

## **Building Safety update**

### **Purpose of report**

For discussion.

### **Summary**

This report aims to update members on the LGA's building safety-related work since the committee's 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.

**Contact officer:** Francis Saukila  
**Position:** NGDP Trainee Adviser (Building Safety Policy)  
**Phone no:** 020 7665 3874  
**Email:** Francis.saukila@local.gov.uk

## **Building Safety update**

### **Background**

1. Since the committee's last meeting, the LGA has continued to work with the Department of Levelling Up, Housing and Communities (DLUHC) and the Home Office to support building safety reform and the remediation of dangerous buildings.
2. The most significant development has been a statement in Parliament by the Secretary of State for Levelling Up, Michael Gove MP, setting out the government's new approach to building safety with plans to protect leaseholders and make developers and companies pay to fix the cladding crisis.
3. The Building Safety Bill is currently at the committee stage in the House of Lords, and the Fire Safety Act is yet to commence.

### **Remediation**

#### **Progress**

4. Progress continues to be made in carrying out remediation of all identified high-rise residential and publicly owned buildings in England with combinations of aluminium composite material (ACM) cladding and insulation found not meeting the building regulation standards.
5. [Statistics](#) published by the Department for Levelling Up, Housing and Communities show that as of January 2022, 93% 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.
6. The Department for Levelling Up, Housing and Communities has also launched [a new online service](#) to help leaseholders track the remediation of their property.
7. Under the Leaseholder and Resident Service, those living in tower blocks will have access to updates on the status of their building's application to the government's Building Safety Fund.
8. It is hoped the service will speed up the process of removing unsafe non-ACM cladding from the highest risk buildings, force building owners to be more transparent, and expose those who have failed to take action to make their buildings safe.

#### **Future Policy**

9. The Building Safety Regulator will not be in a position to drive remediation until 2024 at the very earliest. In the meantime, DLUHC is developing a strategic approach to remediations as the LGA has called for. As part of this process, a remediation partners group which has met on an ad hoc basis for a couple of years, has been formalised,

bringing together the LGA, National Fire Chiefs Council and the Home Office under a DLUHC chair. The purpose of the group is to drive the pace at which the residential building stock is remediated by building owners in response to emerging issues following the Grenfell Tower Fire, through effective local regulatory activity. It does this by:

- Identifying barriers to remediation that are relevant to regulators and their remedies.
- Identifying barriers to effective regulation and their remedies.
- Identifying and promoting ways in which regulators can support effective remediation, including through joint working.
- Identifying and promoting ways in which DLUHC (and government more widely) and other meeting members can support regulators' performance.
- Building positive relationships.

10 The Board will:

- Consider and action activity to progress remediation, mitigate risks and ensure owners' actions are proportionate.
- Identify any areas/regions or buildings that may require further support. Consider actions to progress remediation.
- Discuss policy issues across regions.
- Share information among members.
- Receive relevant, available, data on remediation and interim measures.
- Consider relevant data: remediation progress/fund progress/interim measures.
- Report to The Partnership Board.
- Inform the Fire Protection Board of the Meeting's discussions.

11 Although the detail has yet to be fully worked out, the direction of travel is to assist councils and fire services to coordinate their efforts and to support remediation through inspection and enforcement.

12 To support councils and fire services in this work the LGA is engaged on a number of activities previously reported to the Board:

- a. Hosting a document - [Principles for effective regulation of Fire Safety in purpose-built blocks of flats](#) - drawn up by sector experts led by the LGA and NFCC, to assist council private sector housing enforcement and the fire service to work together to inspect and enforce in relation to dangerous cladding. The text was completed in December last year and the document is in the process of being uploaded onto the LGA website
- b. Commissioning six case studies of joint working. These have been commissioned and at least three will be published by the end of March.
- c. Holding two webinars on joint enforcement in March.
- d. Discussing the funding of the Joint Inspection Team next year with DLUHC with a view to significantly expanding it. This is overseen by the JIT Programme Board. The JIT will continue at a minimum of the same size and activity level in

2022-3 as it has done this year. Discussions are underway over a possible expansion.

- e. Liaising with DLUHC who are planning to write to councils setting out priorities shortly.

