

LANCASHIRE COMBINED FIRE AUTHORITY

PLANNING COMMITTEE

Meeting to be held on 15 November 2021

SUB 18M HIGH RISE RESIDENTIAL UPDATE (Appendix 1 refers)

Contact for further information:

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Table 1 Executive Summary and Recommendations

Executive Summary

Resolution 6–20/21 of Planning Committee minutes dated 12 July 2021 recorded a question from County Councillor Mirfin as to '*whether mid to high-rise buildings were in the same position as high-rise buildings?*'.

The response to this particular question is nuanced as it is linked to the fire safety guidance and legislation applicable at a particular point in time, which has evolved and changed significantly since the Grenfell tragedy and continues to do so at pace.

This paper provides an overview of how the legislation and associated guidance has evolved and how this relates to Lancashire Fire and Rescue Service's (LFRS) increasing duties as the Enforcing Authority for the Fire Safety Order 2005, Fire Safety Bill 2021, and Building Safety Bill (Draft).

In short, it is likely that there are sub 18m residential premises with external wall systems that have flammability performance that would not be acceptable if they had floors over 18m. Government guidance, and thus regulatory capability to address such issues (by any regulator) has evolved significantly in recent months away from a default inference to remove and remediate the cladding (the inferred position immediately post Grenfell) towards a much greater emphasis on proportionality, accepting a limited degree of flammability, and adopting risk assessed approaches.

Thus it is vital that LFRS has clear and unambiguous national guidance to follow so that when enforcement powers relating to external wall systems are conferred upon Fire and Rescue Service's [in October 2021] by virtue of the Fire Safety Bill, the Service (and Fire Authority) is first and foremost able to 'make Lancashire Safer', but also in doing so is able to discharge its legal responsibilities in a manner that matches national expectation, does not cause unjustifiable duress to leaseholders, and does not lead to enforcement action being successfully appealed in a manner that might impact significantly on physical and financial resources of the Authority.

This paper does not detail the wider regulatory and resource issues concerning the new Building Safety Bill as that legislation relates specifically [at this time] to Higher Risk Residential Buildings over 18m which will be jointly enforced by LFRS working as part of the new Building Safety Regulator (with HSE / Building Control). This is being developed and planned to receive Royal assent in April 2022 and be enabled in 2023.

Recommendation(s)

Planning Committee is asked to note the paper.

Background and Information

Building Risk Review

Resolution 6–20/21 of Planning Committee minutes dated 12 July 2021 identified that Lancashire has 69 higher risk residential premises which have all been fully audited under the Building Risk Review process. In addition to reporting back to the National Fire Chief's Council (NFCC), Home Office and Ministry of Housing Communities and Local Government (MHCLG) on the make-up of the external wall systems, the process has allowed inspectors to identify other aspects of fire safety non-compliance.

To date 6 premises in this height range have been identified as having non-compliant external wall systems; all have interim measures in place. A further 3 premises also implemented interim measures; not due to inadequacy of their external wall systems, but instead due to other serious fire safety non-compliance issues such as internal compartmentation breaches or smoke management system defects.

The definition of what constitutes high rise premises varies. The Building Safety Bill will, in future, tightly define Higher Risk Residential Buildings (HRRBs) as all buildings (new and existing) that are at least **18 metres in height or have at least 7 storeys**, and have at least two residential units. The initial Building Risk Review (BRR) data set provided by the NFCC contained premises of 6 floors and above.

Consequently, in Lancashire all residential premises **6 floors and above** have been audited by LFRS Protection staff. This approach has been taken in order to quality assure the data and to ensure that none of the buildings that fall into the 18m or above category were overlooked. It also ensured that risk information was gathered on buildings that fell into LFRS's operational definition of 'high-rise' (6 floors and above) as this allowed risk information to be captured and placed on mobile data terminals. As part of the process protection teams were also asked to identify any additional buildings of 6 floors and above which might have been omitted from the original data.

