



CABINET

26th January 2022

Subject Heading:

The requirements of the Building Safety Bill and Regulatory Reform (Fire Safety) Order 2005 for the council as a landlord.

Cabinet Member:

Councillor Joshua Chapman, Lead Member for Housing

SLT Lead:

Patrick Odling-Smee, Director of Housing

Report Author and contact details:

Garry Knights, Assistant Director Property Services
garry.knights@havering.gov.uk
Telephone 01708 43

Policy context:

This report set out the implications arising for the Council as a landlord as a result of the Building Safety Bill. It sets out the requirement of the bill, the progress the council has made to prepare for the bill and makes recommendations for what additional actions will be required.

Financial summary:

The implementation of this strategy will have financial implications.
Financial implications relate to the cost of the safety measures set out in the report.

Is this a Key Decision?

Yes. Expenditure or saving (including anticipated income) of £500,000 or more.

When should this matter be reviewed?

The matter should be reviewed following final legislation and detailed guidance and regulation from the government.

Reviewing OSC:

Towns and Communities

The subject matter of this report deals with the following Council Objectives

Communities making Havering	[x]
Places making Havering	[X]
Opportunities making Havering	[]
Connections making Havering	[]

SUMMARY

1. This report set out the implications arising for the Council as a landlord as a result of the Building Safety Bill. It sets out the requirement of the bill, the progress the council has made to prepare for the bill and makes recommendations for what additional actions will be required.

RECOMMENDATIONS

- 2.1 That Cabinet note the requirements of the Building Safety Bill and Regulatory Reform (Fire Safety) Order 2005 for the council as a landlord.
- 2.2 That Cabinet notes the progress that has been made to prepare for the implementation of the bill.
- 2.3 That Cabinet recommends to Council that the post of Assistant Director of Property Services is designated as the Accountable Person within the Council's constitution and scheme of delegation and the Monitoring Officer is given delegated authority to make any consequential amendments to the Council's Scheme of Delegation.
- 2.4 That the Towns and Communities Scrutiny Committee should be provided with a quarterly report on performance relating to fire, electrical, gas, lifts, asbestos and legionella safety.

REPORT DETAIL

3. Background

- 3.1 Following the tragic events four years ago at the Grenfell Tower a holistic review of building safety, "Building a Safer Future" led by Dame Judy Hackett, was undertaken, and following the recommendations of this review a new Building Safety Bill is currently being debated in parliament.
- 3.2 The bill introduces a new regulatory regime for all high-risk buildings which are currently in scope and defines these as all buildings of 18 metres or more in height or six storeys (whichever is reached first) and contain at least 2 residential dwellings.
- 3.3 The bill sets out duties at the planning, construction and occupation phases of buildings.
- 3.4 The new Building Safety Regulator will establish a national register of buildings in scope. The new regime will apply to existing occupied in-scope buildings through a transition period that starts with the highest risk buildings first.

- 3.5 The draft bill also impose requirement on those in control of buildings to hold significant level of information on those building, forming a golden thread from inception through to use and ultimately demolition. For new builds this will start at the planning and construction phases and will be a requirement to allow projects to progress, whilst it is acknowledged that in existing building this will take longer to develop and will likely require building owners to undertake significant surveys and develop IT systems to comply.
- 3.6 The bill will change part of the Landlord and Tenant Act 1985, including a regime for charging residents a Building Safety Charge for costs associated with the new regime. For historical building safety failures, the bill has not changed the position that this stays with existing service charge payers including leaseholders.
- 3.7 Landlords will not be able to charge residents for works required by the regulator as a result of the accountable person's negligence.
- 3.8 The bill also imposes legal obligations on residents, through implied terms in tenancy agreements, requiring them to comply with accountable person in their building safety duties, this includes not causing damage to safety equipment or structural elements of a building and ensuring their own equipment is safe and fit for purpose. The accountable person will be able to issue contravention notice where residents fail to comply, but it has not been established the full sanctions available nor how some of these regimes can practicably be monitored.
- 3.9 The BSB is expected to receive Royal Assent in April 2022 and all the provisions implemented between then and December 2023.

