

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

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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
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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'.

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).