### **Fire Protection Board**

- 13 The Fire Protection Board (FPB) was established in 2019 with a task of overseeing the Building Risk Review (BRR). The BRR fulfilled a ministerial commitment to have the fire service inspect or assure every residential building over 18m by the end of 2021. It was always recognised that this was a challenging task, especially in London – and one made more complicated by the inaccurate data available on building locations and numbers.
- 14 Nevertheless, the fire service completed the task on time, which is a considerable achievement, making an important contribution to resident safety and collecting a significant amount data, which will inform the work referred to above. The LGA has worked closely with the National Fire Chiefs Council, the Home Office and DLUHC to support this work through the FPB.
- 15 The BRR work has demonstrated the need for a data system to bring together the information on buildings over 18m in a way that supports effective enforcement. LGA and NFCC have made the case to DLUHC for this resource to be developed as a priority and the response has been positive. A report will be going to the Fire Protection Board later this month
- 16 The success of the BRR has raised questions about whether there should be a follow up exercise aimed at medium rise (11-18m) blocks. However, there are believed to be at least six times as many of these. It is therefore unlikely that the same approach will be taken, and initial work is being undertaken to try and establish an effective method of sampling to estimate the size of the problem and prioritising buildings.
- 17 The report of the Building Risk Review should be published in shortly.

### **Challenges**

- 18 Although the direction of travel is one previously called for by the LGA, there are some potential shortcomings
- 19 The Government has not announced support for leaseholders over the cost of non-cladding remediation. This can be reduced by proportionate remediation, but not eliminated. The Government appears to think it can rely on extending the Defective Premises Act to allow leaseholder to sue developers, but LGA officers do not expect this to work.
- 20 The Fire Safety Act has still not commenced. The Act implicitly requires Responsible Persons to know what their cladding system is made of. Regulations that are to be made under it will require them to tell the FRS. The Act ensures FRSs can take enforcement action in relation to cladding. The delay in its commencement will hamper enforcement.

20.1 Despite LGA representations, PAS 9980 which replaces the Consolidated Advice Note as advice for building owners, contains the following:

*Prior to the amendment of the Fire Safety Order [19] by the Fire Safety Act 2021 [20], it was considered necessary to use the powers under the Housing Act 2004 (as amended) [25] to enforce requirements for remediation of hazardous cladding by use of the housing health and safety rating system (HHSRS). It is anticipated that, following the introduction of the Fire Safety Act 2021 [20], it might now be more appropriate to use the powers granted by the Fire Safety Order [19] for this purpose. Accordingly, in this PAS, the focus is on conformity to the Fire Safety Order [19], and the underlying principles of the Order, rather than the alternative approach adopted under the Housing Act 2004 (as amended).*

21 This appears to be wrong in law and could undermine enforcement using the Housing Act. The Group Chair has written to the Minister and we await a response.

## **Reforms**

### **Building Safety Bill leaseholder costs**

- 22 New measures that will force industry to pay to [remove cladding and protect leaseholders](#) from high costs were unveiled by the Secretary of State for Levelling-Up as part of proposed amendments to the Building Safety Bill.
- 23 Under the plans, developers and manufacturers would be blocked from the housing market by being refused planning permission and building control sign-off if they did not help fix cladding safety issues.
- 24 New powers would also allow cladding companies to be sued and subject to fines for defective products, and protections for leaseholders would be extended to cover other fire safety defects.
- 25 The proposed measures align with the LGA's fundamental asks: that the construction industry, developers, and manufacturers should pay for the cladding crisis. However, the details of the measures – in particular – the precise definition of developer, have implications for social housing. The LGA is assisting DLUHC in identifying the implications of policy options and is lobbying to protect the housing revenue account and to avoid social housing tenants being required to pay for to solve the building safety crisis.

### **Levelling Up Select Committee**

- 26 The Secretary of State for Levelling Up appeared in front of the Levelling Up Select Committee. This is part of the Committee's Inquiry on building safety remediation and funding. It looked at the announcements previously made by the Secretary of State about forcing industry to pay to remove cladding and protect leaseholders from high costs.

- Told MPs the taxpayer may have to pay more to make buildings safe as it was proving difficult to get companies who made combustible materials to pay to fix the building safety crisis.
- Promised to limit leaseholders' bills for non-cladding costs to a maximum of £15,000 in London and £10,000 elsewhere. Contributions to things like waking watch would be set against the cap.
- The withdrawal of the Consolidated Advice Note would eliminate EWS forms overnight. It was estimated 5% of properties would require External Wall System (EWS) forms. The Government was looking at other ways to provide lenders with assurances about fire safety.

