid to

	the Ministry of Housing, Communities and Local Government (MHCLG) seeking government grant toward the replacement of the works.
Reason for recommendations	This approach will enable the timely refitting of an appropriate cladding system to the current accommodation blocks, mitigating ongoing known fire safety and workmanship risks. This is needed to ensure the cladding system is compliant with Building Regulations. The recladding works will importantly help address the national fire safety agenda of improving fire safety standards across homes for residents in the BCP area.
Portfolio Holder(s):	Councillor Bob Lawton, Portfolio Holder for Homes
Corporate Director	Kate Ryan, Corporate Director for Environment and Community
Report Authors	Su Spence, Poole Housing Partnership, Chief Executive Lorraine Mealings, BCP Council, Director of Housing
Wards	Poole Town;
Classification	For Decision

Background

Sterte Court

1. Sterte Court refers to two 10 storey blocks of flats on the Sterte Esplanade that are owned by BCP Council (the "Council") and managed by Poole Housing Partnership (PHP) on behalf of the Council under a management agreement dated 1 April 2014 (the "Management Agreement").
2. The blocks were built in 1961 and consist of 114 one and two bedroom flats. They are identified as Seaview and Bayview.
3. Both the blocks were built with a Wimpey No-fines construction which consists of an in situ reinforced concrete frame with no fines walls with a rendered finish. This construction was widely used in the 1960s but produced poorly insulated solid walled buildings. The flats were built to space standards applicable at the time, but these are considered small compared to standards currently required.
4. The blocks provide homes primarily for use by the Council to house BCP residents and 17 flats that have been sold under the Right to Buy. These 17 flats are known as "leasehold" properties and are occupied by either owner occupiers or residents who privately rent from the owners.

Refurbishment Programme and Workmanship Issues

5. In 2015, PHP completed a major refurbishment programme designed to ensure that the blocks would remain appropriate for occupation for the next 30 years. The work replaced the old concrete balconies with winter gardens to improve

space standards, replaced the windows and over clad the rendered concrete with a cladding system.

6. The 'cladding system' referred to in this report relates to the external Trespa panels, the insulation material and the associated fixtures and fittings.
7. PHP put in place measures after installation to manage the health and safety and fire risk emerging from some workmanship issues, including fortnightly checks on the cladding system, an evening security visit to ensure that no flammable materials were placed against the outside of the building or blocking exit routes and increased caretaker presence. Between 2019-2020, ongoing discussions took place between all parties concerned with a view to ensure safety of the tenants, undertake further investigatory works and conclude how to move forwards with the cladding system as a whole.
8. In June 2017, the Grenfell tragedy occurred involving a fire in a 24-storey block of flats in London tragically killing many people and injuring many more. Significant developments in national building regulations and guidance have been made since this time, with many across the housing sector focussing now more than ever on fire safety within homes. This report aims to directly address this fire safety improvement agenda to keep our tenants safe.
9. In January 2020 new guidelines were issued by MHCLG (*"Advice for Building Owners of Multi-Storey, Multi-Occupied Residential Buildings"*) recommending that remedial action should be considered in respect of any cladding system that contains High Pressure Laminate (HPL) (e.g. Trespa panels) and combustible insulation materials.
10. During early 2020 MHCLG released details of funding that could be used to support replacement cladding on high rise buildings. PHP are in the process of submitting a bid for the funding on behalf of BCP Council which has challenging timescales to meet for a bid to be successful, including a start on site by 31 March 2021. Registration for the fund has been submitted and a full bid will be made to help fund the recladding costs.
11. The full bid will be submitted as information is confirmed with the proposed contractor and as MHCLG work through the information being received. There is a requirement to have submitted full cost information by 31 December 2020, with an outcome on the bid expected in early 2021.

Current Position

12. In April 2020, the Council became aware of technical information that prompted a review of the suitability of the cladding.
13. In addition to the poor workmanship issues, the Council considers that the insulation material is not compliant with Building Regulations in respect of fire safety and that there are fire stopping issues.
14. The Council has since worked closely with PHP and prompted a revised Fire Risk Assessment (FRA) completed in July 2020 which considered the additional technical detail. The FRA concluded that further urgent action was required in order to mitigate the fire risks.
15. PHP and the Council have worked to put urgent mitigations in place. These include onsite 'waking watch' staff to assist with evacuating people safely should a fire occur, a change from the "stay put" to a "simultaneous evacuation" policy

where all occupants in the block need to evacuate the building in the event of a fire, communications with tenants and installing alarms in each individual flat to alert all tenants should a fire start. A sprinkler system is also being installed, as previously approved.

