

MEMO

MEAMRAM

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5th September 2016

Re: Pyrite situation within Dublin City Council

The following is a summary of the Pyrite situation as it affects Dublin City Council housing projects. This does not include any reference to private housing in the DCC area as DCC has no role in such dwellings. All prices exclude VAT. Costs stated under each project are direct costs of works and do not include DCC staff time, cost of consultants, testing or accommodation. These are dealt with in a separate section. Costs of pyrite works are stated as “approximate” as there are always additional defects encountered that cannot be directly attributable to pyrite (e.g. a boiler failing to restart and requiring replacement) but that require to be addressed at the time.

This report does not contain any information on substantial pyrite works carried out under Ballymun Regeneration Ltd., including the “RECO” centre (remediated) and 124 houses in the Sillogue 3b contract. Legal proceedings are ongoing in both of these cases.

Avila Park phase 4 community centre

Community centre for Travellers in Finglas. Built c 2005 by Tara Construction. 6 houses built at same time already remediated in 2012 at a cost of €745,000 (50% DoE funding was secured). Pyrite discovered in 2008. Tenders in 2015 returned at €331,000, but now expired. No imminent plans to proceed with this work.

Griffith Heights

35 Affordable dwellings, 15 social dwellings, 33 Senior Citizens dwellings and community centre

Built c 2004/2005 by Noreside Construction. Pyrite discovered in 2008.

DCC has undertaken to remediate the 35 houses. Remedial works have taken place in 13 houses at a cost of approx €720,000. This figure includes for repairs to footpaths and driveways within the curtilage of the dwellings, and for public footpaths. Tender were received for the remaining 22 houses in December 2015, but with a poor response. The works were re-tendered recently and are commencing on site in September 2016 at a cost of approx. €1.42m.

No recent progress has been made in the dispute with the original contractor.

Ballybough/Poplar Row/Taaffes Place Phase 2

33 dwellings in mixed 2 storey, 3 storey and duplex.

Built 2007 by Glenman Corporation. Pyrite discovered in 2010

Remediation works for 19 ground floor units are complete. Final cost of pyrite works approx. €970k excl. VAT. No recent progress has been made in the dispute with the original contractor.

Valeview Crescent, Finglas

Two houses built on infill land. Built c 2005 by Togail/AMDL. Pyrite confirmed 2011.

Remediated in 2014 at a cost of €82,000.

DCC carried out completion works on these houses following the demise of Togail (Housing Association) and AMDL (building contractor). No possibility of pursuing a dispute in this instance.

Tolka Valley View

22 houses, community centre and 27 senior citizens dwellings.

Developed by Respond housing association, and managed by them. DCC did not engage design team or contractor. Severe damage to footpaths. Worst areas of footpath were temporarily repaired by DCC in late 2013. Note that Respond are taking the view that this is a DCC development and that DCC are responsible. DCC have carried out temporary repairs on the footpaths without prejudice at a cost of approx. €10,000.

BRL 4 houses at Owensilla Terrace and 2 at Balbutcher Way

BRL development

2 houses at Owensilla Terrace and 2 at Balbutcher Way have been remediated at a cost of approx. €190k. Tenants refused to move in two others. No possibility of pursuing a dispute in this instance.

Ballymun Sillogue 3b (Owensilla) (see site map)

58 dwellings, built by Glenman Corporation, completed 2008.

Four houses affected by pyrite. Estimated cost of remediation €200,000. Not tendered yet.

Ballymun Poppintree 5b (Carton) (see site map)

90 dwellings, built by Glenman Corporation, completed 2007.

52 houses included in works. Works were tendered during first week of June, and due to commence on site in Sept 2016 at a cost of approx. €2.75m.

Four houses at the East end of the Carton Estate are currently on site at a cost of approx. €190k.

No recent progress has been made in the dispute with the original contractor.

Belmayne

Large private development. Developer was Stanley Holdings, may be more than one builder

DCC own 18 units with ground supported floors that are affected by pyrite. Claims have been initiated with Premier Guarantee who have sought substantial additional information, including surveying and

testing of stone, together with conveyancing documents to prove that DCC is the beneficiary of the guarantee. Additional information has been lodged for 8 of these claims. Further testing is ongoing to substantiate others. At the time of writing, 7 of these dwellings have been approved for remediation.

