

Building Safety update

Purpose of report

For discussion.

Summary

This report updates members on the LGA's building safety related work since its last meeting.

Recommendation

That members note and comment on the LGA's building safety related work.

Actions

Officers to incorporate members' views in the LGA's ongoing building safety related work.

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Building Safety update

Background

1. Since the Board's last meeting the LGA has continued to work with the Ministry of Housing, Communities and Local Government (MHCLG) and the Home Office to support building safety reform and the remediation of dangerous buildings. Work on both fronts has been disrupted by Covid-19, the latter to a significant extent. Two significant developments have taken place in that a new minister Lord Stephen Greenhalgh has been appointed to a joint position in the Home Office and MHCLG to oversee fire and building safety; and the Fire Safety Bill has been published and has passed its second reading in Parliament.

Remediation

Progress

2. Progress continues to be made in carrying out remediation to the 154 social sector residential blocks with combinations of aluminium composite material (ACM) cladding and insulation that have been found not to meet the building regulation standards. The [statistics](#) published by MHCLG in April show that as of 30 April 2020, remediation has finished on 72 of these blocks. Of those which have not yet been remediated, work has started on 73 of these blocks and a further 9 have plans in place. Funding for the remediation of 139 of these 154 buildings is provided from the government's social sector ACM cladding remediation fund (launched on 16 May 2018 to help remediate social sector residential buildings) and one more is expected to apply. Remediation works for the remaining 14 buildings are being funded through a combination of existing funds and litigation action.
3. The same latest statistics from MHCLG show that remediation work has been completed on 28 private high-rise residential buildings with ACM. A further 182 buildings are yet to be remediated; of these, 49 have begun remediation, 90 have a plan in place, and 40 have plans in development. There is still 1 private high-rise residential building where no plan is in place. As at 31 March 2020, 94 buildings were in scope for the Private Sector Remediation Fund and 92 of them had submitted an application. The remaining two buildings are preparing an application - these had exceptional circumstances or had only recently been identified. Of the buildings not in scope for the Fund, the developer or freeholder committed to pay for remediation of 84 buildings and 23 were accepted under a warranty claim.
4. There are 15 buildings for which the cladding status is awaiting confirmation.

5. Remediation work has slowed to a significant extent since the introduction of measures to combat Covid-19. Apart from issues around whether work can be conducted safely, there are difficulties in workers reaching sites safely.
6. At the end of April MHCLG had figures for 97 of 124 sites. Of these 52 were paused, 14 had paused but were now working again and 31 had not paused (these figures exclude some sites where work was complete but waiting building control sign off).
7. The Government has appointed Dr David Hancock to review ACM remediation and Faithful & Gould, to provide additional programmed management capability. They will 'identify blockers and ... seek solutions to Covid-19 impacts, including on labour and supply, through engagement with individual remediation projects.' Dr Hancock leads the Government Construction Team and chairs the Government Construction Board for the Cabinet Office and Infrastructure and Projects Authority.

Fire Protection Board

8. As members will recall from the last Board meeting, the Home Office has established the Fire Protection Board, which has now completed a Building Risk Review exercise to establish the effectiveness of interim measures at buildings with ACM cladding and whether the relevant fire and rescue service (FRS) had plans in place to deal with a fire in the relevant buildings. All FRSs have now responded to this letter and a report will go to the Minister.
9. To support the work of the Board, £10m of funding has been made available, divided between central funding to the National Fire Chiefs Council (NFCC) and individual fire and rescue services, in addition to funding announced in the budget to support protection.
10. The Board is developing a programme of work designed to increase the pace of inspection across all high-rise residential buildings, but the Minister's pledge to complete this by the end of 2021 is expected to be revised, given the difficulties posed by Covid 19. This programme will be launched in June.
11. It is worth noting that there has been at least one case where Covid 19-related concerns has led to the withdrawal of a waking watch. This is an ongoing issue.