16. The current key outstanding priority action resulting from the FRA is to remove the cladding system and replace with one that meets all building and safety regulations. This report requests related funding in order to progress the works.
17. A replacement cladding system will address our local priority to fully meet the national fire safety agenda and further improve fire safety standards across homes in the BCP area.
18. As a standalone issue, the nature of the insulation material means that it must be removed from the building. The nature of the insulation material, compounded by the workmanship and fire stopping issues, means that the cladding removal needs to be urgently actioned.
19. The Fire Service has been kept fully involved with the approach, is comfortable with the measures that have been put in place to date and is supportive of the conclusion that the cladding system needs removing.
20. The Regulator for Social Housing which oversees social housing has been alerted to the risks and the current plans for mitigation, with detailed information having been provided to them. In September, the Regulator noted the current and ongoing actions being taken to address the issues and, on that basis, did not consider that it would be proportionate to find a breach of the Home Standard or take further regulatory action relating to the Consumer Standards.
21. The Council's Corporate Fire Safety team and Private Sector Enforcement team have been involved in the most recent discussions to ensure that the Council provides a robust response to the issues at Sterte Court. It is important that this is consistent with our enforcement approach in relation to cladding systems on private sector blocks, irrespective of Sterte Court blocks being Council-owned.
22. The fire safety issues at Sterte Court are subject to a Council Internal Audit investigation which is currently underway to establish lessons learned. PHP have similarly commenced their own internal audit to help understand the sequencing of events and identify any lessons learned.

Delivery Options

23. Two feasible options have been identified for delivery of the works at Sterte Court, they are :-
 - a. Remove the current cladding system and pause while an open procurement exercise is undertaken for replacement with a new cladding system
 - b. Remove the current cladding system and replace it with a new cladding system as soon as possible
24. Further options have also been considered but discounted. These include: to do nothing, demolishing the blocks completely for redevelopment and removing the cladding without any replacement. The reasons for discounting these are detailed later in the report.

25. The Council and PHP have established, with professional input, that due to the integral nature of the cladding system, no one element of the cladding system can be removed and replaced in isolation. The integrated nature and particular requirements of a cladding system means that none of the material that makes up the current cladding system could be re-used on the building as part of a new cladding system. The whole cladding system therefore needs to be replaced.

Option A – Remove the current cladding system and pause while an open procurement exercise is undertaken for replacement with a new cladding system

26. This option seeks to deliver the removal of the current cladding system in order to mitigate the current fire risks within the quickest possible time in light of the urgency and then pause while an open procurement process is undertaken for a replacement cladding system.

27. Current estimates suggest that following the decision to proceed the contractor will need a six week mobilisation period enabling site set up in the first week of January 2021 with scaffolding work commencing the following week. The first cladding removal work will commence from the end of February 2021 and it will take a further 11 weeks to the start of May 2021 to complete the full removal of both blocks. Some of the cladding on the upper storeys could be removed at an early stage of the removal works to help reduce the highest risk first and in advance of May 2021.

28. An open procurement process would take approximately four to five months and it is expected that a contractor would start on site during the summer of 2021 to deliver the new cladding system. This time frame is deliverable but is not expected to meet the MHCLG bid requirements of the end of March start on site, making the project most probably ineligible for funding. Option A would address the fire risks in a relatively timely way.

29. The estimated cost for the delivery of this option is shown in the table below:-

Option A	Removal (£000's)	Interim (£000's)	Replace (£000's)
Cladding system	0	0	2,354
Removal	263	0	0
Scaffold	500	400	130
Design	0	0	71
Prelim's	69	0	199
Overheads	57	0	118
Total	889	400	2,872
TOTAL			4,161

30. These costs are based on soft market testing from the current supply chain and would need to be tested within a formal procurement route but are considered to be accurate estimates of likely costs.
31. It is expected that there will be additional preliminary costs and overhead charges by splitting the work and enhanced scaffolding costs during the pause in works. This could be mitigated by leaving the scaffolding in place during the pause, however, the scaffolding contract would need to be novated to the new contractor and it is understood that the incoming contractor may not wish to use the scaffolding. There is also an issue regarding safety and insurance of the scaffolding during the 'pause' period as it is unlikely the original contractor will want to retain responsibility for the scaffolding once its works have completed.
32. Unknown costs relate to the level of remediation work required on the concrete sub structure once the cladding system is removed. There are expected to be water penetration issues over a period of time once the concrete is exposed and these would require regular (weekly) maintenance to ensure that the flats remained fit for occupation.
33. Option A is expected to take approximately nine months from commencement of removal works to commencement of replacement works. During this time residents would have to endure the removal works, any associated remedial works, as well as preparing for the resulting replacement works. This is likely to include ongoing scaffolding obscuring light into flats, reduced thermal efficiency and ongoing disruption.
34. This option however would allow the Council to follow an open procurement route and ensure that all costs incurred have been robustly tested within the market and that value for money was achieved as separate market tested contracts.

