

Insights

RAAC – WHAT IT IS AND WHAT IT MEANS

Sep 11, 2023

SUMMARY

As schools prepared to reopen this September after the summer break, hundreds were informed that, due to the use of Reinforced Autoclaved Aerated Concrete (RAAC) in their buildings (and its current state and condition), this would not be the case and they would need to remain closed or find alternative accommodation until remedial works could be undertaken. There are likely to be further closures in the future, as more schools are found to contain RAAC in need of urgent remedial works. It has recently become apparent that other buildings have been also affected by RAAC issues, for example court buildings and hospitals.

This Insight takes a closer look at RAAC, why it has become an issue now and considers practical steps for those affected by RAAC.

WHAT IS RAAC?

RAAC is a lightweight building material (“bubbly concrete”) that was used in flat roofing, floors and walls between the 1950s and 1990s, predominantly in municipal buildings. It was a cheaper alternative to standard concrete and also easier to install. However, due to its construction, it has different properties to traditional concrete – being much weaker and more susceptible to degradation resulting in failure. The aerated structure means that moisture can easily penetrate and cause weakness, also causing steel reinforcements (rebar) to rust and weaken. There can also be problems where it was not installed properly, subsequent works have taken place having no regard to RAAC presence or where it has been subjected to “excessive” loading. It was used pre-dominantly in roofs but can be found in walls and floors of some buildings too.

RAAC has a lifespan of around 30 years and, now beyond that lifespan, it may collapse with little or no notice. This is particularly the case where the RAAC has not been inspected and/or properly maintained. While there seems to be no issue as to the safety of its use at the time, unfortunately, it was not designed to last indefinitely and we are now seeing the consequences of this coupled with what appears to be, in some cases, a poor inspection and maintenance regime.

WHY NOW?

Although the potential problems with RAAC have been public knowledge for many years, noting various government reports and guidance have been published (resulting in some public sector buildings containing RAAC being more closely monitored in recent years), it was the collapse over the summer of a RAAC beam in a school that had been considered low risk that has prompted increased awareness and the immediate actions being taken.

Although the media are primarily reporting on RAAC in schools, it was used in other non-residential buildings, such as hospitals, court buildings and theatres. In some cases, it may also have been used in housing stock, such as those constructed by local authorities, typically for social housing, or buildings converted to housing. Indeed, the media have reported the closure of court buildings (Harrow Crown Court) and theatres. It may be that over the coming weeks the use of RAAC is discovered to be more widespread than is currently understood.

PRACTICAL STEPS FOR THOSE AFFECTED BY RAAC

Any buildings that potentially contain RAAC should be identified and urgent advice sought from a qualified expert (such as a structural engineer, surveyor or architect), allowing any risks to be identified and an informed decision made. The safety of the end users of any building is the immediate concern. There is a wealth of published guidance setting out how to inspect for RAAC presence and, where identified, how to assess for key risks and deal with them.

Many legal claims arising from the use of RAAC in the construction of buildings will have long passed their limitation period, with many buildings being anything from 30 to 60 years old. In addition, as mentioned above, there was no negligence in the use of the material at the time of construction (it was deemed a safe material to use).

However, in residential units at least (dwellings), there is potential that the Building Safety Act 2022 and its extension of the limitation period to 30 years for historic claims under the Defective Premises Act 1972 might possibly have just kept some claims alive. Under the Act, dwellings must have been fit for habitation at completion. The widespread use of RAAC and the limited lifespan of the product (which appears to have been known by the 1980s) is likely to make an argument that it was not fit for habitation at completion a difficult one to win. There may also be counter arguments that it has not been properly maintained too. Any potential claims will need to be considered quickly though, as the 30 years only takes us back to September 1993 (which is close to the end date for its use), and that date will be continuously moving forwards.

As between landlords and tenants, the determination of liability for remediation of buildings affected by RAAC and any associated consequences of such remediation will require a careful analysis of the relevant lease terms on a case by case basis. A RAAC-related defect potentially triggers a number of interrelated lease provisions including insurance, repair, service charge and

quiet enjoyment. Landlords and tenants who are impacted by RAAC should seek legal advice as early as possible, particularly where there is a risk of injury and/or buildings are required to be vacated at short notice, not least because health and safety legislation imposes stringent duties to protect the health, safety and welfare of occupants, and insurance policies and/or lease provisions may require prescribed action to be taken at a very early stage.

If you have any questions relating to RAAC, please do reach out to your usual BCLP contact.

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