Joint Inspection Team

12. As members will recall the LGA is hosting the Joint Inspection Team to support councils to use their enforcement powers under the Housing Act and the Housing Health and Safety Rating System.

13. The team has so far supported six local authorities to carry out inspections of buildings prior to taking enforcement action following a full site inspection on a small number of buildings and has provided initial advice to a number of others. A number of improvement notices have been issued by the local authorities that have been supported by the team. In some cases, the building owner is challenging the improvement notices, and hearings at the first-tier tribunal in relation to them were expected to be heard in April or May but have been deferred due to the pandemic.
14. The team is being funded by MHCLG for a second year and is recruiting staff currently. Inspections by the JIT have effectively been halted by Covid -9, irrespective of staffing turnover. Issues include use of personal protective equipment (PPE) for the team, accommodation for the team and the ability of host councils to participate. The intention is to recommence inspections as soon as the current recruitment process allows, and PPE and accommodation are available.

Data collection on external wall systems

15. In July 2019 councils were asked by MHCLG to collect data on the external wall systems on all high-rise residential buildings in England. MHCLG had hoped that the exercise would be complete by March 2020, although it was recognised that for some councils with large numbers of blocks this would be a challenge. Approximately 50 per cent of data had been collected by that date and while work continues and is regarded as a priority by MHCLG, it has been impacted by Covid-19 issues.

Non-ACM remediation funding

16. The government announced a £1bn fund for the removal of non-ACM cladding as part of the budget in March 2020.
17. On 2 April MHCLG published the results of tests carried out on non-ACM cladding materials which indicated the dangerous nature of most High-Pressure Laminate, all metal composite material, and some timber cladding systems.
18. On 6 April MHCLG [wrote to stakeholders](#), giving more detail on the funding and in late May published a [prospectus](#) setting out the details of registration, which opened in the first week of June and lasts until 31 July. Remediation will not be funded for buildings that are not registered by 31 July, but registration itself does not guarantee funding.
19. The fund has a maximum value of £1bn and will be awarded on a first-come-first-served basis; work should be able to commence on site in the 2020/21 financial year and buildings will need to submit a full funding application based on a tender price before December 2020. Owners can register if they suspect they may have dangerous cladding and MHCLG is offering unspecified support in establishing whether they do. Residents

are being advised to ask owners if the cladding is safe and then contact the Ministry if the owner is not taking action.

20. The fund will cover buildings over 17.7m, with non-ACM cladding that does not comply with the buildings regulations.
21. In the social sector it will cover:
 - 21.1. the costs that would otherwise be passed on to leaseholders via the service charge (NB this funding does not require councils to register, it can be claimed later, and details will be available after 31 July); or
 - 21.2. the full cost if remediation costs threaten the financial viability of the provider or the Housing Revenue Account - HRA (this requires a statement by a section 151 officer).
22. In the private sector it will cover the costs that would be passed to leaseholders where the building owners can show they have 'explored every opportunity to fund remediation from sources other than private residential leaseholders and Government funding'.
23. It will not cover buildings where owners had committed to do the work prior to the announcement or to non-residential buildings, for example hotels, hospitals and buildings where there are no residential leaseholders.
24. The creation of this fund represents a victory for the LGA, which had been calling attention to the scale of the financial threat to leaseholders and the need to act on non-ACM cladding for well over two years beforehand (as had residents' groups). Nevertheless, the Government's insistence that it will not meet the bill in full if it rises beyond £1bn (which we believe it will by a considerable margin) and the reluctance to fund social sector remediation are unsatisfactory. The latter is likely to have a significant impact on the ability of councils to meet Government housebuilding ambitions and on housing improvement programmes.
25. LGA officers have raised the difficulty councils will have in establishing the viability of the HRA ahead of the 31 July deadline with MHCLG and pointed out that many private owners still do not know what is on their buildings, given that councils efforts to establish what is on the sides of every high-rise block are only about 50 per cent complete. It is therefore likely that some leaseholder-owned blocks genuinely have no idea they may have a problem.