Option B – Remove the current cladding system and replace it with a new cladding system as soon as possible

35. This option seeks to remove the current cladding system in the quickest possible time as the initial outcome required, and then move straight into replacement works with the same contractor.
36. Under this option, scaffolding works would also start the first week in January 2021 with completion of the cladding system removal the start of May 2021 as per option A, but the selected contractor would also progress discussions with the supply chain and work to design the new cladding system during this time. It is expected that this would allow the replacement works to move forward alongside and immediately after removal works are complete.
37. Option B is therefore expected to meet the MHCLG requirements of being on site by March 2021 to commence replacement works which allows a bid for funding to be submitted to help support the overall costs presented here.
38. The estimated costs for the delivery of this option is shown in the table below :-

Option B	Remove and Replace
Cladding system	2,816
Scaffold	130
Design	84
Prelim's	236
Overheads	118
Total	3,384

39. These costs are estimates following soft market testing and will need to be further formalised but have been developed with United Living who are currently delivering Project Admiral on behalf of the Council and PHP and considered to be accurate estimates of likely costs.
40. Project Admiral is currently delivering the major refurbishment work of the four PHP managed high rise blocks in Poole Old Town, including delivery of a new non combustible cladding system. The overhead and preliminary costs as well as the material costs reflect those included in the Project Admiral contract award which was tested via a full OJEU compliant process in 2018 with United Living meeting all financial and quality criteria to be the preferred supplier.
41. The costs have also been benchmarked against similar work taking place for cladding replacement of blocks elsewhere across the BCP conurbation and costs are similar. Confidence can therefore be taken that they represent value for money considering price comparisons.
42. Option B presents good value for money compared with Option A and provides a more timely outcome too.
43. Option B would minimise the length of time that residents needed to live with the ongoing works as the overall delivery time would be reduced compared to Option A. The level of remediation work would also be reduced as the onsite contractor would be required to pick up emerging issues from the sub structure as part of the works on site.
44. Option B can be delivered as a direct award under Rule 72 (c) Public Contracts Regulations 2015 for a contract modification. Such a modification is deemed to be appropriate where circumstances are unforeseen or beyond control of the operating authority and with works deemed urgent where the usual tendering timescales are not appropriate. The importance of urgently reducing fire risk means that the usual tendering processes can be circumvented if appropriate in order to balance the need for delivery against achieving value for money.
45. Further information regarding the application of Rule 72 (c) is contained within Appendix A.
46. There is also an additional requirement for urgency with recladding to meet the MHCLG bid guidelines which require a start on site by March 2021 to access any government grant. This bid will hopefully be successful and reduce the costs incurred locally.

47. The modification must not exceed 50% of the contract being modified and there is a requirement to act with urgency. The modification is expected to be approximately 20% of the current Project Admiral contract so falls well within this.
48. It is therefore recommended that Option B should be taken forward to deliver the removal and replacement of the cladding system at Sterte Court. It is recommended that this option is progressed via a contract modification to the current Project Admiral contract to allow this to progress at pace.

Other Options Considered

Do nothing

49. It would be possible to leave the current provisions in place and manage the ongoing fire risks via the existing mitigations in place as noted above. This is considered to be unsatisfactory going forwards as the FRA on this basis still rates the fire risks as 'Substantial' with non compliant material installed. There are obligations on PHP as the 'Responsible Person' under the Fire Safety Order to take steps to address the FRA recommendations within a reasonable time.
50. Waking watch costs would continue to accrue over time, reducing funds which could be put to better use by funding a replacement cladding system. The costs of delivering the current waking watch service is estimated to be approximately £600k per annum and would continue indefinitely if cladding system is left in its current form.
51. The current position would mean the Council would not be complying with the requirements of the Regulator for Social Housing's Home Standard to "meet all applicable statutory requirements that provide for the health and safety of the occupants in their homes". In such circumstances the Regulator is likely to take action against the Council.
52. There is a reputational risk to the Council. The Council is taking action against privately owned blocks with similar cladding systems in place. The Council should therefore be seen to comply with its own rules and enforcement measures. There is of course the reputational risk if there was a fire in the block. The Council is likely to be subject to criticism for leaving Sterte Court as is, with a 'Substantial' fire risk rating, despite the mitigations to date.
53. Not progressing the recladding works would go against the advice note issued by MHCLG in January 2020 recommending that remedial action should be considered in respect of any cladding system that contains High Pressure Laminate (HPL) (e.g. Trespa panels) and combustible insulation materials.

