



AYLESBURY VALE DISTRICT COUNCIL

Democratic Services

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8 December 2017

ENVIRONMENT AND LIVING SCRUTINY COMMITTEE

A meeting of the Environment and Living Scrutiny Committee will be held at **6.30 pm on Tuesday 19 December 2017 in The Olympic Room, Aylesbury Vale District Council, The Gateway, Gatehouse Road, Aylesbury, HP19 8FF**, when your attendance is requested.

Membership: Councillor M Winn (Chairman); Councillors S Jenkins (Vice-Chairman), M Bateman, S Chapple, A Cole, S Cole, P Cooper, B Everitt, B Foster, T Hunter-Watts and R King.

Contact Officer for meeting arrangements: Chris Ward; cward@aylesburyvaledc.gov.uk

AGENDA

1. APOLOGIES

2. TEMPORARY CHANGES TO MEMBERSHIP

Any changes will be reported at the meeting.

3. MINUTES (Pages 3 - 8)

To approve as a correct record the Minutes of the meeting held on 2 November 2017.

4. DECLARATIONS OF INTEREST

Members to declare any interests.

5. TAXI LICENSING FEES REVIEW (Pages 9 - 14)

To consider the attached report.

Contact Officer: Peter Seal (01296) 585083

6. INSPECTION OF RESIDENTIAL BUILDINGS IN THE VALE TO REVIEW FIRE SAFETY (Pages 15 - 24)

To consider the attached report.

Contact Officers: Khyati Vaughan (01296) 585881 / Will Rysdale (01296) 585561

7. WORK PROGRAMME

To consider the future work programme. Meetings are scheduled as follows:-

13 February 2018: No items yet

31 March 2018: Food Service Plan 2017/18 – Commercial Proposition

Previously noted items:

- Housing acute needs
- ASB leaflets (to allow Member input on their content, as mentioned at a previous meeting)
- Planning Enforcement Update (had previously been reported on 1 November 2016)
- Flooding (in particular relating to housing growth in the District and building on flood plains)

Environment and Living Scrutiny Committee

2 NOVEMBER 2017

PRESENT: Councillors M Bateman, A Bond (In place of S Jenkins), S Chapple, S Cole, M Collins (In place of R King), P Cooper, B Everitt and N Glover (In place of A Cole)

IN ATTENDANCE: Councillor A Macpherson

APOLOGIES: Councillors M Winn, B Foster and T Hunter-Watts

1. ELECTION OF CHAIRMAN

RESOLVED –

That Councillor Everitt be elected Chairman for this meeting only.

2. MINUTES

RESOLVED –

That the Minutes of the meeting held on 20 September 2017 be approved as correct a record.

3. ECOLOGY UPDATE 2017

The Committee received an Ecology report from the AVDC Ecologist, Paul Holton, which provided an update on the service. In attendance for the item were volunteers that had been invited by the Ecologist and each gave a short presentation.

Doug Kennedy – Active Volunteer

After a brief introduction on how he became involved in activist work, Doug Kennedy explained how he had been involved with the Website Working Group and liaison meetings with Thames Water regarding the River Thame's cleanliness. The Committee heard of the importance of monitoring water quality and holding perpetrators of pollution to account. A brief summary of why Thames Water (TW) was fined £20million earlier in the year for breaches of environmental legislation at the Haydon Hill Sewage Treatment works was provided. A liaison group that included AVDC, TW and The River Thame Conservation Trust ensured better communication between all parties. Fish had been monitored this year in the Aylesbury section of the River Thame and numbers were lower than anticipated. Fresh water Invertebrate populations had also been monitored with a lower threshold seen than expected. Both these declines were indicative of water quality so continued monitoring by volunteers to support the Environment Agency statutory monitoring stations was critical to understand what was happening in the River Thame. The value of a healthy river in Aylesbury Vale was considered to be a huge asset and it was hoped work to achieve this would be supported in full by Councillors and Staff at AVDC.

Natalie Brehan – The River Thame Conservation Trust

A map showing an overview of the River Thame's route and catchment area was provided to Members along with notable locations of the Conservation Trust's work. The four main strategic aims were as follows:

- Increase understanding of the freshwater habitats and species of the Thames catchment and monitor changes in them
- Improve biodiversity by practical habitat works on the ground
- Improve water quality
- Improve knowledge, understanding and appreciation of the freshwater environment of the River Thames catchment and increase its recognition in local planning frameworks

Work that had been carried out by the Trust included Eythrope Habitat Improvement Works and Eythrope Fencing which intended to improve habitats and reduce livestock access to the river. The Trust had also worked at Cuttlebrook Nature Reserve in 2016 in order to reduce silt deposition and discourage dog entry into the river as this caused bank erosion. Designated dog access points into the river had been successful in combating this as these entry points were gravelled which prevented excess mud and sediment entering the river. Volunteers were important in the Trust's work and were crucial in the implementation of species surveys, river cleaning and the removal of invasive Himalayan Balsam. The Trust wanted to advise Households on how they impact the river even without being in proximity to it as surface drainage often ended up in rivers. Incorrect waste in sewage systems would also cause blockages and issues at treatment plants which may cause inadvertent damage to rivers and wildlife. Phosphate reduction in households was also another household change that would benefit rivers, and community incentives through Thames Water Funding would be investigated for future projects. Further information was available via leaflets that would be distributed: <http://riverthame.org/wp-content/uploads/2015/12/Phosphorus-Leaflet-New-Forest-WEB.pdf>

