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Title	Fire Safety in Tall Buildings
Purpose of the report	To note the report for information
Report status	Public report
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Lead councillor	Councillor Emberson
Corporate priority	Healthy Environment
Recommendations	The Committee is asked to: 1. To note the report for information

Executive summary

- 1.1 This report provides an update on the Council's ongoing response in the private sector, following the Grenfell Tower fire in 2017. This includes action taken in relation to privately-owned high-rise residential blocks within the Borough boundaries and our partnership with the Royal Berkshire Fire and Rescue Service (RBFRS).
- 1.2 As a result of the building safety programme a data collection exercise to identify external wall materials and insulation on all high-rise residential buildings was carried out and inspections made of the high risk properties.
- 1.3 Four high rise residential buildings in the private sector were identified with Aluminium Composite Material (ACM) cladding which failed the required fire safety standards, early in the project in 2017/18. Work has been completed on all these buildings.
- 1.4 Work continues to a further set of properties in the private sector with other types of external wall system and with other defects, such as compartmentation issues. Works to 9 properties were completed in 2022/23 and 17 tall buildings have works outstanding, or require further investigations to determine the extent of works required.
- 1.5 The Council continues to work with the RFBRS on buildings that contain fire safety deficiencies, taking enforcement action where required. In most cases the fire and rescue service are the enforcing body, particularly in relation to external wall systems. The Memorandum of Understanding (MOU) between RBFRS and the 6 Berkshire councils was reviewed in early 2022 to reflect changing priorities and new legislation. This enables a partnership approach to inspections and enforcement.
- 1.6 The Department for Levelling Up Housing and Communities on 10 February informed the Council of 'New Burdens' funding of £47,049 for financial year 2023/24 to drive the remediation of unsafe high-rise private sector buildings.

2. Policy context

- 2.1 The tall buildings remediation work contributes to the 'Healthy Environment' and 'Thriving Communities' themes of the Corporate Plan 2022/25. There was a target for remediation of tall buildings with cladding under the Healthy Environment theme and 100% of residential tall buildings with ACM cladding were remediated. However, continuing work is required to protect residents of other buildings.

3.0 The proposal

Background

- 3.1 Following the Grenfell fire a Public Inquiry opened on 14th September 2017. Phase 1 of the inquiry looked at the events on the day of the fire and the Chairman of the inquiry published his Phase 1 report on 30 October 2019. Phase 2 of the Inquiry examines the causes of these events, including how Grenfell Tower came to be in a condition which allowed the fire to spread in the way identified by Phase 1. The Inquiry suggests that external fire loading was partly responsible for the rapid-fire spread.
- 3.2 On 16 May 2018, *Building a Safer Future, Independent Review of Building Regulations and Fire Safety: Final Report* by Dame Judith Hackitt was published. The report identified that the current system of building regulations and fire safety was not fit for purpose and that a culture change was required to support the delivery of buildings that are safe.
- 3.3 The government published an implementation plan in December 2018 that provided an approach to delivering the recommendations in Hackitt's Review. This plan sets out the intended programme of work to deliver fundamental reform to the system that will ensure that residents are safe, and feel safe, in their homes.
- 3.4 As part of this plan, changes to legislation have been made which includes the recent introduction of the Fire Safety Act 2021 and the Building Safety Act 2022. Although much of this is enforced by the fire and rescue service and a new Building Safety Regulator, remediation orders and remediation contribution orders may be applied for by interested parties and a range of enforcement bodies including the Council. These are new powers to require works and contributions towards costs. Amendments have also been made to the Building Regulations and the associated guidance (Approved Documents).
- 3.5 The government has also introduced schemes to protect leaseholders from paying costs associated with remedial works relating to external wall systems including the Building Safety Fund and a developers self-remediation scheme where those who built the affected buildings complete or pay for the works.
- 3.6 The legislation sets up three new bodies to provide effective oversight of the new regime: the Building Safety Regulator, the National Regulator of Construction Products and the New Homes Ombudsman. The Health & Safety Executive (HSE) will be the Building Safety Regulator. The HSE will be responsible for regulating high-rise buildings (7 or more storeys or 18 metres+) with at least 2 residential units or that are hospitals or care homes as a building control body (during design, construction) and will also have a role in regulating occupied buildings and have some interaction with Council functions relating to tall buildings fire safety. The Building Safety Regulator will also have a wider role regulating the building industry and building control bodies.
- 3.7 The fire service remains responsible for enforcing the Fire Safety Order, these regulations including requirements on performing checks common parts and external wall systems and providing information.