3.10 Building Safety Regulator

- 3.11 The bill establishes a new national Building Safety Regulator (BSR) which will sit within the Health and Safety Executive. This has already been created in shadow form and has already undertaken significant levels of recruitment ahead of the adoption of the bill.
- 3.12 The BSR has three main functions
- Oversee the safety and performance system for all buildings, advising minister of changes to the building regulations, identifying emerging risk and managing the performance of building control bodies.
 - Assisting and encouraging the improvement of competence in the construction industry, improving standards and supporting development of building control officers.
 - Leading implementation of the regulatory regime for high-risk buildings including powers to order remedial actions, including stopping works. They also have the power to appoint special measure for failing projects and order the replacement of duty holder, responsible persons and fire safety officers.

Cabinet, 26th January 2022

- 3.13 The BSR will be able to issue 'stop', 'compliance' or 'improvement' notices and breach of any of these will be a criminal offence. The BSR will replace the Building Regulations Advisory Committee with a new oversight structure.
- 3.14 The draft bill also includes proposed changes to the Regulatory Reform (Fire Safety) Order (RRSFO) which consider the approach to fire safety in buildings. The key proposals are:
- Fire Risk Assessments needs to be wider than just the internals covered in the existing regulations, and will need to consider the external facades, cladding systems, and areas around the buildings
 - For additional cyclical compliance checks on fire doors, both communal and flat entrance doors in high-risk buildings, currently proposals are 3 monthly checks on communal doors and 6 on flat entrance doors
- 3.15 This report sets out the requirement of the bill for the council for in-occupation buildings that it owns and manages as a landlord. Other aspects of the bill and changes to the regulatory regime will be subject to future reports to Cabinet.
- 3.16 Havering Housing Services are a registered provider under the terms of the Housing and Regeneration Act 2008. This means that we are subject to regulation by the Regulator of Social Housing (RSH), a government agency that regulates the actions of all registered providers, including local authorities.
- 3.17 Following the Grenfell Tower fire in June 2017 and the subsequent Green (August 2018) and the White Papers (Charter for Social Housing Residents – November 2020), the RSH has carried out its review of the framework by which registered providers are regulated. The RSH determined that local authorities were seen to be ineffectively regulated and that performance and governance in some areas was poor. In 2021, the RSH undertook further consultation to determine further updates to the regulatory framework consumer standards, with tools to support social housing landlords in meeting these.
- 3.18 The four consumer standards currently are:
- **Home Standard** – including quality of accommodation, and repairs and maintenance
 - **Tenancy Standard** – including allocations and mutual exchange, and tenure
 - **Neighbourhood and Community Standard** – including neighbourhood management, local area co-operation and anti-social
 - **Tenant Involvement and Empowerment Standard** – including customer service, choice and complaints, involvement and empowerment, and understanding and responding to the diverse needs of tenants
- 3.19 Further to this, the White Paper sets out new powers for the RSH to prepare Codes of Practice to amplify the current consumer standards and regulate against them. The Council's responsibility is to ensure it meets its health and safety obligations with proper oversight to all health and safety issues, including gas, fire, electrical, lift, asbestos and legionella safety remains high on the agenda.

3.20 Following the draft Building Safety Bill the RSH has indicated that it will become more active in enforcing standards in relation to tenants' safety and will require evidence of good governance, i.e. reporting on a regular basis to members. The RSH will carry out routine assurance-based inspections on consumer standards of all large registered providers, including local authorities, every four years.

3.21 This report sets out the arrangements required for the RSH to ensure good governance.

4. Preparations for the bill

4.1 Since the Grenfell Tower disaster the council has implemented a comprehensive action plan to ensure that our tenants and leaseholders are safe in their homes. This includes:

4.2 Savills were appointed as independent expert advisors to Cabinet members to ensure they receive impartial and challenging advice regarding their statutory responsibilities and interpretation of the information they receive. Savills recommended a series of measures to ensure that the council has a robust approach to resident safety.

4.3 Policy

4.4 The council has reviewed the fire safety policy and management plans to ensure they were up to date and compliant with legislation and best practice. The council has included in the compliance policies, which were approved in 2020, as many of the draft proposals as possible and are in the process of implementing them. The council has also tried to future proof against some likely future changes, for example looking at basic building safety case file in low and medium rise buildings.