Reform

26. As promised in the ministerial statement on 20 January, the Health and Safety Executive (HSE) has become the new building safety regulator (initially in shadow form) and Dame

Judith Hackitt is chairing a board to oversee the transition to this new regime. The promised first national chief inspector of buildings has yet to be recruited.

Fire Safety Bill

27. The Bill has now passed its second reading in the House of Commons. The LGA [briefed](#) MPs for the debate. While the LGA welcomed the Bill, we raised a number of concerns:

27.1. The Bill could lead to significant costs for local authorities as housing stockholders. Despite officers' requests the Impact Assessment was not published until after the debate and this document has increased our concern. Discussions with councils suggest that the cost of including cladding systems in fire risk assessments is much higher than the Home Office realises.

27.2. Disparities between the Fire Safety Order's concept of a Responsible Person and the proposals for an Accountable Person and a Building Safety Manager contained in the Government's response to the [Building A Safer Future consultation response](#) could confuse duty holders and cause complexity in regulation. Subsequent discussions with officials have not eased these concerns, in particular because it now appears that the Building Safety Bill will not legislate to ensure that mixed use buildings have a single accountable person.

27.3. The Government needs to ensure that there are enough trained professionals to carry out the new-style fire risk assessments. There is a chronic shortage of fire engineering expertise in the UK at present. The Government needs to act now to set up degree, conversion and apprenticeship schemes to address this – without more fire engineers the Bill may fail. These concerns have subsequently intensified as a result of discussions with professional bodies and NFCC. There is a risk that the government could require assessments that simply cannot be obtained. We have raised these concerns with officials who accept this risk needs to be managed

27.4. Similarly, we are concerned at the impact the Bill could have on insurance costs and have raised this with officials who are managing the risk.

27.5. The Government should not make councils and other freeholders responsible for issues beyond their control. The Bill makes duty-holders responsible for fire doors, even if they are owned by leaseholders. Requiring councils to inspect fire doors is likely to prove unworkable and extremely costly. We have raised this with officials and have drawn some recent relevant case law to their attention

27.6. Ministers need to clarify if existing fire risk assessments are still valid. There are half a million fire risk assessments in social housing and redoing them all in short order would be very expensive and logistically challenging. We understand this is

not the Government's intention, but it would reassure councils if that was stated in Parliament.

27.7. We have various concerns about the practicalities of some of the recommendations of the Grenfell Tower Inquiry that are to be added to the Bill via secondary legislation, which is to be subject to a consultation in coming months.

28. The Bill should be considered in committee later this month and the LGA will be raising these concerns, while supporting the Bill in principle.

Response to Building a Safer Future consultation

29. On 2 April, the Government published a number of documents including [a summary of responses to the consultation](#), [its response](#) and [impact assessments](#).

30. The response defines the scope of the new regime as 'all multi-occupied residential buildings of 18 metres or more in height, or more than six storeys (whichever is reached first)'. This is expected to add approximately 1500 buildings to the number in scope. The fact that this height trigger would still not capture the Cube student residence in Bolton, which suffered a fire last November with near-fatal consequences involving an as yet unidentified form of high-pressure laminate cladding, helps make the point that height is an ineffective measure of risk.

31. The response contains several points the LGA has lobbied for:

31.1. The higher-risk regime can expand over time, potentially bring buildings under 18m into scope (although we would prefer a more sophisticated approach than simply lower the height trigger).

31.2. there will be a transition period for existing in-scope buildings. This is important given the scale of work that will be involved in some buildings and the shortage of appropriate skills in the UK.

31.3. new buildings will come under the regime at the planning stage if they are over 18m rather than 30m as originally proposed.

31.4. building owners cannot chose their building control regulator for buildings in scope. The response states that 'the skills, expertise and capacity of local authority building control will provide the main support for the new regulator and be complemented by Approved Inspectors where required'.

32. However, the relationship between the new regulator and local authority building control and local fire and rescue services remains unclear.

