

17 June 2021

Building Safety update

Purpose of report

For discussion.

Summary

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

Recommendation

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

Action/s

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

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Remediation

Progress

1. [MHCLG statistics](#) show that by 30 April 2021 92% (433) of all identified high-rise residential and publicly owned buildings in England had either completed or started remediation work to remove and replace unsafe Aluminium Composite Material (ACM) cladding (95% of buildings identified at 31 December 2019) – an increase of two buildings since the end of March.
2. The pace of ACM remediation continues to be slow – 2 buildings were added to the total above in March and over 100 residential buildings still have ACM cladding. One of these, New Providence Wharf, experienced a serious fire on 7 May.
3. The [interim report of the investigation into the fire](#) was published on 1 June by London Fire Brigade (LFB). The initial findings from Senior Brigade Fire Investigators show that the smoke detectors on the 8th floor communal corridor failed to operate both the Automatic Opening Vent (AOV) and the cross corridor fire doors.
4. The spread of fire on the outside of the building from floors 8 to 11 is believed to have been facilitated by timber decking on the balconies.
5. The fire raises questions as to whether Responsible Persons (RPs) are doing enough to ensure that interim measures are fit for purpose, including whether they are based on assumptions about the building's behaviour in a fire that are wrong. Given that buildings have interim measures because they have not been built properly, RPs need to ensure that these assumptions have been checked.
6. The LFB is asking:
 - 6.1. all building owners and managers to check the materials used on external balconies and consider whether they could contribute to the spread of fire, and if necessary modify them as soon as possible; and
 - 6.2. all those responsible for high rise buildings, especially those in charge of properties that no longer support a stay put strategy, as was the case at New Providence Wharf, to check their fire safety measures including smoke ventilation systems (such as AOVs) as a priority. These should be regularly inspected and any issues acted upon.

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7. [Registrations for the Building Safety Fund](#), which funds the remediation of non-ACM dangerous cladding on private blocks (and potentially covers the cost to leaseholders of remediation on social blocks) are also proceeding slowly. Around a third of the £1 billion funding announced in the 2020 budget has been allocated. Of nearly 3,000 registrations only 668 have been approved to apply for funding and only 70 full applications have been approved. Over 800 registrations have either been rejected or withdrawn.
8. The above means that the £3.5 billion additional funding for cladding remediation over 18 metres announced in February is not yet being spent. We have yet to hear the details of how it will be allocated. The loan scheme for buildings 11-18 metres has also yet to be fleshed out.
9. The [Waking Watch Relief Fund](#) roll out has completed with applications in London closing at the end of April. Analysis of the figures for London has not been undertaken. We are not aware of any applications that could not be funded.
10. On 26 May 2021 the Waking Watch Relief Fund re-opened to applications for a 4-week period using unallocated funding from the initial £30 million. The application period will close on 24 June 2021. This tranche of the funding will be administered by MHCLG more details can be found at the link above.

Joint Inspection Team

11. The parliamentary process for extending the indemnity for Joint Inspection Team's work has now been completed. The wording of the revised indemnity and funding agreement between the LGA and IDeA on one side and MHCLG on the other have been finalised and the IDeA Board has approved the signing of both documents. These changes will extend the team's inspections to cover buildings with dangerous non-ACM cladding and expand its training programme for councils. This should help to maximise its impact.

Fire Protection Board

12. The Building Risk Review programme overseen by the Board, remains slightly ahead of its target schedule to ensure all residential buildings over 18m have been assessed or inspected by the end of 2021.
13. The LGA has raised the need to ensure liaison between council housing enforcement and fire and rescue service enforcement. This has resulted in some work to adapt the protocol attached to the LACORS fire safety guide to cover liaison over high rise residential buildings. This is being carried out under the Fire Protection Board.

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Reform

14. Although MHCLG was due to respond to some of the Public Accounts Committee recommendations in relation to the department's building safety programme by the end of January, it has still not done so.

15. The Housing, Communities and Local Government (HCLG) select committee published its [report on cladding remediation](#) on 29 April. The LGA gave evidence to this inquiry. Recommendations include a call for a Comprehensive Building Safety Fund for full remediation works of affected buildings that:

- 15.1. applies to all high-risk buildings of any height, irrespective of tenure;
- 15.2. covers all fire safety defects, including combustible insulation; and
- 15.3. covers all associated costs.

The report goes on to say that the 'Comprehensive Building Safety Fund should be fully funded by Government and industry, and the Government should establish clear principles regarding how the costs should be split between the two. Total contributions should not be capped. Social housing providers should have full and equal access to government funds for remediation'.