- 3.8 The Council's enforcement role is primarily through its role as Building Control Body, where building regulations apply to new works to buildings and as Local Housing Authority for enforcement of housing conditions under the Housing Act 2004.
- 3.9 The Housing Act does provide the Council with powers to require improvements or prohibit use of all or part of a residential building. In November 2018, the Government amended the operating guidance on the Housing Health and Safety Rating System, to clarify that local authorities have powers to enforce against the owners of buildings with unsafe cladding under the Housing Act 2004.
- 3.10 There is overlap between the Housing Act and Fire Safety Order. The Housing Act covers flats and common parts whilst the Fire Safety Order covers common parts. The safety of common parts can sometimes rely on fire safety measures within flats which is an added complexity. However under the memorandum of understanding agreed with BFRS, the fire authority are to take the lead on inspection and enforcement action in purpose built blocks of flats.
- 3.11 There are further issue highlighted in the legal implications section of this report. The full implications of this may not become clear until the new regulator is fully operational and further primary or secondary legislation is introduced.

Tall Buildings Activity In Reading

- 3.12 Given the overlap in legislation, in 2018 a County-wide Steering group was convened by RBFRS with representatives of the six Unitary Authorities in Berkshire. A Memorandum of Understanding (MOU) between RBFRS and the 6 Unitary Authorities was signed in 2018 and updated in 2022 with the purpose of strengthening the draft Protocol for Fire Safety Enforcement and putting into place a joint plan of action with regards to the roles and responsibilities of each party. A programme of joint work was agreed and a multi-disciplinary operational team comprising RBFRS, and an Environmental Health Officer from the Council was formed with the remit of reviewing the safety of high-rise residential blocks in Reading on a prioritised basis.
- 3.13 RBFRS built a risk profile for all high-rise residential premises across Berkshire which informed prioritisation for inspections. By using these calculated risk profiles, 32 of the highest risk residential buildings over 18 metres in Reading were jointly inspected between March and August 2018. Joint letters were sent out to notify all residents prior to the inspections and to offer home fire safety checks by fire officers. In addition to the communal areas, at least 5% of flats were inspected for each residential high-rise block. RBFRS and the council followed up separately on the issues found under their respective enforcement legislation - The Regulatory Reform (Fire Safety) Order 2005 and the Housing Act 2004.
- 3.14 The common deficiencies found in high rise blocks in Reading include:
 - Compartmentation breaches.
 - Fire lifts not in operational use.
 - Fire doors in disrepair.
- 3.15 In Reading there were four residential buildings over 18 metres which were identified as having ACM cladding which failed the required fire safety standard and is not of limited combustibility. The Council and RBFRS have worked with the relevant stakeholders of these buildings to ensure a long-term remediation plan were established. Works to remove ACM cladding were completed to the final of these buildings in May 2022.
- 3.16 Following on from the work carried out to ensure ACM cladding is removed from residential properties, buildings with other types of cladding systems and other external wall systems (EWS) are now being considered as part of the government's Building Safety Programme.

- 3.17 DLUHC has required all local authorities to complete a data collection exercise to identify external wall materials on all high-rise residential buildings 18 metres and over within their area. In response to the DLUHC's data collection request, the Council served over one hundred legal notices requiring building owners and managers to provide information on their external wall materials. The Council has received EWS information on all the applicable buildings. This data collection exercise must now continue for the buildings where works are completed.
- 3.18 33 buildings were identified as non-compliant and possibly requiring remedial works. The properties required assessment by a fire engineer or other competent person to determine whether remedial works were needed. As well as the work to remove hazardous external wall systems, in some cases there was a need to install interim measures to reduce risk. Initially interim measures included waking watches, but over time alternative measures such as extended fire alarm systems were installed, pending completion of works to the EWS.
- 3.19 Several factors can explain the delays to completion of works. As well as the complexities of tendering and organising the physical works, availability of materials, testing sites and competent assessors was a factor. In some cases, despite combustible material being in place the competent person (a qualified surveyor or fire risk assessor) determined that the risk was low and that the material could remain, or suggested a 5 year timescale for completion. Some property owners reported delays in confirmation of funding from the Building Safety Fund and may be unwilling or unable to complete works until funding is confirmed. In addition, a separate scheme for developers to pay the costs of remediating buildings which they build may add further complications.
- 3.20 The Council has been monitoring progress with works in conjunction with the fire service. In most cases responsibility for enforcement of requiring owners to complete remedial works, particularly in relation to external wall systems, lies with the fire service. This is outlined under the terms of the MOU, the Council will provide a supporting role. In most cases planning consents were required to complete works and material alterations to existing blocks of flats, including alterations to individual flats, are controlled under the Building Regulations 2010 through the Council or external Approved Inspectors.