4.5 The council has reviewed the asbestos policies and management plans to ensure they were up to date and compliant with legislation and best practice. The council has included in the compliance policies, which were approved in 2020, as many of the draft proposals as possible and is in the process of implementing them.

4.6 The council has also reviewed the electrical safety policy. The Landlord and Tenant Act requires landlords to ensure electrical systems are maintained safely throughout a tenancy but does not provide guidance on inspections intervals. BS7671 – Requirements for Electrical Installation recommends inspections of domestic electrical system not later than 10 years since the last inspection. The council will meet this standard as a minimum, however, legislation has been introduced which require all private rented accommodation to have an electrical inspection no later than 5 years from the previous inspection, however it is silent on registered providers, although it is likely that this will be extended in the future.

4.7 The council has therefore adopted the approach of undertaking inspections no later than 5 years from the date of the last inspection. This will apply to all domestic and communal electrical systems. On completion of an inspection, an electronic

Cabinet, 26th January 2022

Electrical Inspection Condition Report (EICR) will be provided, and a paper copy sent to the resident.

- 4.8 The legionella policy applies to communal water systems in general needs properties, sheltered schemes and any other water supplies and storage to communal areas; it does not apply to individual domestic properties. The council will undertake risk assessments for all relevant properties every 2 years in line with the L8 Approved Code of Practice. All works and testing regime will comply with HSG274 Part 2: The control of legionella bacteria in hot and cold-water systems.
- 4.9 This will identify potential sources of risk and their potential harm, reflecting on the both the use of the building and its occupancy type. All actions which are identified will be undertaken with the timescales identified in the risk assessment.
- 4.10 We have included in the compliance polices the provision that we will use designated products or safety critical products, once this regime has been developed. In the meantime, we are only specifying product which can demonstrate appropriate certification for both the product and installations. This is especially relevant around door specifications, and policy has been agreed in which only timber doors will be allowed in blocks, including for leaseholders, as these provide a nominal 30-minute resistance in all cases. Also included in the polices is the minimum competencies we require from contractors undertaking fire related works in our blocks.
- 4.11 **Procedure & Processes**
- 4.12 We have established effective working relationships with London Fire and Rescue Service and both at a strategic and operational level.
- 4.13 Carrying out Type 4 Fire Risk Assessments (FRAs) (invasive survey to common areas and a sample of flats) on all high, medium and low risk buildings which is over and above the statutory requirements. This programme was completed in October 2021 and will now be followed up with annual reviews.
- 4.14 We have reviewed our TMO agreements and have included some clear guidance around building safety obligations, including an explicit duty for the TMO to comply with the building safety manager where relevant and for them not to undertake any repairs or maintenance projects to any fire or structural related elements of any buildings.
- 4.15 **Data**
- 4.16 We have completed a review of our IT systems to ensure that we have robust data to deliver demonstrate resident safety.
- 4.17 Commissioning of an IT system (twinnedit) to provide the “golden thread” of data for in-occupation buildings and enable information to be available to residents. This will handle the myriad of different data types and source on one platform and provide a portal which resident and other stakeholders (including the LFB) can obtain relevant