Building Safety Bill

16. The Government has yet to respond to the HCLG Select Committee's pre-legislative scrutiny of the Bill. This was supposed to be done in January. The Bill was included in the Queen's Speech (see **Annex One**) but no new detail was provided. We understand it is hoped to publish the Bill before summer recess.

Gateway One

17. Planning Gateway One, the first stage of the building safety regime, should commence in August. Developers of residential buildings over 18m will need to provide a Fire Statement and the Health and Safety Executive's Building Safety Regulator will become a statutory consultee on planning. The Government has published [more details](#), which will be of interest to planning authorities, fire authorities (although it should not require fire authorities to do additional work, beyond very occasional requests from the regulator) and developers.

18. We raised with MHCLG concerns about the shortcomings of regulations introduced over the Christmas period that apply where a developer wants to use a Permitted Development Right (PDR) to extend a block of flats upwards to create new flats.

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Product safety

19. On 21 April the government [announced the lead reviewers conducting the Independent review of the system for testing construction products and published the Terms of Reference](#).
20. The review will answer the question: ‘How should the UK system for testing the safety of construction products and the use of data from the system be strengthened, to inspire confidence that those products are safe and perform as labelled and marketed when incorporated into construction work?’
21. It will do this by:
 - 21.1. Mapping the system for testing, certifying, marketing, selling, re-testing and recalling construction products, including the legal framework under which this happens.
 - 21.2. Considering evidence from a variety of sources and assess what does/ could go wrong within this system.
 - 21.3. Recommending how this system should be strengthened, taking into account wider government and industry reforms and any economic or practical implications of implementing the recommendations
22. The independent review will be led by a panel comprising Paul Morrell OBE (Chair of the review) and Anneliese Day QC, supported by MHCLG and Office of Product Safety and Standards officials. It is to report in the summer and the Government will publish the review and its response (as soon as practicable). The LGA has submitted informal evidence to the review.

Fire Safety Bill

23. The Bill finally received Royal Assent at the last possible moment after the House of Lords backed down and abandoned amendments designed to protect leaseholders from remediation costs. Work on everything else seemed to grind to a halt at the Home Office in the last weeks of the Bill’s passage and as a result we have yet to see the outcome of its latest work on the risk based guidance that must accompany the Bill. The Act’s commencement – slated for June – is further complicated by the fact that there is no current guidance on completing fire risk assessments (see below).

Fire Safety in Purpose-Built Blocks of Flats

24. This guide was commissioned from fire safety experts by the LGA at the Government’s request in 2011. The LGA is no longer hosting this guide (although the government now is) as changes in government policy and regulation mean that it is now out of date and the LGA does not have the inhouse expertise to amend the document. The LGA warned

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the government in 2019 that this might happen and has not taken the decision lightly. We cannot however host advice to our members that could leave us or then open to legal challenge.

25. The Government is currently producing a new version which we anticipate will be available later this year. Until this guidance appears, or the Government provides interim guidance it will be difficult to complete the fire risk assessments envisaged in the Fire Safety Act. Article 50 of the Fire Safety Order 2005 requires the Secretary of State to ensure that guidance is available to responsible persons on their duties under the Order.

Fire Safety Consultation

26. The Government published its [response to the Fire Safety Consultation](#) on 17 March. This covered proposals designed to:

- 26.1. strengthen the Regulatory Reform (Fire Safety) Order 2005 (the FSO) and improve compliance in all regulated premises;
- 26.2. implement the Grenfell Tower Inquiry Phase 1 Report recommendations that require a change in the law; and,
- 26.3. improve the effectiveness of consultation between Building Control Bodies (BCBs) and Fire and Rescue Authorities (FRAs) on planning for building work and the arrangements for the handover of fire safety information.

27. The response says the Government's will introduce measures that include:

- 27.1. improved competence requirements for fire risk assessors;
- 27.2. a requirement that all Responsible Persons under the FSO must record their completed fire risk assessment; their contact information, including a UK based address, cooperate with other RPs in the building and ensure they pass information on to new RPs;
- 27.3. increased fines for various offences under the Order;
- 27.4. improvements to the coordination of fire and building control
- 27.5. delivery of the recommendations from the Grenfell Tower Inquiry Phase 1 recommendations that require legislation through regulations introduced under Article 24 of the FSO before the second anniversary of the Grenfell Tower Inquiry Phase One Report (this timetable may have slipped following the delay to the Fire Safety Bill and we think September is the new target). The recommendations on Personal Emergency Evacuation Plans (PEEPs) and fire door inspections will subject to further consultation, before then. The regulations will impose new

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requirements in relation to signage, Premises Information Boxes and lift inspections, as well as PEEPs, fire door inspections and evacuation more widely.