CURRENT POSITION

- 3.21 The MOU with RBFRS was reviewed and signed in early 2022 to reflect changing priorities and new legislation. Periodic meetings have taken place at a strategic and operational level to review activity and priorities. This has included reviews of the buildings where significant risk has been identified and emergency planning to consider the response required should a building be found with significant issues. Other joint work has included a training day relating to tall buildings and fire precautions in houses in multiple occupation.
- 3.22 Nine residential properties were recorded as having works completed to their EWS in 2022/23. The corporate plan contains a target for 5 properties to be remediated each year. However, from the works in the pipeline it is likely that fewer than 5 will be completed in 2023/24.
- 3.23 Seventeen buildings continue to require works, or need further investigation to determine what works are required.
- 3.24 Thirteen properties were recorded as having interim measures currently in place at the time of writing, though in the case of five of these buildings it was believed that works to replace the EWS were complete. This categorisation was expected to change following a review of updated risk assessments, so that interim measures would no longer be required.

- 3.25 RBFRS changed their structure in early 2023 to disband the previous tall buildings team and relocate the work into the local area teams, the West Hub covers Reading and so officers have met with the West Hub team to begin a review of the information we both hold. The Council will continue to assist RBFRS as they complete further inspections and assessments, providing information or officer presence as and when required and we intend to meet regularly with them. The lead officer for this project is due to be away for some time and so measures are in place to handover some of this work.
- 3.26 The Department for Levelling Up Housing and Communities awarded New Burdens funding of £47,049 for financial year 2023/24 to drive the remediation of unsafe high-rise private sector buildings.
- 3.27 In early 2023 DLHUC requested that all records are updated on their computer system, known as DELTA to confirm the current EWS in place (i.e. to show the works completed). Despite the changes in legislation confirming RBFRS are responsible for enforcing the EWS requirements, the Council is required to collect and update this information.
- 3.28 DLUHC announced that the portal on DELTA will remain open until October 2025 to allow for further records to be uploaded and amended. An initial data release is expected in the summer of 2023 and so work is underway to collect this information. A further set of notices have been issued in 2023 relating to 11 buildings, requiring information to be provided. As further works in the pipeline are completed similar information requests will be carried out.

OPTIONS PROPOSED

- 3.29 The Council and RBFRS will continue to work on high-risk buildings which contain deficiencies related to fire safety. The Council will review on a case by case basis whether formal enforcement is required under the Housing Act or our other powers, following the statutory guidance and the Housing Standards Enforcement Policy. RBFRS continue to have regular communication to discuss progress with the Building Safety Programme and individual properties.
- 3.30 The Council will continue its efforts to obtain external wall systems details of all applicable buildings in response to the request from DLUHC.
- 3.31 The Council will keep updated with the latest government guidance and take action where appropriate. This includes any new changes derived from recommendations in the final Grenfell Inquiry report and from the new Building Safety Regulator.
- 3.32 On completion of this work stream the focus will shift to identify and work on other priority areas. This may include buildings over 11 metres tall, residential conversions or flats above commercial properties.
- 3.33 The Environmental Health Officer post that has led on delivery of this work is currently on maternity leave. The work is to be shared across existing members of the team who have received training from the Joint Inspection Team (a specialist team hosted by the Local Government Association). Maternity cover will be used to backfill elements of their work.
- 3.34 The post that has led on delivery of this work to date is part of a team responsible for licensing of houses in multiple occupation and other housing standards activities. It is proposed to use some of the DHLUC funding to deal with backlogs of work in this area, which have built up in part due to activity in this area.