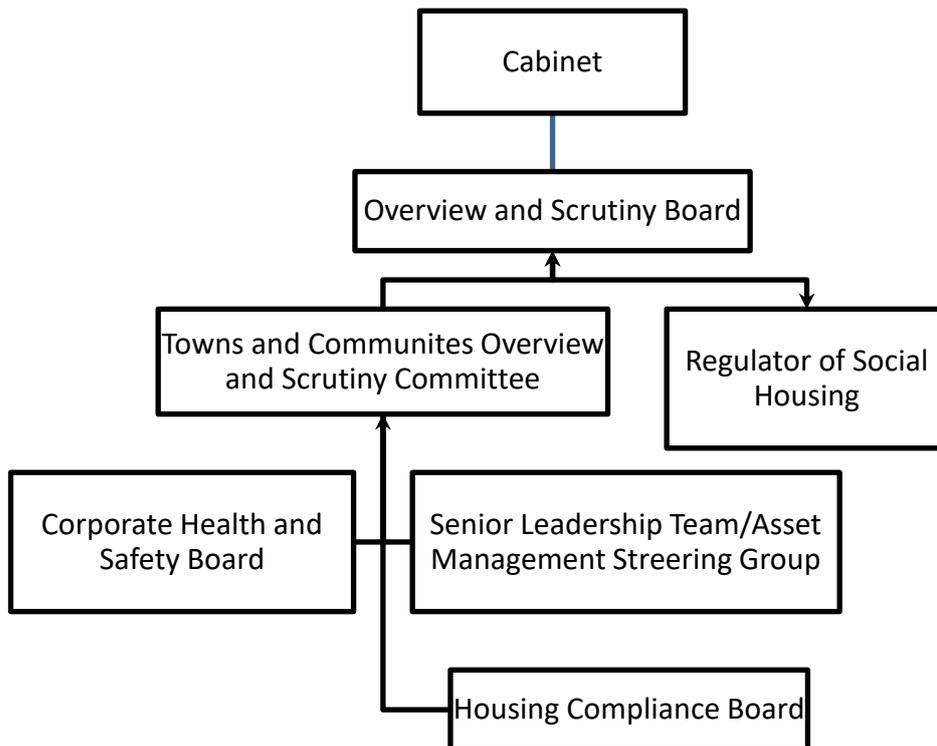
information, including full 3D renders of buildings and evacuation information, all linked to our assets management system Keystone.

4.18 Performance

4.19 Established a performance management framework through the Housing Compliance Board, Housing Senior Management Team, Corporate Health and Safety Board, Senior Leadership Team/Asset Management Group of the Council and Cabinet Members. The performance framework is attached as Appendix 1 to this report. A benchmarking exercise has been completed with local authorities with similar stock to ensure our performance framework is robust.

4.20 It is intended that the following reporting hierarchy is followed in the future:

4.21



4.22 Assurance

4.23 An independent audit by Mazars was commissioned to test the systems and processes relating to the management of gas safety, fire safety, asbestos, legionella, electrical safety and lift safety. The report has been presented to the Audit and Risk

Cabinet, 26th January 2022

Committee in January 2022. An annual audit of the compliance processes, procedures and data will be carried out.

4.24 Established a comprehensive risk register for health and safety compliance to ensure that the key risks are being effectively managed. A copy of the risk register is attached at appendix 2.

4.25 Resource

4.26 We have committed resources to improve the tenant safety on estates by removing obstacles and other hazards from common areas.

4.27 The service has carried out a review of the skills and resources required to deliver resident safety implemented a reorganisation, recruitment and training plan for all staff.

4.28 We have included in our budgets sufficient monies to undertake the new door checking regime if this is adopted and will implement as part of a cyclical compliance programme as required.

4.29 These actions have prepared the service for the requirement of the bill and the new RSH regime however further arrangements are going to be needed as set out in the next section.

5.0 Additional preparations required.

5.1 For all building in which we hold either a legal estate in possession or the relevant repairing obligation of the common parts then the bill will require us to appoint an accountable person who will be legally responsible for the safety of building within the scope of the bill. This will apply to all housing stock, currently 10 high rise buildings (but if widened out could also extend to a further 980 buildings). Accountable persons can be individuals or corporate individuals.

5.2 The duties of the accountable persons will include;

- Registering high risk buildings with the regulator
- Applying for a Building Assessment Certificate, which must be obtained before the building can be occupied
- Appointing Building Safety Managers
- Ongoing obligations to assess and fire and structural issues
- Maintain a building safety case file
- Provide residents with key safety information and ensuring a resident engagement strategy is in place
- Engage with the BSR as required, including the proactive reporting of defect/failures

5.3 Failure by the accountable person will be a criminal offence, punishable by imprisonment of up to two years and/or a fine.