More information was sought by Members from the Trust representatives and Ecologist and advice included:-

- i. Engaging of young people in schools was a future priority but the Trust did not have the resources to fully engage. It had been found that children were better engaged where they can see the issues faced and the Trust did not have land in which to facilitate this type of learning. The present focus was on advising adults, households and Parishes.
- ii. Member assistance would be appreciated through the Trust's work and advice being passed to constituents wherever possible. Thames Water would also be receptive to Member and community engagement.
- iii. Industrial polluters in the Vale were not known but would be checked with the Environment Agency and reported back to Members.
- iv. The Trust wanted to create more volunteer patrols along the river to monitor pollution 'spikes' as continuous monitoring equipment was costly and subject to weather conditions. AVDC was limited in how much assistance it offered through current Ecological workload.
- v. The Environment Agency helpline was the first point of contact for any concerns members of the public had over pollution.
- vi. Enforcement would manage any statutory damage claims.

Representatives from Bucks Owl and Raptor Group (BORG) who also brought George, a captive bred Barn Owl

Originating in 2012 from the Aylesbury Vale Project, BORG was run completely independently by volunteers. Barn Owls and Kestrels were both listed under RSPB classification as Amber Status which meant they had an unfavourable conservation status and were generally in decline. Part of this reason had been due to a decrease in nesting sites which was attributed to Dutch Elm disease and farms removing or changing usage of their storage barns.

It was explained that barn owls were iconic and a barn owl in flight captured the public's imagination. BORG hoped to build on this iconic image by working with landowners to supply and install barn owl boxes (£75) and other boxes (£40). The boxes provided a safe environment to roost and breed which had consequently had a positive impact on barn owl population numbers. There were 700 boxes in Buckinghamshire, 400 of which were for barn owls, and there were 55 nesting sites in the county. The group linked into The British Trust for Ornithology (BTO) to ring chicks in the district. There had been 137 chicks rung in 2017 which was an increase from 120 in 2016. The UK population of Barn Owls was thought to be 30,000 and had resulted in changing the status to Green. However the major Bird Charities were minded to continue the conservation work for this species to fully achieve its potential distribution across the country which was still considered to be some way off. BORG was helping achieve this aspiration in Bucks and had developed an educational programme working with young people to inspire a new generation of people the value of these birds. George, the captive bred barn owl, had been instrumental in this process and he was brought in to the meeting to meet Members. As well as being a part of Vale Lottery, BORG had launched a 'friend' subscription scheme to raise funds and appreciated all promotion that Members offered.

Members sought more information from the Group representatives and were advised that:-

- i. Captive bred owls lived around 16 years compared to five years in the wild.
- ii. Successful liaison with developers to promote wildlife friendly sites was possible as seen at Kingsbrook, Aylesbury.
- iii. Barn owls were primarily white in colour.
- iv. Nesting sites had been identified along the HS2 route and it was deemed inevitable that those within a mile and a half from the route would be severely affected as train lines and roads were responsible for large numbers of owl deaths. Nesting boxes would be fitted outside this proximity along the line to encourage safe nesting.
- v. BORG did not advertise the location of public nesting sites so that they were not disturbed.

After the presentations from the volunteers, the Ecologist provided an update to Members. Since the Council's reorganisation, the Ecology Service was part of the Environment Team in Regulatory Services in the Customer Fulfilment Sector. This reorganisation had been deemed a benefit to ecology and heritage as the Environment Team's remit included Heritage and Conservation, Parks and Green Infrastructure, Pollution Control, and Trees. Links between ecology and parks had been aided through the efforts of volunteers that assisted with habitat management on AVDC's land and ecological input in the management of parks.

The service also worked with Development Management in order to provide a service for customers in the pre-planning process, such as carrying out checks for protected species. This benefited customers by potentially preventing delays to applications as the checks identified the need for further detailed protected species assessments early in the application timeframe. Species specific surveys would often be constrained by when they could be carried out in the year so early identification of this necessity was important in the developer's planning timetable. Screening guidance to planners on this was available and delivery teams were on hand to provide this. Additionally, planning decision notices contained a note on protected species which highlighted the importance of applicant action should it be necessary. The service had employed Swift Ecology in a consultancy capacity to support and sustain the delivery of ecological expertise which amounted to 46 hours / 6.3 days during the 2017/18 financial year. Checks had been carried out to ensure that there were no conflicts of interest from consultants. It was anticipated that the AVDC Ecologist would comment on over 500

planning applications in 2017 and would also contribute towards tree and landscape surgeries offered by Planning Officers.