This approach resulted in the following breakdown of premises:

In line with future Building Safety Bill requirements (**18 metres in height or at least 7 storeys**) LFRS has 38 premises 'in-scope' for the future regulations. All 38 premises have been fully audited and the current outcomes are as follows -

Audited	Full Makeup of EWS ¹ Known	Awaiting EWS Report	Left to Audit
38	19	19	0

¹ EWS: The external wall system made up of the outside wall of a residential building, including cladding, insulation, fire break systems, balconies, and anything else attached to the exterior of the building

Satisfactory	Informal Advice	Notification of deficiency	Enforcement Notice
1	1	30	6

Lancashire has 31 residential premises of 6 floors which have also been inspected as part of the initial BRR programme, with outcomes as follows -

Audited	Full Makeup of EWS Known	Awaiting EWS Report	Left to inspect
31	2	29	0

Satisfactory	Informal Advice	Notification of deficiency	Enforcement Notice
2	1	25	3

Sub 18m residential tall buildings have not been targeted for audit in the same systematic and comprehensive manner as the 18m plus Building Risk Review premises for reasons which are explained in greater detail throughout this report.

The reasons primarily relate to the scale of the housing stock below 18m (the National Property Gazetteer indicates Lancashire currently has 2226 purpose-built flats of 4 or 5 storeys, and 7715 of 3 storeys or less) and LFRS not [yet] having enforcement powers beyond the common areas (Housing have historically been the regulator with primacy for the whole building) and ongoing developments in the guidance against which to inspect and regulate i.e. what standards are acceptable.

Notwithstanding the above, in the past three years Inspectors have audited 79 premises of 4/5 storeys (resulting in 6 enforcement notices and 49 notifications of deficiencies) and 195 premises of 3 storeys or less (resulting in 10 enforcement notices and 137 notifications of deficiencies).

Evolution of Guidance

Shortly after the fire at Grenfell Tower, the independent expert advisory panel advised government to undertake identification screening of residential buildings over 18m tall to identify the type of aluminium composite material (ACM) used.

On 6 July 2017, having spoken to a group of technical experts from a wide range of professions and organisations, the expert panel recommended further large-scale testing of cladding systems. This was undertaken to better understand how different types of ACM panels behave with different types of insulation in fire.

On 21 Nov 2018 MHCLG published specific guidance relating to Aluminium Clad Materials (ACM) [Aluminium composite material cladding - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/744211/Aluminium-composite-material-cladding-GOV.UK-20181121.pdf)

The original guidance evolved several times in the following two years as new intelligence and information came to light and it was recognised that ACM was not the only External Wall System material that might cause a building to behave unexpectedly in fire. This culminated in the publication on 20 January 2020 of what is now referred to as the 'Consolidated Advice Note' or CAN which includes other types of EWS systems and insulation.

[Building safety advice for building owners including fire doors January 2020.pdf \(publishing.service.gov.uk\)](#)

Crucially in the context of the question from Councillor Mirfin, the CAN referred to buildings 'of any height'. Two relevant paragraphs are extracted from the text for context:

1.5. Following recent events, the Expert Panel has significant concerns that consideration is not routinely given to Requirement B4 of Schedule 1 to the Building Regulations (on external walls resisting the spread of fire), particularly in circumstances where the guidance in Approved Document B is less specific. Requirement B4 is clear and requires that "the external walls of the building shall adequately resist the spread of fire over the walls and from one building to another, having regard to the height, use and location of the building." **The need to assess and manage the risk of external fire spread applies to buildings of any height.**

1.6. The government has announced its intention to introduce a Fire Safety Bill which will clarify that building owners and managers of multi-occupied residential premises of any height must fully consider and mitigate the risks of any external wall systems and fire doors in discharging their duties under the Fire Safety Order. **We strongly advise building owners to consider the risks of any external wall system and fire doors in their fire risk assessments, irrespective of the height of the building, ahead of the planned clarification.**

This guidance, and other discussions at the time, seemingly led to an ambiguous regulatory position as Building Regulations had not previously expressly prohibited the use of combustible materials on external cladding in buildings under 18m. The CAN Guidance was open to subjective interpretation and a situation wherein buildings that were compliant at time of their *new build* may be judged to be 'non-compliant' *retrospectively* (not something that usually happens in UK Building Law).