28. Further work will be carried out to develop policy in relation to fees and charges, false fire alarms, maintenance, the provision of information to residents and higher-risk workplace buildings.

Implications for Wales

29. 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

30. 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

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

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Annex one Queen's Speech – [Supporting document](#) text on the Building Safety Bill

“My Ministers will establish in law a new Building Safety Regulator to ensure that the tragedies of the past are never repeated.”

The purpose of the Bill is to:

- Make substantial reforms to the UK's building safety regime by establishing the Building Safety Regulator to deliver a new approach to regulating the built environment.
- Implement the recommendations made in the Independent Review of Building Regulations and Fire Safety, led by Dame Judith Hackitt.

The main benefits of the Bill would be:

- Changing the regulations and standards for the construction of high-risk buildings to ensure accountability and responsibility by making fundamental changes to the regulatory framework for higher-risk buildings and ensuring that products used in the construction of buildings will be held to rigorous safety standards.
- Putting in place measures that ensure homeowners can have a clearer path to redress and giving residents a stronger voice in the system.
- Ensuring the lessons from the Grenfell Tower tragedy are learnt and that residents are safe and feel safe in their homes.

The main elements of the Bill are:

- Establishing the Building Safety Regulator and updating existing building safety regulation, including a new stringent regime for buildings 18 metres or more, or 7 storeys or more, and introducing a system of Accountable Persons and Dutyholders – who will be responsible for making and keeping a building safe.

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- Establishing a new framework to provide national oversight of construction products, and strengthening the powers of the Office for Product Safety and Standards in this area.
- Establishing a new homes ombudsman and simplifying the process to log complaints to the Housing Ombudsman for social housing tenants.
- Making provisions to support the removal of unsafe cladding, including through a financing scheme to pay for costs and a levy to ensure the development industry pays its fair share of the costs of remediating unsafe cladding.

Territorial extent and application

- The Bill will extend and apply to the whole of the UK. Its substantive provisions would apply in the main to England, with some provisions applying to England and Wales and provisions related to the Construction Products Regulator applying to the whole of the UK.

Key facts

- Over 13,000 buildings will fall into the higher risk regime established by the Bill, with an estimated 400 additional buildings coming into scope each year.
- We are supporting the removal of all unsafe cladding from buildings between 11-18m [*NB this must be a typo, they mean over 18m*] through a £5 billion investment fund which will fully cover these costs.

We have also announced a generous financing scheme for the removal of unsafe cladding from buildings between 11 and 18 metres. A new tax on the residential property development sector will raise at least £2 billion to help cover the costs of the Government's remediation programme. We are also providing £30 million to pay for the cost of common alarm systems, to help end costly waking watch measures in buildings waiting for remediation.

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- We are clear that the responsibility for building safety still lies with the building owner and that the Government has stepped in only as a last resort.
- The Government published a draft bill in July 2020 for pre-legislative scrutiny by the Ministry of Housing, Communities and Local Government Select Committee.

We will respond to their considerations shortly

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Annex 2 Text of email on Gateway One

As this email arrived on the day of the Queen's Speech it has not been possible to analyse or condense its contents.

Yesterday (10/05/2021) MHCLG published information on planning gateway one to support stakeholders and industry (including planning applicants and local planning authorities) to prepare for its implementation in the summer, and as you know JRG have contributed to the planning gateway one policy and policy design trials over the last year.

Government is committed to transforming the regulatory framework for fire safety in response to the Grenfell Tower fire, bringing about the biggest change in building safety for a generation, and will be introducing our Building Safety Bill this year which will establish a new building safety regime in England.

As a first step, a number of new requirements (referred to as planning gateway one) are to be introduced into the planning system by making amendments to The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), and an associated instrument. The purpose of the new requirements is to ensure fire safety matters as they relate to land use planning are incorporated at the planning application stage for schemes involving a relevant high-rise residential building. Subject to parliamentary scrutiny we propose to bring the changes into effect from 1 August 2021. The draft statutory provisions have been published and will:

- involve the Health and Safety Executive (HSE) becoming a statutory consultee before permission is granted for development which involves or is likely to involve a high-rise residential building in certain circumstances;
- require relevant applications for planning permission to include a fire statement (on a form published by the Secretary of State, or one to substantially the same effect) to ensure applicants have considered fire safety issues as they relate to land use planning matters (e.g. layout and access) ; and
- help inform effective decision-making by local planning authorities (or the Secretary of State as the case may be), so that those decisions and the actions that flow from them properly reflect and respond to the needs of the local community.

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Planning gateway one information can be viewed at: <https://www.gov.uk/guidance/building-safety-planning-gateway-one>