The Ecology Service had worked on key projects throughout the last 12 months and the update was as follows:

Kingsbrook Development

Sales had been successful with the developer accrediting this to the site's conservation focus and relationship with the Royal Society for the Protection of Birds (RSPB). Alok Sharma, the Housing Minister for England, visited the site in September 2017 and in October 2017 representatives from the UK's nature conservation network visited the development. All attendees saw how this site was an example on how nature and housing can be integrated effectively. Scheduled next was the planning for the nature reserve and visitor centre which was likely to be managed by the RSPB upon completion.

East West Rail and HS2

HS2 had submitted 20 planning applications which had been dealt with by consultants with the Ecologist's oversight. East West Rail had informed there will be a number of applications submitted before July 2018 which would cover works commencing before the agreed Transport and Works Act Order. The applications were expected to have a high level of ecological input with particular note on the work on the Claydon rail section as this was an ecologically sensitive area. An ecological statement on the East West Rail line was expected in January 2018.

Great Crested Newt Pilot

From 2018, new District Licences would be available within the Vale through a Nature Space Partnership project. The project intended to bring the largest benefit to great crested newts whilst also streamlining licensing processes for developers. AVDC had entered a pilot scheme and the scheme providers acknowledged the need for additional resources so funds for an additional post were available. AVDC intended to employ a support Ecology Officer on a fixed term basis in January 2018. The post would initially focus solely on work generated by the pilot.

Vale of Aylesbury Local Plan

Ecology guidance had been provided to Forward Plans Team when formulating the Local Plan with the intention of providing a robust protection for habitats and species in the Vale. Policies related to ecology in VALP included:

- NE1 Protected Sites
- NE2 Biodiversity and Geodiversity
- NE3 Rivers and Streams
- NE9 Trees, Hedgerows, and Woodlands

Berryfields Mitigation Scheme

AVDC had partnered with the local Wildlife Trust to deliver a project which aimed to restore, manage and establish hedgerows in and around the Berryfields development. This would be expanded to cover meadows and ponds as the Scheme progressed, and community participation and involvement would be encouraged wherever possible. Bucks, Berks, and Oxon Wildlife Trust would employ a Project Officer for this Scheme from Spring 2018.

Members discussed the update and asked the Ecology Team to check the wording in the VALP regarding air quality. Members saw merit in a proposal from one of the Local Members regarding the designation of specific areas in Buckingham as Wildlife Corridors in order to protect sites. This suggestion would be pursued by Officers.

The Committee congratulated the work carried out by the Ecology Team and particular note was made of the progressive and coordinated work carried out at the Kingsbrook development. All volunteers were thanked for their attendance and their enthusiasm to conservation was commended.

RESOLVED –

That the Ecologist's report which updated on achievements and upcoming work be noted.

4. WORK PROGRAMME

The upcoming work programme for items coming to Scrutiny was considered as per the agenda. The Built Facilities Strategy scheduled for 19 December 2017 was subject to a three month consultation period so would not feature at that meeting. Consequently, this item would be scheduled for 2018. Members expressed an interest in receiving a report covering Sporting Facilities which was expected to be covered in the Facilities Strategy. Additionally, Members discussed the possibility of receiving an update on Aylesbury Garden Town. This would be investigated after the Member's Event was held.

Members were also advised that the next meeting would contain an update on Friars House following the fire safety inspection of residential buildings in Aylesbury Vale which was previously brought to Committee.

RESOLVED –

That the situation regarding the work programme be noted.

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TAXI AND PRIVATE HIRE LICENSING; FEES AND CHARGES

1 Purpose

- 1.1 To review the taxi and private hire fees and charges and agree fee levels upon which the Council can subsequently formally consult on.

2 Recommendations/for decision

- 2.1 That the Environment & Living Scrutiny Committee agree the fees and charges set out in Appendix 2 to this report; and
- 2.2 Licensing Committee be charged with the statutory consultation and implementation of the fees and charges.

3 Supporting information

- 3.1 The Council's taxi and private hire licence fees and charges have not been formerly reviewed for a number of years. However existing fee levels as a whole appear not to be wholly disproportionate. Existing taxi fees and charges are attached as Appendix 1.
- 3.2 Over the last two years taxi licensing has been subject to a number of changes relating to the introduction of new technology, some key decisions by the Council's Licensing Committee and significant changes in the law. Whilst the overall budget for hackney carriages and private hire, through diligent management, remains neutral it is prudent that the Council carry out a thorough review of fees and charges and agree them in accordance with the law.
- 3.3 The relevant legal provisions are set out in the Local Government (Miscellaneous Provisions) Act 1976 ('the Act') and specifically Section 53 in respect to drivers and Section 70 in relation to vehicles and operators. Both the procedure and authorisation process in respect to Sections 53 and 70 are different. The setting of fees for drivers (Section 53), for example is delegated to Licensing Committee and there is no requirement to advertise any proposed fees. Fees for vehicles and operators (Section 70) is a Cabinet decision and there are more extensive implementation arrangements.
- 3.4 In the interests of fairness and transparency it is intended to apply the same arrangements for driver licence fees as is required for vehicles and operators. This report seeks the agreement of the Environment and Living Scrutiny Committee of the specific fee levels for taxi licensing and the general methodology behind their calculation. A subsequent report, with the agreed fee levels will be brought before Licensing Committee with a recommendation to publish a notice of the proposed new fees and charges. If objections are received and not withdrawn a further meeting of Licensing Committee will consider them and agree the final fees with or without modification. In respect to vehicle and operator fees Licensing Committee will recommend their approval by the appropriate Cabinet Member.
- 3.5 Sections 53 and 70 of the Act allow the Council to charge fees for the grant of licenses in respect of hackney carriage and private hire drivers, vehicles and operators. The legislation specifies the elements that can be included in the calculation of the licence fees.
- 3.6 The costs of issue and administration of licences can be recovered in driver's licence fees. In respect of vehicle and operator licences, the reasonable cost of inspecting vehicles, the reasonable cost of providing hackney carriage