33. Crucially the response admits that the Government has still not worked out how to make the proposals affordable, in particular for leaseholders and in respect of the employment of a Building Safety Manager. It also sets out what duties residents will be under not to

endanger others in their block. However, nothing is said about utility companies who might breach compartmentation while installing services etc.

34. We expect the Building Safety Bill to be published in draft form and submitted for pre-legislative scrutiny in July.

35. The Bill will make arrangements for new competence frameworks and oversight bodies. SSCB lead members decided to support the bid by Local Authority Building Control to become the oversight body for building control.

Approved Document B

36. On 27 May the Government announced that the height at which sprinklers will be required in new buildings will be lowered to 11m from November, and changes will also be made requiring improved wayfinding signage to assist firefighters.

37. The lowering of the sprinkler height is the successful outcome of a long period of lobbying by the LGA, in particular the Fire Commission and FSMC and the NFCC.

38. The Government is delaying a requirement for evacuation alert systems in high-rise buildings. The LGA called for this delay, as the proposal had not been properly thought through.

Action on mortgages for properties in high-rise residential buildings

39 The LGA remains concerned at the continuing insurance and mortgage issues faced by leaseholders in blocks that have dangerous cladding (or where leaseholders cannot prove they do not have dangerous cladding) and the difficulties faced by surveyors seeking insurance to demonstrate that cladding is safe.

40 It is clear that mortgage lenders are increasingly demanding that EWS1 forms are provided by those applying for mortgages on flats even in blocks under 11m and there have been examples of these requests being made in relation to buildings that have no cladding.

41 The EWS1 form provides assurance that a building has a safe cladding system, but there is a shortage of skilled professionals to provide this assurance and those that can, do the work have experienced difficulties in obtaining professional immunity insurance.

42 On 2 April the Government announced that:

42.1 An industry group has been set up to design a data-sharing portal so that lenders and leaseholders can access the information needed to proceed with sales and re-mortgaging for buildings 18 metres and over, building on the introduction of a new process to support valuation through an 'EWS1' form. (the form that says what the external wall system is).

42.2 The Royal Institution of Chartered Surveyors is leading efforts to devise an approach to apply 'reasonable and proportionate valuation judgement' to buildings under 18 metres.

42.3 Measures will be put in place to support construction professionals who have experienced challenges in accessing adequate Professional Indemnity Insurance and support for fire engineers who are advising on the safety of high-rise and other complex buildings.

43 LGA officers have raised this issue on several occasions with MHCLG who are pursuing discussions with the insurance and mortgage-lending industry.

Ongoing work

Joint Regulators Group

44 As members will recall from previous meetings, MHCLG has been progressing development of policy and legislative options for implementation the new building safety regulatory framework through the Joint Regulators Group. This work has continued following the Covid-19 outbreak, but some meetings have been postponed. The Bill timetable has not yet been extended however and we anticipate that it will be subject to pre-legislative scrutiny, possibly by the housing select committee before the summer recess.

45 The LGA submitted written evidence to the HCLG Select Committee inquiry into cladding and responded to a consultation on lowering the height threshold for the ban on combustible cladding.

Implications for Wales

46 Building regulations and fire and rescue services are devolved responsibilities of the Welsh Assembly Government, and the main implications arising from the recommendations of the Hackitt Review and the government's response to it are on building regulations and fire safety in England. However the Welsh government has announced that it will be making the changes recommended in the report to the regulatory system in Wales, and the LGA has been keeping in contact to ensure the WLGA is kept informed of the latest developments in England.

Financial Implications

47 Although the LGA has set up the Joint Inspection Team, the cost of doing so is being met by MHCLG. Other work arising from this report will continue to be delivered within the planned staffing budget, which includes an additional fixed term post in the safer communities team to support the LGA's building safety work.

Next steps

48 Officers to continue to support the sector's work to keep residents safe and reform the buildings safety system, as directed by members.