

22 November 2017

Fire safety in high rise buildings update

Purpose of report

For information.

Summary

This paper updates the Board on the work of central and local government since the last meeting to ensure that high rise buildings are safe, including the LGA's submission to the Building Regulations and Fire Safety Review.

Recommendation

That members:

1. Note the ongoing work at a national and local level to improve fire safety in high rise buildings; and
2. Note the LGA's submission to the Building Regulations and Fire Safety Review and consider if there are any additional points to be raised with the Review team.

Action

Officers to proceed as directed.

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Fire safety in high rise buildings update

Background

1. Since the last meeting of the Board, LGA work has continued to deliver the three lobbying priorities identified by the LGA's Leadership Board, which are to ensure that:
 - 1.1. National action focuses on what needs to happen to make buildings safe.
 - 1.2. Government agrees to find the necessary resources for any required changes, both for remedial work and for any new tighter requirements.
 - 1.3. A review of building regulations and fire safety guidance and systems is undertaken.
2. The LGA's work over the last two months has predominantly centred on three areas: remedial work to council tower blocks that need their cladding replaced; the data collection work the Department of Communities and Local Government has asked councils to undertake to help identify private high rise residential buildings where the cladding needs to be replaced; and finalising the LGA's submission to the Review of building regulations and fire safety.

Social Housing Tower Blocks

Remediation work

3. As was reported to the last Board meeting fifteen councils have been identified who own 45 tower blocks with combinations of Aluminium Composite Material (ACM) cladding and insulation that failed the full systems tests carried out by the Building Research Establishment (BRE) over the summer. In addition over 100 housing association tower blocks in 34 local authorities also require remedial work. The Department of Communities and Local Government (DCLG) has continued to liaise closely with social landlords about the remediation work they need to carry out to their tower blocks, and requested an update from them on the progress with the remediation works by 10 November.
4. The 15 councils have raised a number of issues with the Housing Solutions Team in DCLG, which is responsible for this area of work. A significant concern has been finding the expertise to carry out the remediation work, including the number of civil and fire engineers and chartered surveyors available to provide professional advice about further action and to check on the quality of work, as well as finding competent contractors to strip and replace cladding systems from the blocks. Other concerns have included how to prioritise buildings in work programmes and the capacity of the building and construction industry to do the work.

Alternatives to ACM Cladding

5. A further key question for councils has been what they replace the ACM cladding and insulation on their tower blocks with; an issue that is of wider interest as private high rise residential buildings with ACM cladding are identified. In the consolidated advice it issued on 5 September, DCLG indicated it would be asking the Independent Expert

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Advisory Panel (established to provide advice on how to make buildings safe) to consider whether there may be heightened risks associated with other cladding systems.

6. It is understood that the first stage in the review of whether there are any other cladding systems that present a similar fire safety risk to ACM cladding systems has been concluded, and that consideration is being given to commissioning BRE to research other materials that might be used in cladding systems, and using this as the basis for a catalogue. BRE has already started to publish the results of full system tests where the cladding system has passed. There are concerns with how useful it is to just publish test results where the system has passed. The LGA has therefore called for the results of failed full system tests conducted by BRE to be published.

Industry Response Group

7. Further advice for councils and building owners on carrying out remediation work is due to be provided by the Industry Response Group (IRG) established by DCLG in July. It has been working on a series of briefing notes about the key stages of remediation. These will include a decision tree for owners of buildings with ACM cladding to use, a myth-busting glossary (covering the meaning of a range of terms including materials of limited combustibility, insulation, and responsible person), the different professional advice (eg architect, fire safety engineer, quantity surveyor) available to advise on elements of the work, and assessing fire safety and identifying remedial works. These briefing notes were due to be published in October.
8. The LGA has raised a number of issues in relation to the IRG's work, not least being the speed with which advice is being made available to building owners. In the absence of a definitive list of products that have passed or failed the full systems tests perhaps the most useful advice the IRG could produce would be to give a clear steer to building owners about what products could be used to safely replace ACM cladding. We do not anticipate however that the IRG will be providing building owners with that advice due to differing views between different parts of the industry.