stands and any reasonable administrative costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles can be included in the fees.

- 3.7 In respect to drivers only, the costs of enforcement cannot be included in the calculation. The Council cannot make a profit from licence fees and any surplus or deficit must be carried forward and form part of any subsequent review of fees.
- 3.8 The general methodology behind this review of fees has been determined by the Act and the document 'Open for business: Local Government Association (LGA) guidance on locally set licence fees'. This guidance has been used as a starting point only because it does not take into account the specific statutory restrictions applicable to taxi and private hire fees and therefore not all the costs listed as recoverable in the guidance have been included in the fees.
- 3.9 The LGA guidance acknowledges that the EU Services Directive, applicable to most forms of licensing does not apply in the case of taxi and private hire licensing but the principles, however remain helpful. The core principles are that fees should be non-discriminatory; justified; proportionate; clear; objective; made public in advance; transparent; and accessible.
- 3.10 The LGA guidance draws attention to two important judicial decisions in respect to fees. The first is *Cummings V Cardiff* which rules that the charges within a licensing regime for different categories of licence should not subsidise each other.
- 3.11 The second is *Hemmings V Westminster*. Strictly speaking this does not apply to taxi and private hire licensing as this case proceeded under the auspices of the EU Services Directive. The principle ruling was that application fees relate solely to the costs of authorisation i.e. reviewing the application and granting or refusing it. Successful applicants should subsequently be charged an additional fee relating to the costs of on-going administration and enforcement. Whilst this is not necessarily applicable to taxi and private hire licensing it would be prudent to bear in mind the principle and might, for example inform the Council's refund policy in respect to unsuccessful applications.
- 3.12 The LGA guidance acknowledges that Councils are free to design the licensing service that best serves the needs of their community and recover the costs accordingly. It provides a number of elements that Council's may wish to consider (but for consideration only). These include administration, visits, third party costs, liaison with interested parties, management costs, local democracy costs, on costs, development, determination and production of licensing policies, web material, advice and guidance, setting and reviewing fees, monitoring and inspection visits and maintaining statutory registers. The legislation does not require the Council to make a precise calculation so as to arrive at an income which exactly meets the cost of the administration of the various licences. Councils are required, however to take a reasonable and proportionate approach and should aim to set a fee level that is sufficient to cover the cost but not make a surplus. On that basis it is proposed that a full service review of fees is carried out every three years, thus affording the opportunity to reconcile any surplus or deficit accrued. In addition to this the fees will be reviewed annually in relation to any increase in RPI and where appropriate an increase applied to the fee to recover related increased costs to the Council. Increases in line with RPI will not require a formal approval process.

- 3.13 A review of the cost of delivering taxi licensing services has been carried out and new fees are proposed that reflect both the full staffing costs as well as the support service costs e.g. services such as democratic services, corporate governance, office accommodation etc. Where the fee pays for a service provided to the Council by a supplier, such as DVLA checks, or a physical item such as a plate or bracket for a vehicle, this has been factored into the fee. DBS fees are set by our supplier and vary to a small extent annually. The DBS fee is therefore detailed separately and will be increased annually to reflect supplier cost increases. This will not require a formal approval process. The cost of physical supplies also varies dependent on supplier costs and will be increased annually to reflect supplier cost increases, This will not require a formal approval process.
- 3.14 A full summary of the fees proposed is set out in Appendix 2. The most significant variation from current fees can be seen in the areas of hackney carriage and private hire driver licences where the cost of a new 3 year licence has risen from £156 to £193. This reflects the increased resource requirements imposed on local authorities by the Deregulation Act 2015 which enables applicants who reside in and outside of Aylesbury Vale to apply for a driver licence from the Council. All drivers licensed by the Council are subject to series of checks in order to determine that they are fit and proper and do not pose an unacceptable risk to the safety of the travelling public. Deregulation has resulted in an increase in the numbers of applications received and in the type and variance of checks that need to be carried out uniformly across the service which include checks with other local authorities, police forces and immigration services to ensure that a licence can be issued in good faith. In many cases a charge is made to the Council for the provision of this information, in addition to the additional staffing resource required to carry out these checks and monitor and manage the timely return of information against the application.
- 3.15 Whilst it is proposed that driver licence fees should increase, it is proposed that both hackney carriage vehicle and private hire vehicle licence fees should reduce, with new hackney carriage vehicle licence applications reducing from £372 to £300 and new private hire vehicle licence applications reducing from £342 to £307. In the main, this reduction reflects the benefits resulting from the introduction of new digital technology to manage bookings and the issue of licences which has reduced the amount of resource required to deliver these services.