4. Contribution to strategic aims

- 4.1. Working in collaboration with Berkshire Fire and Rescue Service (BFRS) and building owners we can build on work already undertaken to enable safer housing for communities living in tall buildings, aligned to the 'Healthy Environment' and 'Thriving Communities' themes of the Corporate Plan 2022/25.
- 4.2. The partnership working on this project can also assist in our working relationship with Berkshire Fire and Rescue Service.

5. Environmental and climate implications

- 5.1 This report is for information only and as such there are no implications for environmental and climate change. In addition, the action taken in relation to external wall systems, is likely to fall under the jurisdiction of the fire and rescue service.
- 5.2 Removal of cladding without replacement would be likely to increase heat loss and energy use from the affected buildings. Any re-cladding works carried out to buildings will need to comply with Building Regulation Standards including those set out in Part L. Wider impacts on heatloss and excessive heat relating to external wall systems are not within the scope of this report.

6. Community engagement

- 6.1. Any enforcement action taken would likely require consultation with a range of stakeholders including building owners, management companies, leaseholders and other occupants.

7. Equality impact assessment

- 7.1. Not relevant to this report.

8. Other relevant considerations

- 8.1. This report sets out our role as an enforcement body, there will be separate implications to the Council as landowner and as a landlord. A report to this committee on 10th November 2021 set out the likely implications of the legislation in relation to our social housing stock.
- 8.2. Although the Memorandum of Understanding with BFRS does not have legal implications if we are not able to meet our commitments, it could cause reputational damage and harm further working partnerships with them.
- 8.3. Although a number of staff have received training on tall buildings defects and enforcement, this is a specialist area. Close partnership working with the fire service will help the Council to deliver its advisory and enforcement functions.
- 8.4. Once the Building Safety Regulator becomes operational, working relationships will need to be set up with the new body. Information sharing and consistency of enforcement, particularly where there is overlap of enforcement regimes, are likely to be key issues.
- 8.5. The continuation of this work and the loss of the lead officer for this programme on maternity leave are likely to have some impact on the ability to deliver the house in multiple occupation licensing scheme, housing complaints reactive services and other housing standards work. Recruitment to two fixed term posts should mitigate this.

9. Legal implications

- 9.1 There are several important pieces of legislation which impact on fire safety within dwellings. In addition, statutory and non-statutory guidance supports the legislation. Some of this predated the Grenfell fire, this has been supplemented by new legislation as well as amendments to this existing legislation. The main changes to legislation have been made which includes the recent introduction of the Fire Safety Act 2021 and the Building Safety Act 2022. Amendments have also been made to the Building Regulations and the associated guidance (Approved Documents).

Legislation enforced by the local authority

- 9.2 The Councils powers are principally contained in
- Building Regulations 2010 Part B.
 - Housing Act 2004.
- 9.3 Material alterations to existing blocks of flats, including alterations to individual flats, are controlled under the Building Regulations 2010, and need to be approved by a building control body otherwise an offence is committed. Even if the block satisfied earlier legislation, proposed alterations must be considered in the light of the current Building Regulations; it is not sufficient to carry out alterations based on the earlier legislation. In practice, any proposals to carry out alterations including to fire alarm systems, means of escape, smoke control arrangements and structural alterations, should be submitted to ensure compliance with regulations.
- 9.4 The Housing Act 2004 makes requirements regarding the condition of a broad spectrum of housing including both individual flats within a block and the common parts of a block. The Council as local housing authority are the enforcing authority for this legislation. Assessment of conditions is carried out using the Housing Health and Safety Rating System (HHSRS) - where 'category 1' (more serious) hazards are identified the local authority has a duty to take some form of enforcement action. Under the Housing Act 2004, the housing authority must inspect properties if they become aware of significant fire hazards and have powers of entry for this purpose. The Council may make requirements for improvements in fire precautions and has the power to prohibit or take emergency remedial action in the event of serious risk.

Legislation enforced by other bodies.