Carleton Hall, Marino

Community hall, crèche and 4 apartments (2 over 2) Procured by Development Dept.

Builder was Tara Construction.

Remediation of the two ground floor apartments is complete at a cost of approx €138k.

During discussions with the operators of the crèche and hall, it became clear that if remedial works proceeded, they would want alterations to the design of the building. Estimated cost of remedial works to hall and crèche approx. €400,000 excluding any fees for a design team.

Extension to 7A Avila Gardens

This is a pyrite damaged extension to a travellers housing in Finglas. This work is on site at the time of writing at a cost of €53,000.

Clancarthy Road, Donnycarney

DCC remediated 20 Senior Citizens dwellings at Donnycarney in 2011 at a cost of approx. €560k excl. VAT. DoE funding was secured for the contract value of these works.

Ballybough Community Centre All weather pitch and external areas

Pyrite appears to be confined to the external areas of this building. All weather pitch and car park remediated during 2016 at a cost of €230k.

Indirect costs of pyrite remediation works

Indirect costs include DCC staff costs, cost of non-routine maintenance arising from pyrite, stone sampling and testing, consultant costs, costs of alternative accommodation.

It is not possible to give an accurate breakdown of these costs, rather an estimate of the overall approximate costs.

Summary of costs (all costs exclude VAT)

Works	€7,323,000
Fees	€468,281
Sampling and testing	€359,670
Accommodation	€497,000
<i>(assuming a value of €1000 per month per house and €500 per month per SCD apartment)</i>	
DCC direct staff costs	€1,171,000
Outstanding possible works	€1,660,000

The Department of Environment funded the Clancarthy Road remediation to the full contract value, and the Avila 6 houses remediation to 50% of the contract value. No other projects have been funded externally, nor have any of the associated costs (fees, sampling and testing, accommodation) been

funded. It remains open to DCC in most cases to pursue the original contractor under the contract. These disputes are known to require a lot of resources and time, and the outcome is far from certain. I am aware of three disputes that have been pursued through the courts against the quarry that supplied the original stone, and these have been vigorously defended and appealed at great cost to all parties. DCC. The only remedial works for DCC currently being funded by an insurance company (Premier Guarantee) are those at Belmayne. DCC will still incur some residual costs on these, which are being dealt with on a case-by-case basis.

The Pyrite Resolution Act 2013 was signed into law in December 2013. This sets out the legal basis for the operation for a compensation scheme operated by the Pyrite Resolution Board. Note that this scheme only applies to dwellings, but excludes dwellings owned by a local authority.

Recurring Issues

In deciding whether or not to pursue a claim the following issues recur:

- Contractor's financial status.
- Insurance.
- Longevity.
- Costs.
- Certainty.

Contractor's financial status and insurance

Many contractors in serious financial difficulty – close to liquidation – difficulty in funding dispute resolution process or remediation. If contractor goes into liquidation then DCC loses opportunity of obtaining an enforceable judgement / award against contractor. DCC not have any contractual link with contractor's insurer or quarry. No 'Third party liability against insurers Act' in Ireland. Effect - DCC cannot proceed to recover against contractor's insurer of its own accord. Insurer only pay when contractor has sustained a loss, that is, final court judgment or arbitrator's Award against the contractor.

Longevity and costs

Insurance companies may step in to defend the claim on behalf of the insured as they do not wish to have a judgment or arbitrator's award finding that the terms of their insurance policy cover defects caused by pyrite. They are willing to spend enormous sums defending such claims. Further, any case advanced would have to pass two hurdles, (1) that the damage caused by the pyrite is recoverable under the policy and (2) that the damage caused is in fact due to the presence of pyrite. In relation to (2), instances of poor workmanship can obscure the actual cause of the defect sufficient to "muddy the waters" as to whether pyrite is, in fact, the cause.

Certainty

The issue as to whether damage caused by pyrite is recoverable under the relevant insurance policies is complicated and substantial costs may be spent in arriving at a finding, which is only the first step in

recovery. The priority is often to have the remediation works carried out as efficiently and expeditiously as possible. DCC is also under a duty to mitigate its loss.

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