Remove and Re-render

54. It may be possible to remove the current cladding system and render the external concrete on the building. This would mitigate the water penetration issues but would not address the thermal efficiency of the building. Wimpey no fines constructed buildings commonly have damp and mould issues due to water ingress and cold external walls.
55. These issues are all mitigated by thermal efficient cladding and support a more acceptable inside temperature which could not be achieved if the cladding system was not replaced. The remaining 4 high rise blocks managed by PHP are also being suitably clad to help address these issues.

56. This option would require a re-design for the current windows and the balcony structures which are currently designed to interact with a cladding system that includes a cladding panel. These costs have not yet been estimated but are considered to be in the region of £0.5m.

Redevelopment of the blocks

57. The option of complete redevelopment of the blocks has also been given some consideration as a possible option to provide a more modern living environment instead of high-rise blocks but has been discounted.
58. There would be a requirement to rehouse existing residents that would put pressure on already scarce housing stock across Poole. There would be considerable cost incurred with each resident entitled to a home loss payment of approximately £6k per tenancy along with support to move and covering reasonable costs incurred in this process, which could be a very lengthy one. There would also be buy-back issues relating to the owner occupier leaseholder properties within the blocks.
59. The building would need to be managed prior to and during any renovation and this would lead to additional costs and enhanced management issues of an empty or partially empty building. There would be rent loss over the period of time while redevelopment was planned.
60. The site is unlikely to deliver an increase in the overall number of homes available to the households on the housing register due to the density of surrounding sites. This option therefore has a high degree of disruption and cost with a risk of not increasing the overall number of new homes.
61. Despite the density of the blocks, it should be noted that there are currently no significant management issues associated with Sterte Court. The flats are not too difficult to let, turnover of residents is relatively low and anti-social behaviour is not a significant issue. There is also a thriving community group in the area, a self-funded children's play area and well used community gardens, all of which would likely be lost within a redevelopment.

2. Summary of financial implications

62. The delivery of the preferred option will require contract resources of £3.384m to be identified, plus a contingency for unidentified remediation works and project contingency.
63. Initial building surveys have identified that the sub structure will need to be managed for water penetration where it becomes exposed to the elements. This is expected to be managed by the contractor on site as part of development works and initial cost estimates for removal and replacement have included some assumptions around remediation works as the current cladding system is removed. An estimate of £0.25m has been provided to cover additional costs that may arise to ensure that the sub structure remains appropriate for occupation although there is a low risk that this cost could be higher. This estimate is based on the current surveys of the sub structure and the ongoing maintenance programme that has been in place.
64. All contracts are expected to have a contingency sum that can be accessed for unforeseen circumstances and this is proposed to be 5% in line with other

contracts of a similar nature. The 5% contingency sum in this case will be £181,700.

65. Given the above, the estimated financial costs of the total project is £3.816m.
66. It is proposed that this project will be funded from the Housing Revenue Account (Poole Neighbourhood). This will be in addition to projects agreed as part of the three year budget setting cycle and this will be funded from current HRA reserves.
67. The current 2020/21 forecast outturn shows an underspend against current agreed budgets as projects have been delayed following reduced activity from COVID. This has meant resource to be returned to unallocated reserves and it is proposed to fund this work from these unallocated reserves. If approved, these sums will be reflected in the revised three year programme for 2021/22 onwards. These reserves would otherwise be used to support the delivery of housing management and maintenance services, as well as supporting an ongoing new build programme, but had not been allocated to date.
68. PHP and BCP officers will continue to liaise with MHCLG to progress the bid for grant with approval sought for sign off of the final bid by the Section 151 Officer at the appropriate time. It is hoped that a good proportion of the total costs will be met by the MHCLG grant although the total government fund is capped and there is no guarantee that the bid will be successful.
69. PHP have approved authority through the Management Agreement with the Council for the revenue spend on the mitigation measures arising out of the FRA such as the provision of waking watch staff.