- 9.5 The Regulatory Reform (Fire Safety) Order 2005 (the Fire Safety Order) came into force in October 2006. The FSO imposes duties on the 'responsible person' who has control of the premises - usually a company or organisation and usually the freeholder or landlord. Responsibilities also apply in respect of anyone who has a contract or responsibility for maintenance, repairs or for the safety of premises. It does not apply to individual flats but does apply to the common parts of flats such as stairwells, a plant room or caretaker room, shared facilities and lobbies. The Fire Safety Order was extended in 2022 to clarify that it does include flat entrance doors, external walls and the structure of the building. The Fire safety order is enforced by the fire and rescue authority (Berkshire Fire and Rescue Service)
- 9.6 The Fire Safety Order requires that suitable and sufficient fire risk assessments (FRAs) are carried out - this forms the foundation for the fire safety measures required in a block of flats. The fire and rescue authority will review the FRA at the time they audit a building. Further detail is provided above in this report. An FRA will result in an action plan detailing managerial and physical measures with prioritisation commensurate with

the risk. LGA guidance suggests that a low risk, low rise block might need an FRA to be completed every 4 years and reviewed every two years. For blocks with higher risk and over four storeys in height a new FRA every 3 years and an annual review would be more appropriate. Guidance on the FSO and its requirements has been issued in a series of guides. Blocks of flats are included, among many other types of residential premises, in the HM Government guide 'Fire safety risk assessment: sleeping accommodation' published by the Department for Communities and Local Government (DCLG).

- 9.7 The Fire Safety (England) Regulations 2022 have been made under the Fire Safety Order, these regulations create new requirements for responsible persons including providing information to residents, performing checks on fire doors and informing the fire service of external wall systems and any material changes made to them.
- 9.8 There is overlap between the Housing Act and Fire Safety Order. The Housing Act covers flats and common parts whilst the Fire Safety Order covers common parts. There may be cases where either the fire service or the Council could take enforcement action. The safety of common parts can sometimes rely on fire safety measures within flats which is an added complexity. The Housing Act places a duty on the council to consult the fire service before taking action relating to fire safety and the memorandum of understanding and partnership arrangements should assist in determining who is best placed to take action, when required.
- 9.9 The Building Safety Act 2022 creates three new bodies to provide effective oversight of the new regime: the Building Safety Regulator, the National Regulator of Construction Products and the New Homes Ombudsman. The Building Safety Act has named the Health & Safety Executive (HSE) as the Building Safety Regulator. The HSE will be responsible for regulating high-rise buildings (seven or more storeys or 18 metres plus) with at least 2 residential units or that are hospitals or care homes (during design and construction).
- 9.10 The Building Safety Regulator may issue directions, with Secretary of State approval, which could require The Council to take actions to assist the regulator perform its functions.
- 9.11 The Building Safety Regulator will also regulate standards in the wider building industry and the building control profession.

Remediation orders and Remediation contribution orders

- 9.12 Remediation orders will allow interested persons to apply to the Property Chamber of the First-tier Tribunal for an order requiring a building owner or other person with repairing obligations to remedy certain relevant defects. Where a building owner has a remediation order applied and they are not fixing the defect, then it is enforceable by the county court. Where the building owner or developer has not remediated the building in the specified timeframe, they can be held in contempt of court, this can be punishable by a fine or up to 2 years in prison.
- 9.13 Remediation contribution orders allow interested persons to apply to the Property Chamber of the First-tier Tribunal for an order requiring a company to make payments in connection with the remediation of relevant defects.
- 9.14 Interested persons who can apply include the Council as well as the Building Safety Regulator, the fire and rescue service, leaseholders of flats within the building, as well as the freeholder and other building owners for the building.
- 9.15 A review of the Councils delegations and enforcement policies will take place to determine whether further actions are required.

10. Financial implications

- 10.1. The Department for Levelling Up Housing and communities on 10 February informed the Council of New Burdens funding of £47,049 for financial year 2023/24 to drive the remediation of unsafe high-rise private sector buildings.
- 10.2. The main anticipated costs of resourcing this work are staffing costs. No capital expenditure is planned. The funding is therefore likely to be sufficient for this years planned activity. The work is to be shared across existing members of the Public Protection team during the lead officer's maternity leave. Maternity cover will be used to backfill elements of their work.
- 10.3. Given the funding that has been provided and the potential harm to our communities arising from a lack of action, the proposal is considered to be value for money.

11. Timetable for implementation

- 11.1. Not applicable.

12. Background papers

- 12.1. There are none.