Interim fire safety mitigation measures

9. While remediation work is commissioned to replace ACM cladding on social housing tower blocks, councils and housing associations have to continue to ensure the safety of residents in those blocks. To assist with that DCLG and the National Fire Chiefs Council (NFCC) have produced additional guidance for building owners. DCLG issued updated advice on interim fire safety mitigation measures at the end of September. This recommends that building owners check for example, that they have a suitable fire risk assessment, that residents understand emergency fire procedures, and that doors that open on to escape corridors and stairwells are fire resistant.
10. Fire and rescue services have been carrying out inspections with building owners to assess the risks in individual buildings following the issuing of this advice, which has required the deployment of considerable resources. London Fire Brigade for example will have to inspect around 200 buildings.
11. Having completed these checks, an assessment has to be made about whether a 'stay put' strategy remains appropriate for the building taking into account a range of factors. If

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it is decided that a 'stay-put' approach is temporarily unsuitable for the building, then a simultaneous evacuation policy should be implemented. If the risks are very serious then consideration should be given to decanting residents from all or part of the building until the remediation work is complete. The NFCC have produced complementary guidance to DCLG's on implementing a simultaneous evacuation policy, such as the use of a Waking Watch or a common fire alarm system to detect fire and initiate an evacuation. We understand that in a number of social housing tower blocks there has had to be a move to simultaneous evacuation, following assessments by the fire and rescue service.

Funding

12. Funding the remediation work is of course a crucial issue for the affected councils, as is the cost of the fire safety checks for fire and rescue services. In order to get a sense of the cost to the fifteen councils, the LGA has asked them to provide estimates of the cost of conducting remediation work. So far we have had responses from fourteen out of the fifteen. These indicate work is either underway or already completed to remove the cladding from 26 tower blocks, and in a small number of cases replacement work has already started. Councils were also asked to provide estimates of the cost of additional fire safety measures such as installing alarms or sprinkler systems.
13. There may also be financial implications for local authorities who have transferred tower blocks to housing associations. Housing associations are not being provided with funding by government to undertake the remediation work needed to the buildings they own, and as a result they have been exploring other avenues to find the funding for the work. We understand some are examining the 'stock transfer warranties' provided at the time of the transfer by the relevant council.
14. At an evidence session before the Communities and Local Government Select Committee on 11 October the Secretary of State repeated the Department's position on funding. DCLG take the view that fire safety is the responsibility of the building owner and is not making any additional funding available to councils to carry out remediation work. The expectation is that councils will fund this work themselves. Where councils are unable to afford the work they can discuss this with the Department. Currently 32 councils have approached DCLG and seven are in detailed discussions with officials about providing them with greater flexibility to borrow from their Housing Revenue Account (HRA), or make a transfer from their general fund to the HRA.

Private sector blocks

Data collection

15. DCLG's programme for ensuring that private high rise residential buildings are safe continues to develop. Having written out to councils at the start of September to ask them to gather data on the number of private high rise residential buildings in their area, DCLG wrote on 19 October to owners of these buildings to request key pieces of information. At the same time DCLG have also written to local authority chief executives confirming that gathering the data on private high rise residential buildings represents a new burden and funding will be made available for this work. DCLG's assessment is that the additional costs amount to £289,000 across the sector.

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16. In order to assist the seven authorities with the largest number of private high rise residential buildings, DCLG has appointed relationship managers for each council. DCLG has also held teleconferences with these councils and the fifteen authorities with the next highest estimated number of private blocks to enable them to discuss issues. Those councils involved have raised concerns about the time and resource required to collect the information DCLG have requested be returned by 10 November. There has also been debate about the respective roles of councils and fire and rescue services in gathering this data.

Legal powers

17. The other main concern that councils have raised with DCLG are their powers to take action where landlords do not prove co-operative. DCLG wrote to councils in a letter dated 8 October setting out the powers they believe are available to councils under the Housing Act 2004 and the associated Housing Health and Safety Rating System. DCLG's view is that the powers in the legislation can be used in relation to external cladding systems.
18. There is concern among local authorities that, irrespective of DCLG's legal advice, private landlords will challenge attempts by councils to compel them to take action through the courts. Any dispute of this sort would have significant implications for the local authority concerned, especially if it is a smaller council with limited resources, and more widely for fire safety if the landlord's case was successful. If a building owner was to successfully challenge a council's attempts to take a sample of cladding to identify whether it was an ACM panel or not then we could be left with a number of buildings with cladding on them that represents a fire hazard, but the owner cannot be compelled to do anything about under the Housing Act. In these circumstances the onus may be on fire and rescue services to take action under the Regulatory Reform (Fire Safety) Order 2005. We have therefore urged DCLG to support any council that faces a legal challenge from a landlord, including appearing alongside the council in court.