Cabinet, 26th January 2022

- 5.4 The accountable person will be responsible for appointing a designated Building Safety Manager (BSM) for each building who must be able to demonstrate sufficient skills, knowledge and competency to undertake the role. They will be responsible for the day-to-day management of a building, including the involvement in the procurement of contractors, liaison and engagement with residents and approving works on site. Failure to undertake their duties will be punishable by a fine.
- 5.5 We currently have 10 buildings which fall with the scope of the regulations. The bill does not dictate how many buildings a BSM can manage but peer organisations are looking at between 3 and 5 buildings per BSM. Given the lack of clarity on the roll and whether it can be undertaken by multiple people we have not yet looked to recruit to develop our job description or recruit to these posts. There are several groups which are developing a competency framework and we will keep a watching brief to following best practice when it emerges.
- 5.6 The Council's constitution and scheme of delegation will be amended to designate the Assistant Director of Property Services as the Accountable Person for the Council's housing stock.
- 5.7 It is not clear whether the BSM must be undertaken by a single person or elements could be given to a number of individual and co-ordinated by the accountable person. It has also not been defined what competency will be considered acceptable for this role.
- 5.8 Requirements under the RRFSO
- 5.9 The bill will require landlords (or those in control of the common parts) to;
- Fire Risk Assessments will need to be wider than just the internals covered in the existing regulations, and will need to consider the external facades, cladding systems, and areas around the buildings.
 - Include additional cyclical compliance checks on fire doors, both communal and flat entrance doors in high-risk buildings, currently proposals are 3 monthly checks on communal doors and 6 on flat entrance doors.
- 5.10 We currently publish basic fire safety information on our website and residents have an email address they can contact to obtain their relevant FRAs. As part of the twinned approach resident will have portal from which they can access all relevant information including their evacuation plans, contact details of relevant staff, upcoming works etc.

6.0 Governance

- 6.1 The Principal Accountable Person (building owner) has to provide:
- A strategy for buildings in scope
 - Information on how residents can be involved in decisions
 - Access to prescribed information (Fire Risk Assessments, Building Safety Case, etc.)
 - Opportunities to raise issues, clear routes to escalate issues

- A copy to all residents aged over 16
 - A way to measure their approach
 - Must be reviewed periodically and when necessary
- 6.2 Our resident engagement strategy has set out the approach and methods that will be used to ensure we meet these requirements and the development of the data available will ensure that resident have access to the proscribed information. We will also ensure that the Resident Engagement Panel have quarterly performance reports on resident safety.
- 6.3 In 2020 the RSH wrote to local authority landlords regarding the implementation of the consumer standards and said:
- “Meeting health and safety obligations is a primary responsibility for registered providers. Boards and councillors must ensure that they have proper oversight of all health and safety issues (including gas safety, fire safety, asbestos and legionella).”*
- 6.4 The RSH has commenced December 2021) a formal consultation on the key performance indicators they will use to measure tenant safety. They are proposing to use:
- Gas safety - Proportion of homes for which all required gas safety checks have been carried out.
 - Electrical safety – to be agreed.
 - Fire safety - Proportion of homes for which all required fire risk assessments have been carried out.
 - Asbestos safety - Proportion of homes for which all required asbestos management surveys or re-inspections have been carried out.
 - Water safety - Proportion of homes for which all required legionella risk assessments have been carried out.
 - Lift safety - Proportion of homes for which all required communal passenger lift safety checks have been carried out.
- 6.5 In order to provide this insight it is recommended that the Towns and Communities Scrutiny Committee receive quarterly performance reports on consumer safety on these measures.
- 6.6 As well as the measures set out in this report, officers will draw up a comprehensive action plan for the implementation of the BSB, the Regulatory Reform (Fire Safety) Order 2005 and the Regulatory Framework from the Regulator of Social Housing.

REASONS AND OPTIONS

7.0 Reasons for the decision

The new Act will require the council to take on new duties and responsibilities for the safety of tenants and leaseholders in their properties. This report recommends the actions required for the Council to comply with those new duties.

8.0 Other options considered:

As this is a statutory requirement the council is under an obligation to act on the new duties.

The role of the accountable officer could be held by another officer however the skills and experience, and seniority within the organisation, make it more appropriate that the Assistant Director of Housing property Services holds the post.

IMPLICATIONS AND RISKS

Financial implications and risks:

This report set out the implications arising for the Council as a landlord as a result of the Building Safety Bill.

