

IN THE CORONERS COURT
OF VICTORIA
AT SALE

COR 2011 003754

FINDING INTO DEATH WITH INQUEST
(Amended pursuant to s76 of the *Coroners Act 2008*
on the 22nd August 2012)

Form 37 Rule 60(1)
Section 67 of the Coroners Act 2008

Inquest into the Death of Tye Norman Sunderland

Delivered On: 10 August 2012

Delivered At: Sale

Hearing Dates: 01/08/2012

Findings of: Mr Clive Alsop, Coroner

Representation: Mr Felkel, counsel for the family of the deceased

Ms Alampi, counsel to witness Telfer

Coroner's Assistant: Leading Senior Constable Jason Gibbons

I, Clive Alsop, Coroner, having investigated the death of Tye Norman Sunderland
AND having held an inquest in relation to this death on 01/08/2012
at Coroners Court Sale
find that the identity of the deceased was Tye Norman Sunderland
born on 15 July 2006
and the death occurred on 4 October 2011
at Central Gippsland Health Service, Guthridge Parade Sale VIC 3850

from:

1a HEAD INJURIES

in the following circumstances:

COMMENTS

Pursuant to section 67(3) of the Coroners Act 2008, I make the following comment(s) connected with the death:

On the evening of the 4th October 2011, 5 year old Tye Sunderland was with his 7 year old sister Jasmine in a bedroom at their home at 120 Cunninghame Street, Sale. They were playing together when Tye apparently attempted to climb onto the mantel piece above what had originally been a fireplace. The structure was described by the informant, Senior Constable Burgermeister in her summary of the events as:-

"The original fireplace in this bedroom did not have a traditional mantel piece. A small cupboard had been placed in the fire recess area. An additional façade of bricks and mortar had been laid up the face of the chimney and the sides of the fireplace and cupboard and mantel-piece laid on top. The entire assembly has then been painted white. In essence there was a second skin of bricks laid up the original chimney. It is not known when the façade and cupboard has been added. The former owner estimated that this was probably done over 34 years ago."

As Tye was climbing, the slab of brickwork supporting the mantel piece collapsed onto the two children. Jasmine was pinned under the bricks by her legs but Tye was completely covered by the bricks with only his feet visible under the rubble.

Tye's mother, Holly Sunderland, observing what had happened called to her daughter Crystal to get the mobile phone so she could call for help. Two neighbours, Frank and Klara Jones responded to the sounds of distress coming from the house and started removing the broken masonry.

Ambulance personnel arrived shortly thereafter and Tye was transported to the Sale Hospital where, despite efforts to resuscitate him, he died of his injuries at about 9pm.

THE PROPERTY

The house occupied by Tye and his family was described as an "older style" brick home which had been used as a rental property since 2009. Tye's family were the second lot of tenants to occupy the premises. The property was managed by real estate agents Graham Chalmer P/L, who had carried out a pre-rental inspection of the premises. This inspection noted some defects in the property, notably cracks in window panels, marked and cracked walls and doors, cobwebs, some areas of mould in the carpets and other general comments. Whilst the property could best be described as being in poor condition, there was no overt indication of any structural inefficiency in the fireplace/mantel piece.

SUBSEQUENT INSPECTIONS

The property was inspected on 5th October 2011 by Mr Joshua Hillman, assistant building surveyor of the Wellington Shire Council. A "Building Order for Minor Work Under Section 113 of the Building Act 1993" was then served on the owner of the premises requiring, inter alia, the demolition of the remaining brickwork in the fireplace and associated rubble and the provision of a report within 30 days confirming the structural adequacy of the fireplace.

On 13th October 2011, Mr Brian Ross, Civil Engineer and Building Surveyor inspected the property at the request of the letting agents to prepare the report referred above. That report contains the following material:-

"The building has suffered from foundation movement with general cracking throughout. This is not uncommon for a building of this age. The subject area of concern is the fire place in the second/middle bedroom on the east side. The fire place and chimney had been constructed with a face brick front and a mantel piece. A small cupboard had been inserted in the fireplace. The lower portion of the sides of the brickwork were keyed into the side brickwork of the fireplace. The upper portion however appeared to have been sitting on a lintel with little or no ties back into the chimney thus creating a weak point at the lintel location. The stability relied on the bonding of approximately one and a half bricks in either side.