3. Summary of legal implications

70. Following in-depth discussions with the Council's procurement team it has agreed that the most appropriate solution would be for the Council to directly award a contract for the works by a contract modification to United Living in accordance with Reg 72(c) Public Contracts Regulations 2015. The contract modification would not exceed 50% of the Project Admiral contract and the urgency element required under Regulation 72(c) is met as the Council needs to mitigate fire risks promptly. There is also the aspiration to meet the MHCLG bid timescales to secure a government grant to support costs.
71. There is ongoing work to confirm the contract under which the direct award would be given. The current Project Admiral is a JCT intermediate contract (with contractors design) and it is likely that this would be varied for the additional works with enhanced design conditions to ensure that United Living has full design and construction liability for the replacement cladding system in line with the principle of a Design and Build contract. Alternatively, the issuing of a Design and Build contract as a modification would allow these conditions to be set out as an integral part of the contract with clear accountability.
72. The required approach will be confirmed by PHP with assistance from its appointed consultants, Arcus Consulting Ltd, in conjunction with discussions with United Living and agreed at pace to enable works to progress quickly. Legal Services will provide comments and input to the proposed contractual arrangement.

4. Summary of human resources implications

73. The project will be delivered by the PHP Development Team. There is good expertise within this team having delivered a number of new build and maintenance projects over the past five years. The project can be delivered within current resource planning assumptions

5. Summary of sustainability impact

74. The use of external cladding delivers thermal efficiency improvements to concrete buildings that support a more comfortable environment for all residents. The continued delivery of this approach at Sterte Court will ensure that the benefits seen by the residents over the past five years from warmer properties and reduced energy bills will continue.

6. Summary of public health implications

75. None identified

7. Summary of equality implications

76. None identified

8. Summary of risk assessment

77. The delivery of the recommended option will remove the urgent fire risks identified that are currently being partly mitigated through other measures.

Background papers

Appendix A : Procurement Advice Note

Appendix B: Confidential paper regarding leaseholder recharging

APPENDIX A

PROCUREMENT ADVICE NOTE

DN401481 - Project Admiral - Design & Build Tower Block Refurbishment

Background

This note considers the modification to the original contract that was awarded to United Living for £18,052,260.16 and the report to Cabinet on 28th October 2020: Recladding of Sterte Court blocks - HRA, seeking to modify the original contract by an additional £3.4m.

Modification of contracts during their term

It is written in the context of Regulation 72 of the Public Contracts Regulations 2015 (PCR15) and other relevant obligations in respect of the modification of a contract during their term where additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement. (Clauses not relevant to this modification have been removed for clarity)

72.— (1) *Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases: —*

(a) ...

(b) *for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor—*

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, and

(ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority,

provided that any increase in price does not exceed 50% of the value of the original contract;

(c) *where all of the following conditions are fulfilled: —*

(i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;

(ii) the modification does not alter the overall nature of the contract;

(iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.

(d) ...

(e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8); or

(f) ...

(2) ...

(3) Contracting authorities which have modified a contract in either of the cases described in paragraph (1)(b) and (c) shall send a notice to that effect, in accordance with regulation 51, for publication.

(4) ... (5) ... (6) ... (7) ...

(8) A modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where one or more of the following conditions is met: —

(a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;

(b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—

(i) allowed for the admission of other candidates than those initially selected,

(ii) allowed for the acceptance of a tender other than that originally accepted, or

(iii) attracted additional participants in the procurement procedure;

(c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

(d) the modification extends the scope of the contract or framework agreement considerably;

(e) ...

(9) ...

Other relevant obligations

Financial Regulations Part G (33) requires consultation with the Strategic Procurement Team to modify a contract and the outcome recorded in a Procurement Decision Record.

PCR15 Regulation 51 requires us to publish a contract modification notice in the Official Journal of the European Union (OJEU).

In addition to Regulation 51 of PCR 15, the Contract Register entry in the public domain will be amended to reflect the modification.

Issue a contract modification letter (SPT to supply template) to incumbent contractor.

Conclusion

Given the evidence within the Cabinet report, the request to modify the existing contract is compliant with the tests outlined in the PCR15 Regulation 72 as follows:

- 72(1)(b)(i) and (ii) – The detrimental effect on costs alone is clear in the case of a change of contractor.
- 72(1)(c)(i) – The report outlines clearly how the need for a modification has not been bought about by us.
- 72(1)(c)(ii) – The modification is requesting more of the same work.
- 72(1)(c)(iii) - The modification represents an 18.8% uplift in contract value which is sufficiently below the 50% threshold.
- 72(1)(e) & (8) - Sterte Court was not included in the original tender requirements, however, the work is not considered to be significant within this definition.