### **Building Safety Bill House of Lords**

- 27 The Building Safety Bill is currently in the House of Lords at the [report stage](#). The report stage gives all members of the Lords a further opportunity to examine and make amendments to a Bill.
- 28 The LGA has four core asks around the Building Safety Bill at present. These are addressed in order of priority below.
- a. We ask that the Government distinguish developers and local authorities to ensure Housing Revenue Accounts (HRAs) are not forced to choose between remediation and essential services.
  - b. We ask that the construction industry, as well as developers and manufacturers, should pay for the crisis.
  - c. It is essential to expand the scope of the Bill so that the more stringent building safety framework applies not just to buildings over 18 metres but also to those under 18 metres where those buildings are multiple occupancy dwellings.
  - d. Councils must be funded to deliver the Building Safety Regulator (BSR). The current BSR structure means enforcement and inspection activity will, in practice, be conducted to a large degree by councils and fire and rescue services. The LGA remains concerned at the prospect that the Government is not providing sufficient funding to allow the fire service to expand its capacity to the extent required to deliver the Building Safety Regulator's functions adequately. This is the subject of another paper.
- 29 The LGA'S complete submission to the House of Lords at the committee stage can be found [here](#).
- 30 The LGA has tried to push through two amendments to the Building Safety Bill:
- a. An amendment to Clause 57 ensures that the planned Levy does not apply to social housing. The Levy is designed to cover the cost of government support for the remediation of unsafe cladding. This support is provided to leaseholders in buildings with unsafe cladding systems,

either through the building safety fund or through a system of low-cost loans for buildings under 18m. For the most part, this support is not available to social landlords. Except for buildings with ACM cladding, social landlords have been denied access to these funds. For councils, these remediation costs, therefore, fall on the Housing Revenue Account and must be recouped either through rent increases or by diverting funds away from improvements to council housing or the provision of new council housing. If the Levy is imposed on councils, it will increase the cost of building or refurbishing social housing or increase rents. Yet, the benefits to funds will not be available to the tenants who would otherwise have benefitted from lower rents or better housing.

- b. The Building Safety Bill fails to apply the gateway system to buildings under 18 metres. This will create a two-tier system where buildings under 18 metres will face less rigorous safety regulations than those over 18 metres. However, height is a crude determinant of risk. Therefore, we have called for an amendment requiring buildings under 18 metres to pass through Gateway 2 and Gateway 3 (The Bill does not cover gateway One). We also seek to ensure that the local authority is the building control authority for the Gateway system under 18 metres, to remove developer choice. By eliminating the right of developers to pick their own regulator for buildings over 18 metres, the Government has acknowledged the damaging impact this has had on safety. Local authority building control will deliver most of the Building Safety Regulator's building control services in relation to buildings over 18m; our amendment provides the same reassurance to those living in lower buildings without overburdening the new regulator.

- 31 The LGA hopes to promote a further amendment protecting social housing tenants from the costs of remediation.

#### **House Of Commons Oral Evidence by Cllr Rachel Blake on behalf of the LGA**

- 32 Cllr Rachel Blake gave [oral evidence](#) in the Commons at Levelling Up, Housing and Communities Committee (Building Safety: Remediation and Funding) on behalf of the LGA.
- 33 The committee was looking at the Secretary of State's statement on [10 January](#) about potential new ways of raising money and which buildings might be affected.
- 34 Several concerns were raised on behalf of councils.
  - a. The first is about fire safety costs that do not come under cladding. These costs are equally burdensome and are related to cladding remediation works in some cases; therefore, should be added to any remediation cost funding formulas.

14 March 2022

- b. The second is that leaseholders are not the only victims of the construction industry's failure to build safe homes. Government should also seek ways to cover the costs of social landlords because failure to do so is exposing housing revenue accounts.

The LGA also sent in written evidence to the committee.

### **Fire safety act**

- 35 The Fire Safety Act is still yet to commerce.

### **Grenfell Fire Inquiry**

- 36 The Inquiry into the Grenfell Tower fire is still ongoing. The Inquiry was created to examine the circumstances leading up to and surrounding the fire at Grenfell Tower on the night of 14 June 2017. The Inquiry is currently hearing evidence on the role of the central government in establishing the legislative regime and formulating guidance on how to comply with it. Officers continue to follow events at the Inquiry.

### **Implications for Wales**

- 37 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**

- 38 Although the LGA has set up the Joint Inspection Team, the cost of doing so is being met by DLUHC. 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 community's team to support the LGA's building safety work.

### **Next steps**

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