The brickwork appears to have used a lime type mortar which was friable but appears stable in the remaining sections. There was a narrow diagonal crack in the mortar on the western side of the arch. There were significant cracks in the adjacent wall particularly on the western side of the chimney. These cracks extended up to but did not appear to extend into the chimney part. Other walls around the building were also exhibiting significant cracks within the cement plaster lining. The walls were generally vertical indicating settlement rather than leaning. When the cracking occurred is unclear and some of the external walls have previously been repaired. At this stage the chimney appears to be relatively stable but should be monitored for further movement.

The cracking is potentially due to soil moisture content changes which could be caused by inadequate drainage and or vegetation. Further investigation should be carried out and consideration given to stabilizing the foundations.

The cement render sounds hollow in many areas indicating that the plaster had become separated from the brickwork. In some areas this was falling away particularly on the south wall of the subject bedroom and the adjoining passage. Remedial action should be taken to repair the render.

The timber floor in front of the subject fire place was also showing signs of decay with holes in the floor boards. This may have been started with the collapse of the mantel piece."

EVIDENCE

In giving evidence at the inquest hearing, Mr Ross, stated that the façade of the fireplace had been constructed some decades ago. At that time some bricklayers would bind such a construction to the brickwork immediately behind it by placing metal ties in the mortar in such a way as to connect the new brickwork to the existing bricks. This was despite the absence of any legislative requirement to do so. The problem with this system was that the ties often rusted or rotted away.

On inspection of the fallen brickwork in this matter, he was unable to say whether the bricklayer had used this technique.

In evidence to the hearing, Mr Hillman stated that he was not personally aware of any similar structural failure having occurred in the local area. He suggested that "there could be a need for random inspection" of older properties to enable council officers to check the stability and safety of internal masonry. This suggestion would be a specific advantage in those instances where houses are not in apparent good repair.

LEGISLATION

Section 16 of the Building Act 1993 prohibits building work unless a valid permit exists and is in force and requires that building work be carried out in accordance with the act, the regulations made thereunder and the conditions of the permit.

However, Schedule 8 of the Building Regulations 2006 No 68 specifically excludes specified types of "repair renewal or maintenance of a part of an existing building" from the requirement for a permit.

That exclusion appears to enable brickwork of the type involved in this tragedy to be carried with no need for any permit.

In the light of:-

- (1) Mr Ross's comment that the cracking observed in the mortar in this home "is potentially due to moisture content changes";
- (2) His proposition that these changes could be caused by inadequate drainage and or vegetation;
- (3) The possibility that other older properties may contain similar potentially dangerous brickwork;

there may be a need for some legislative amendments to assist in the early detection and repair of similar deficiencies:

RECOMMENDATIONS

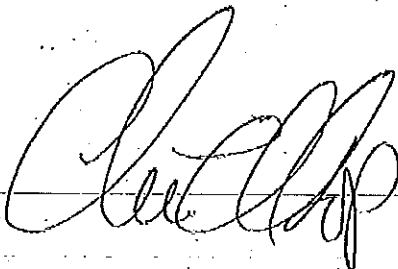
1. That consideration be given to amending the Building Act:-
 - (a) to require a permit before construction of the type of masonry walls and facings currently exempted by Schedule 8;
 - (b) to require a bricklayer constructing such a wall or facing to certify, in writing, that appropriate ties have been used to attach the new brickwork to suitable existing materials;
 - (c) To permit regular overall structural assessment of rental properties;

I acknowledge the extensive work done by the informant in this matter and the assistance of Mr Brian Ross in providing details of the various legislative provisions, the subject of comment in this finding.

I direct that copies of this finding be forwarded to:

- (1) The Minister of Local Government and;
- (2) The Minister for Planning;

Signature:



Mr Clive Alsop

Date: 10.8.2012