4 Options considered

- 4.1 None

5 Reasons for Recommendation

- 5.1 The periodic review of taxi licence fees and charges is a legal requirement.

6 Resource implications

The cost of running the taxi and private hire licensing service, including the review of fees, is met by appropriate fees and charges.

Appendix 1: CURRENT HACKNEY CARRIAGE / PRIVATE HIRE LICENCE FEES

HACKNEY CARRIAGE VEHICLES –

Annual Vehicle Licence Fee	£372
Replacement vehicle to expire on original licence date	£70
Insurance Replacement Vehicle	£200

PRIVATE HIRE VEHICLES –

Annual Vehicle Licence Fee	£342
Replacement vehicle to expire on original licence date	£70
Insurance replacement vehicle	£200
Executive Plate	£54
Replacement Vehicle Licence Plate with Bracket	£30
Replacement Vehicle Licence Plate only	£22
Replacement Bracket only	£8
Replacement Vehicle Window Card	£20
Replacement Door Signs (each)	£16
Replacement Drivers Badge	£25
Replacement Neck Lanyard	£6
Reprint of Licence (driver, vehicle or operator) to be posted	£16
Reprint of Licence (driver, vehicle or operator) to be emailed	£12
Replacement Hackney Carriage Laminated Tariff Card and Wallet	£10
Vehicle re-tests: within 14 days of first test	£28
After 14 Days of first test	£41
Non attendance of a vehicle inspection without 24 hours notice of non attendance	£75

DRIVERS LICENCE –

Hackney Carriage/Private Hire Driver's Licence Renewal (before previous licence expires)	£135
Hackney Carriage/Private Hire Driver's Licence for three years inc Knowledge Test	£156
The Knowledge Test (Retest)	£24
Criminal Record Bureau Check (Enhanced) - Online	£44

PRIVATE HIRE OPERATORS LICENCE –

Private Hire Operators Licence per annum	£203
Private Hire Operators Licence 5 year licence	£743

Appendix 2: PROPOSED HACKNEY CARRIAGE / PRIVATE HIRE LICENCE FEES

HACKNEY CARRIAGE VEHICLES –

Annual Vehicle Licence Fee	£	300
Replacement vehicle to expire on original licence date	£	102
Insurance Replacement Vehicle	£	180

PRIVATE HIRE VEHICLES –

Annual Vehicle Licence Fee	£	307
Replacement vehicle to expire on original licence date	£	102
Insurance replacement vehicle	£	180
Executive Plate	£	-
Replacement Vehicle Licence Plate with Bracket	£	34
Replacement Vehicle Licence Plate only	£	22
Replacement Bracket only	£	11
Replacement Vehicle Window Card	£	22
Replacement Door Signs (each)	£	23
Replacement Drivers Badge	£	19
Replacement Neck Lanyard	£	4
Reprint of Licence (driver, vehicle or operator) to be posted/emailed	£	10
Replacement Hackney Carriage Laminated Tariff Card and Wallet	£	10
Vehicle re-tests: within 14 days of first test	£	26
After 14 Days of first test	£	52
Non-attendance of a vehicle inspection without 24 hours notice of non-attendance	£	75

DRIVERS LICENCE –

Hackney Carriage/Private Hire Driver's Licence Renewal (before previous licence expires)	£	175
Hackney Carriage/Private Hire Driver's Licence for three years	£	193
The Knowledge Test (Retest)		N/A
Criminal Record Bureau Check (Enhanced) - Online	£	44

PRIVATE HIRE OPERATORS LICENCE –

Private Hire Operators Licence 5 year licence	£	677
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UPDATE ON RESPONSE TO GRENFELL TOWER DISASTER

1. Purpose

- 1.1 To update the Scrutiny Committee on the Council's response to the Grenfell Tower disaster, following the report presented at the Committee meeting held on 20 September 2017.

2. Recommendations/for decision

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| 2.1 | The Scrutiny Committee is requested to note the contents of the report. |
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3. Supporting Information

- 3.1 The report 'Response to Grenfell Tower Disaster' was presented to Committee on 20 September this year. A copy of the report is attached as Appendix A.