The implementation of the bill will have significant revenue and capital financial implications for the Council.

The bill will change part of the Landlord and Tenant Act 1985, including a regime for charging residents a Building Safety Charge for costs associated with the new regime. For historical building safety failures, the bill has not changed the position that this stays with existing service charge payers including leaseholders.

Landlords will not be able to charge residents for works required by the regulator as a result of the accountable person's negligence.

However, the accountable person will be able to issue contravention notice where residents fail to comply, sanctions and monitoring regimes are yet to be established.

All proposed Health and Safety work will be built into the HRA cyclical works programme and funded from the HRA. Although the full extent of these costs are unknown at this stage, in preparation, the HRA Asset Management Strategy agreed at Cabinet in October 2021 contained provision of £20,606,620 for the next 5 years to meet the statutory compliance requirements and provision has been made in the long-term plan for anticipated costs arising from the Fire Safety Act and Building Safety Bill.

The Twinnedit system is currently being procured and will also be funded from the HRA Asset Management budget.

All works that have been commissioned and completed so far have already been funded from existing HRA budgets.

Legal implications and risks:

The Building Safety Bill 2021-22 is subject to amendment as it proceeds through Parliament.

Cabinet, 26th January 2022

The Bill proposes a regime overseen by a new Building Safety Regulator, with particular emphasis on "higher-risk buildings". The government has also published a draft statutory instrument, the High-risk Building Regulations which was intended to provide more information about the government's intentions for secondary legislation in England once the Bill is enacted.

The Bill creates new:

- Obligations that apply throughout a building's life cycle.
- Requirements relating to the competence of those involved with buildings (including residents).
- Means of enforcement for breach, including criminal sanctions, together with an extension of the limitation period for civil actions.
- Financial costs relating to construction, in the form of a developer levy that must be paid before construction begins.

The Building Safety Bill also proposes:

- Extending the limitation period for claims under section 1 of the *Defective Premises Act 1972* (DPA 1972) (which relates to the "provision" of a dwelling) from six to 15 years, with the new 15-year period applying retrospectively.
- Adding a new section to the DPA 1972, expanding the right to claim so that it covers any work undertaken on an existing dwelling provided that work is done in the course of a business.
- Bringing into force section 38 of the Building Act 1984 (BA 1984), which gives private individuals the right to claim damages where they suffer harm because work on a building has not met Building Regulations standards (including damages arising from death or personal injury).
- Amendments to the provisions within the Fire Safety Order. The amendments to the Fire Safety Order build on the Fire Safety Act 2021, which clarifies that the FSO applies to the structure, external walls and flat entrance doors in buildings containing two or more sets of domestic premises. The amendments provide specific criteria and responsibilities for all Responsible Persons (RPs) undertaking duties under this role.

The Building Safety Bill is extensive and further legal advice may be required in the course of implementing the provisions of the Bill.

Human Resources implications and risks:

It is likely that additional staff resource will be required to undertake a number of roles across all service, given the volumes of projects which are planned across the borough, we will need to recruit and train staff in emerging areas and will likely be competing against the wider construction, regulator and building control sectors for staff with the relevant skills and knowledge. We are already seeing other boroughs and landlords offering significant packages to attract staff, especially in areas such as building control and landlord functions. Both Planning and Housing Property Service are part of the Strategic Workforce Planning Project looking at how we can ensure we have the skills, capacity and capability to develop officers going forward.

All implications for LBH employees will be managed in accordance with the Council's HR policies and processes.

Equalities implications and risks:

Households with protected characteristics are over-represented in social housing and therefore the measures set out in this report to ensure their safety, will have a positive impact on their well-being.

Health and Wellbeing implications and Risks

Having a safe home is essential to individual health and wellbeing, and meeting RSH consumer standards and new Building safety bill be critical in delivering safer housing. We will use works which flow from these changes to ensure future programme of works deliver where possible additional health benefits, through information to residents, specification changes and holistic work programmes.

BACKGROUND PAPERS

Appendix 1 – Landlord Health and Safety Compliance Scorecard.

Appendix 2 – Landlord Health and Safety Compliance Risk Register.