Outcomes from the programme

19. We have also suggested that DCLG give more thought to what happens as this programme develops. From what we have heard from the construction industry, it seems ACM cladding has been more widely used on private high rise residential buildings than on social housing tower blocks. The proportion of private high rise residential buildings with ACM cladding that needs to be removed may well be greater than in council and housing association buildings. The number of affected council tower blocks amounted to no more than three per cent of the total number of council owned blocks. If the number of private residential high rise buildings with ACM cladding is higher than in the social housing sector this will have significant resource implications for FRAs if they have to inspect them.
20. DCLG has been clear that owners are responsible for the safety of their buildings, with the expectation being that private landlords will undertake the necessary remedial work. However this raises a number of issues. Some building owners may not be able to afford the remedial work needed to make a building safe. In this circumstance who will carry out the remedial work and who will pay for it? Fire and rescue services and councils

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would then have to consider who if anyone might be made to take responsibility for carrying out the work. Resolving any disagreements over who is responsible could be a complex and time consuming legal process.

21. Other building owners will pass the costs of the remedial work on to leaseholders. When these include the costs of any interim fire safety measures, the bills leaseholders could face may be substantial, and it is possible some may lose their homes as a result. It is also unclear if every building owner of a block with ACM cladding could afford to pay for interim fire safety measures until remedial work was carried out. We may therefore see pressure placed on fire and rescue services from private building owners to change their advice on the interim fire safety measures needed in a particular block.
22. This also raises the question of what action can be taken where a building owner stops providing interim fire safety measures, such as a waking watch. The powers fire and rescue services have under the Regulatory Reform (Fire Service) Order 2005 are not extensive and the ultimate sanction available would be to close a building; which would mean having to rehouse the residents living in the block. In these circumstances it is not clear if any of the powers councils have under the Housing Act, would provide a better tool short of closing the building to take action against a building owner.
23. Councils may feel compelled to take action in these circumstances. As has been reported in the press, Slough is taking action to acquire a private high rise residential building which has ACM cladding that needs to be removed. While others may wish to go down this route to ensure their residents are safe, the costs of carrying out the remediation work could well be prohibitive, even if councils are able to recover the costs of the work from the leaseholders or insurers at a later date.

Large Panel System built buildings

24. Following the inspections commissioned by the London Borough of Southwark into the tower blocks on the Ledbury estate, DCLG wrote out to all councils about large panel system-built buildings in early September. The Department recommended councils check any large panel system buildings they are responsible for to see if they have piped gas, and if they do ensure the building can carry gas safely. Whether or not large panel system buildings have a gas supply, councils were told it was important for them to understand their structural history and monitor their condition and structural integrity.
25. Councils have been told they will have to examine the records they have, which may be incomplete, to aid this process. We have therefore searched the National Archives to help councils ascertain if there are any large panel system buildings in their area that were strengthened after the explosion at Ronan Point in 1968. This information has been provided to the LGA's principal advisers in the regions to share with member authorities. DCLG have indicated that they are considering whether to produce further advice to building owners on large panel system buildings, and the further investigations that Arup have been commissioned to carry out on the Ledbury estate is due to complete at the end of November.

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Building regulations and fire safety review

26. At was reported to the last Board meeting Dame Judith Hackitt's review of building regulations and fire safety issued a call for safety in September. Following consideration by the Lead Members of the Safer and Stronger Communities Board and Fire Services Management Committee, by the Environment, Economy, Housing and Transport Board, as well as the LGA's Grenfell Task and Finish Group, the LGA's evidence was submitted to the Review on 13 October. A copy has been attached at Annex A. Subsequently the Review team invited the LGA to participate in a roundtable event with tenants and leaseholders in London on 6 November, and there has also been a meeting with the Review team.
27. The Review's interim report is expected before the end of the year, with the final report and recommendations ready in spring 2018. This is still a work in progress, so if there are additional points members wish to see raised for consideration by the Review team these can be included in any future discussions.

Implications for Wales

28. The issues set out in this document are being addressed by the devolved administration and local authorities in Wales.

Financial Implications

29. The LGA's work in response to Grenfell Tower continues to be intensive; however it has been met so far from existing resources.

Next steps

30. Members are asked to:
- 30.1. Note the ongoing work at a national and local level to improve fire safety in high rise buildings.
 - 30.2. Note the LGA's submission to the Building Regulations and Fire Safety Review and consider if there are any additional points to be raised with the Review team.