4. Update

- 4.1 DCLG wrote to all local authorities on 18 October 2017 requesting information about privately owned residential buildings that are over 18 meters tall and especially those containing external cladding. A copy of the letter is attached as Appendix B.
- 4.2 The relevant information has been submitted to DCLG via an online questionnaire and within the required timescale. Local authorities will receive additional new burdens funding for the collection and return of the data.
- 4.3 DCLG has also confirmed that local authorities have enforcement powers, relating to the Health and Safety Rating System (HHSRS), in respect of the external cladding systems of tall residential buildings.
- 4.4 Friars House, Aylesbury is the only identified residential building in the district that is over 18 meters tall and fitted with ACM type cladding.
- 4.5 DCLG has recommended that additional testing is carried out on the insulation at Friars House to determine whether further action needs to be taken.
- 4.6 Officers are continuing to liaise with the management company, building owners, VAHT and DCLG to ensure that the most up-to-date advice and guidance is followed. As it currently stands the responsible private sector party are refusing to action any further work, despite representation from both AVDC and DCLG. Officers are therefore considering the options available for enforcement in partnership with the DCLG

Contact Officer

Khyati Vaughan (01296) 585881 or
Will Rysdale (01296) 585561

Background Documents

APPENDIX A

Report presented to Scrutiny Committee in September

RESPONSE TO GRENFELL TOWER DISASTER

1 Purpose

- 1.1 To advise the Scrutiny Committee of the Council's response to the Grenfell Tower disaster in regard to the fire safety management of buildings managed or owned by the Council.
- 1.2 This report sets out actions taken by the Council since the disaster to mitigate the risk of any similar disaster occurring and demonstrate compliance with the Regulatory Reform (Fire Safety) Order 2005.
- 1.3 The Council fully accepts its duties under the Regulatory Reform (Fire Safety) Order 2005. The Corporate Health and Safety Policy 2017 outlines those duties and arrangements.

2 For decision

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| 2.1 That members of the Scrutiny Committee note the contents of the report. |
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3 Supporting information

- 3.1 Safety checks following Grenfell Tower Fire, The Department for Communities and Local Government, – 22nd June 2017 (Appendix A)
- 3.2 Statement issued by Vale of Aylesbury Housing Trust (Appendix B)
- 3.3 **Background**
- 3.4 The Grenfell Tower fire started on 14 June 2017 in a 24 storey, 67m high tower block in North Kensington, West London. It resulted in at least 79 fatalities and 70 injuries. The tower is owned by Kensington and Chelsea Borough Council and managed by Kensington and Chelsea Tenant Management Organisation on behalf of the council.
- 3.5 Grenfell Tower underwent major renovation, which was completed in 2016 and as part of the project, the concrete structure received new aluminium composite rainscreen, in part to improve the insulation and appearance of the building.
- 3.6 A residents organisation, Grenfell Action Group, expressed significant safety concerns prior to the fire, with criticism levelled against the council for fire safety and building maintenance failures. Also, the escape path was limited to a single staircase.
- 3.7 All local authorities and registered providers received a request from the DCLG on 18 June 2017 asking them to identify whether any panels used in new build or refurbishment residential buildings (over 18 meters tall) are a particular type of cladding made of Aluminium Composite Material (ACM), similar to that used at Grenfell Tower. If any buildings were found to have ACM cladding, then samples needed to be tested.
- 3.8 **Actions Taken**

- 3.9 A Grenfell Response Board has been set up to discuss any Government guidance issued as a direct result of the disaster and to examine existing risk profiles of all Council managed and owned properties.
- 3.10 The Board consists of the following members;
- Andrew Small - Director and Chair Person
 - Will Rysdale -Assistant Director – Community Fulfilment
 - Teresa Lane -Assistant Director – Commercial Property and Regeneration
 - Joanne Crosby - Corporate Health and Safety Manager
 - Adam Heeley - Building Control and Access Manager
 - Martin Roberts - Property Officer
- 3.11 The first meeting was held on 3 July and was chaired by Andrew Grant. Subsequent meetings have been held and are schedule to continue on a regular basis.
- 3.12 All Fire Safety Risk Assessments and Fire Safety Management Plans for properties managed by the Council were reviewed by the Corporate Health and Safety Manager. This is in addition to statutory annual reviews already undertaken.
- 3.13 Fire Safety Management Plans and Fire Safety Risk Assessments were obtained from Tenants of commercial properties owned by the Council but self-managed for review.
- 3.14 **Findings**
- 3.15 The only residential property owned by the Council is Griffin Place, which provides emergency accommodation for the homeless. This property is managed by Bromford Housing Association.
- 3.16 This building does not contain ACM type cladding, is less than 18 meters tall and it has recently been confirmed that it meets the relevant fire regulations.
- 3.17 The Council does not hold any social housing stock. We are working with local Registered Providers (RP's/housing associations) to identify residential tower blocks that they own and/or manage in the District which contains ACM cladding. RP's have been offered to deal with any properties that are identified with any significant fire risk.
- 3.18 Friars House, Aylesbury. This building is over 18 meters tall and is fitted with ACM type cladding. We are working closely with Moreland Estate Management, the Vale of Aylesbury Housing Trust (VAHT), Bucks Fire and Rescue and DCLG to ensure the safety of residents.
- 3.19 Moreland Estate Management have been informed to independently assess fire systems within the building and the automatically controlled vents on each floor and understand these are sufficient to limit and prevent a fire from spreading. Despite this we will continue to working with all parties to ensure that the most up-to-date advice and guidance is followed.
- 3.20 VAHT own and manage Walton Court and Silverdale Close in Aylesbury Vale, both of which are clad in a cement based fibre board which is non-combustible. See Appendix B
- 3.21 There have been various investigations of other buildings across the Vale (not limited to residential properties) and this includes the portfolio of buildings that

AVDC owns/has an interest in and recommendations made as to what actions we may need to take, if any.

- 3.22 There were concerns over the materials used in the cladding of the building occupied by University Campus Aylesbury Vale but subsequent information from the developers and the Fire Service have confirmed that the cladding complies fully with the current requirements of the Building Regulations and the fire safety procedures and practices are all satisfactory.
- 3.23 We have also prioritised the safety and inspections of our Community Centres and office locations, reviewing all of their relevant fire risk assessments and safety management plans, including those managed by the current tenants.
- 3.24 There has also been a meeting chaired by Will Rysdale with members of the Aylesbury Vale Community Safety Partnership including Thames Valley Police, Bucks Fire & Rescue, Bucks CC and the CCG. This group has spoke about the findings so far and has agreed to review the longer term response plan should such a tragedy happen within the Vale. Several Freedom of Information requests have been received and responded to.
- 3.25 The Grenfell fire inquest has now started and it is likely that new guidance from their findings will be produced. Our Building Control team are monitoring any new legislation and guidance that is published.
- 3.26 Potential problems may arise in the private sector as there is more pressure from central government to check private buildings to make sure they are safe and have taken the correct precautions.

4 Resource implications

- 4.1 Officer time has been spent responding to and researching various questions and FOI requests. At this stage we can not provide further information as to whether there will be other financial implications (if any).

Contact Officer

Khyati Vaughan and Will Rysdale, 01296 585881

Appendix B

Letter received from DCLG



Department for
Communities and
Local Government

Neil O'Connor CBE
Director, Building Safety Programme

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8th October 2017

To: Local Authority Chief Executives,

Identifying all residential tower blocks with Aluminium Composite Material (ACM) cladding: Legal Clarification

Since Tamara Finkelstein wrote to you on 5th September, I have become aware of concerns a number of you have raised regarding the legal powers under which you can act should enforcement action be required.

I am therefore writing to you to provide DCLG's interpretation of **the Housing Act 2004, and the regulations and Housing Health and Safety Rating System made under it. DCLG's view is that the powers available to local authorities under this regime are available in respect of the external cladding systems of tall residential buildings.** In addition, I have set out reminders of additional enforcement powers which may be available in some circumstances. This is not intended to be an exhaustive list however and local authorities will need to make their own considerations based on the circumstances of each particular case. I would also like to remind you of existing guidance such as guidance on the Housing health and safety rating system (HHSRA) at <https://www.gov.uk/government/collections/housing-health-and-safety-rating-system-hhsrs-guidance>

DCLG's considered position as outlined in Annex A is that the 2004 Act, the Regulations and both sets of statutory guidance made pursuant to the 2004 Act, which comprise the HHSRS regime, are clearly designed and intended to ensure the safety of residents in relation to a range of prescribed hazards, including fire, many of which will derive from the construction of the wider fabric of residential buildings which are external to the elements of individual dwelling units. The safety of any cladding system fitted to a residential building over 18m (whether in respect of fire or structural integrity) is entirely within the scope of the HHSRS regime and amenable to statutory enforcement in appropriate cases. These powers can be considered and deployed with other potential enforcement action as identified above.

However, it is of course for each local housing authority to make its own decision about what is lawful on a case by case basis, and to take their own legal advice where necessary.

Any enforcement action taken by local housing authorities under the 2004 Act can be challenged on appeal to the First-tier Tribunal in the first instance, and ultimately it is for the Tribunal and the courts to make any determination about the application of these provisions on a case by case basis.

I hope you find the above helpful. If you have any further questions, please contact housingchecks@communities.gsi.gov.uk.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. O'Connor', written in a cursive style.

Neil O'Connor
Director, Building Safety Programme Policy

Annex A

1. DCLG considers that the provisions of the Housing Act 2004 (the "Act") will be available in principle for local authorities to inspect and take enforcement action in respect of ACM cladding where that poses a hazard under the HHSRS.
2. DCLG's view is that the regime is targeted wider than the individual units of occupation in a block. The legislation is designed with a number of different purposes in mind, not all of which are dealt with expressly in guidance, and there are no grounds to consider that the external cladding on a building is not caught by the regime. Taking samples of the cladding, if necessary under warrant, would fall within the regime and the local housing authorities' enforcement powers under that regime at part 1 and 7 of the Act.
3. There are many examples in the legislation and guidance which support that this is the only sensible interpretation.

Housing Act 2004 ("the 2004 Act")

4. Under the 2004 Act, the section 1(4) definition of "residential premises" includes any common parts of a building containing one or more flats. The section 1(5) definition of common parts expressly includes the structure and exterior of the building **and therefore includes a cladding system on a residential block**, which is part of the exterior of a building.
5. The definition of hazard at section 2(1) includes health and safety risks arising from a deficiency in a dwelling or in any building or land in the vicinity. This is clearly beyond individual dwelling units. Hazard is cast widely – it includes not only the building (thus the cladding) but even the land in the vicinity, when a dwelling will fall within it.
6. The enforcement powers available to local authorities, in particular those at section 239 and section 240, but also all other relevant powers, must be interpreted in line with these earlier definitions in the Act which include common parts. Thus the powers are available in respect of cladding which might pose a hazard.

Housing Health and Safety Rating System (England) Regulations 2005 (the "Regulations")

7. Regulation 3(1) and paragraph 24 of Schedule 1 define a prescribed hazard for the purposes of the 2004 Act as including exposure to uncontrolled fire and associated smoke. Exposure to such a hazard is not confined to matters arising, for example, from the construction of elements within an individual dwelling unit, but will include aspects of the wider fabric of the building or structure within which the unit is located.
8. Within Schedule 1 there are other examples of prescribed hazards which will likely derive from the wider fabric of a building, including paragraph 29 ("structural collapse and falling elements"). Such hazards clearly require consideration and inspection of a building's wider structural elements. Indeed, if there was a potential for cladding

panels to fall from a building because of defects or deterioration in their fixings, this is a matter which would fall within the ambit of the hazard defined by paragraph 29. There can be no valid reason to exclude such panels from consideration of any exposure to uncontrolled fire and smoke which they might present.

9. Regulation 3(2) prescribes that the risk of harm arising from hazard may be at a dwelling or house in multiple occupation (HMO), or "in any building or land in the vicinity of the dwelling or HMO". Again, it is clear that a hazard is not confined to circumstances pertaining in an individual dwelling unit, but is defined in much wider terms, consistent with the provisions in the 2004 Act referred to above.
10. In relation to the requirement to consult with fire and rescue authorities imposed by section 10 of the 2004 Act, regulation 4 prescribes that a fire hazard is where the risk of harm is associated with exposure to uncontrolled fire and associated smoke. This duty is not restricted to circumstances which concern only an individual dwelling unit.
11. Even if there was ambiguity in the interpretation of provisions of the 2004 Act and underlying regulations (and DCLG does not consider that there is such ambiguity), the regime as a whole must be interpreted purposively so as to ensure the safety of residences in respect of fire hazards.
12. In any event, DCLG's interpretation of the primary legislation, as set out above, is also confirmed by the statutory guidance issued pursuant to section 9 of the 2004 Act.

Housing Health and Safety Rating System - Operating Guidance

13. At paragraph 1.1.2 of the Operating Guidance:

"The underlying principles of the HHSRS is that –

Any residential premises should provide a safe and healthy environment for any potential occupier or visitor".

14. Paragraph 1.13 of the Operating Guidance is explicit that the materials with which a dwelling is constructed are within the regime; it follows that external cladding materials are within the scope of the rating system.
15. Paragraph 4.03 of the Operating Guidance makes clear that the external parts of the dwelling are expressly covered in the context of inspections.
16. At paragraph 5.03 of Operating Guidance the list of what should be included in an assessment includes at sub-paragraph (d) "the building associated with the dwelling" i.e. encompassing the wider fabric of a building which may contain several individual dwelling units.
17. Paragraphs B17 to B19 of Annex B of the Operating Guidance (Inspections for an HHSRS Assessment) explicitly mention the exterior of the building.

Annex D of the Operating Guidance (Profiles of potential health and safety hazards in dwellings) covers potential types of hazard. In particular, at paragraph 29.01 – there is the need to assess the external structure of the building. Although this is about risks of fabric being displaced or falling, it shows that the external aspects of the building are in scope of an assessment. Cladding is specifically mentioned in this context, at 29.08 and at 29.18.

Housing Health and Safety Rating System – Enforcement Guidance

18. In the Enforcement Guidance, paragraphs 6.6 - 6.11 specifically contemplate deficiencies external to any individual dwelling unit leading to enforcement action against the wider building owners.
19. In particular, paragraph 6.9 deals expressly with a deficiency relating to the structure which should be dealt with by a notice on the person that owns the building.
20. It follows from the above that DCLG considers that there should be no doubt about the ability to use the enforcement powers under the 2004 Act to address ACM cladding deficiencies which may give rise to fire hazards.
21. In addition, there are other relevant enforcement powers which we summarise below.

Building Act 1984

22. Where building work has been carried out in breach of the Building Regulations, especially where such work has been recently completed, local authority building control bodies may:
 - a. enter any premises at reasonable hours for the purpose of undertaking their functions under the Building Act and building regulations. This includes to ascertain whether there is, or has been a contravention of the Building Act or of any building regulations, and to take any action or execute works required by the Building Act or regulations where the local authority is authorised or required to do so (section 95). If admission to the premises is refused, a justice of the peace may issue a warrant under section 95(3) and 93(4);
 - b. serve an enforcement notice on a building owner to require the removal or alteration of work that does not comply with the Building Regulations under section 36(1). Such a notice must be served within 12 months of the date of completion of the building works in question as per section 36(4). If the enforcement notice is not complied with the local authority may itself take action to remove the offending work or effect such alterations in it as it deems necessary (section 36(3));
 - c. prosecute contraventions of the Building Regulations through summary proceedings in the magistrates' court (section 35), within six months of the breach being discovered, provided that action is taken within two years of completion of the building work that is in breach (section 35A).