MHCLG sought to clarify by publishing additional guidance that advised their sub 18m concerns related predominantly to ACM. [Title \(publishing.service.gov.uk\)](#)

By this stage the mortgage and survey industry had already reacted to the CAN and created the EWS1 survey form process that leaseholders had to have completed for residential buildings of any height before their apartments could be sold. As the original EWS1 form was applied to buildings of all heights, and there was [is] a national shortage of chartered engineers able to undertake the assessments this led to thousands of leaseholders being unable to complete the EWS1 process, or with EWS1 outcomes that meant they were unable to sell their homes.

Fast forward to 21 July 2021 and the Rt Hon Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government made a written statement to parliament entitled 'Proportionality in Building Safety; seeking to clarify the national position [Proportionality in building safety - GOV.UK \(www.gov.uk\)](#)

The key elements of the written statement are:

- Technical evidence has been provided by an independent body of experts [Independent expert statement in building safety in medium and lower-rise blocks of flats - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/671117/Independent_expert_statement_in_building_safety_in_medium_and_lower-rise_blocks_of_flats_-_GOV.UK_(www.gov.uk).pdf);
- Any remediation or mitigation work faced by leaseholders in blocks between 11 and 18m in height (typically, four to six storeys) needs to be appropriate, proportionate and affordable;
- Initial results of surveys of medium rise blocks of flats indicate that the vast majority are free from serious safety risks associated with unsafe cladding requiring remediation, and from any associated costs. Only a small proportion of medium rise blocks of flats might have cladding systems that could require further assessment. The extent of cladding and other materials on the exterior of buildings varies greatly. The initial results show that not all cladding systems have combustible materials and not all combustible materials in the external wall need to be replaced. We expect that a significant number of buildings that will require further investigation will not require costly remediation to remove unsafe cladding but could be made safe through other more cost effective measures or do not require any work to achieve an appropriate level of safety. Further work is being undertaken by the Department between now and September to establish the extent to which unsafe cladding needs to be replaced, or whether it can be suitably mitigated through fire protection and prevention measures;
- Furthermore, in most cases in blocks of flats below 18m where fire safety risks are identified (such as the presence of combustible cladding), adequate levels of safety can be achieved for residents by implementing cost effective risk mitigations (such as smoke and fire detectors and alarms, adequate means of escape, sprinklers and smoke control systems). Where these risk mitigations are not present, their introduction, or other cost-effective measures or enhancements, can mitigate risks identified without unnecessarily financially burdening those involved. Where EWS1 forms and assessments have already been completed for buildings below 18m and have identified costly remediation work we strongly recommend that these assessments are reviewed to ensure that the proposed solution is cost effective and proportionate;
- However, based upon the evidence available, it is clear that in blocks of flats below 18m the risk aversion that we have seen in the mortgage and insurance markets - in the identification of significant and costly construction works to completely replace external wall systems or in the additional scrutiny being applied through encouraging or even mandating EWS1 assessments - is unjustified and unnecessary. There should not be an assumption that there is significant risk to life unless there is clear evidence to support this;
- Although nothing in this statement contradicts the government's Consolidated Advice Note (CAN), over the coming months government intends to withdraw the CAN as a new industry standard, developed by the British Standards Institution (Publicly Available Specification 9980) and further guidance from the Home

Office in relation to the Fire Safety Order is published. In line with the CAN, this new guidance will support a risk based proportionate approach and will help guide responsible persons on their duties and the approaches they should take, and provide a suitable framework for professional fire risk assessments that are proportionate to risk, undertaken periodically in the usual assessment cycle.

Conclusion and current position:

Refreshed guidance for sub 18m regulation is still under review and Fire and Rescue Services await the new Publicly Available Specification (PAS) 9980 and further associated guidance from the Home Office which will clarify the type of regulatory action which is appropriate, proportionate and can be consistently applied without leading to undue duress/cost to freeholders and leaseholders and risk to LFRS/public purse in terms of potentially costly (resource / financial) legal appeals.

Evolution of Regulation

Throughout the period detailed above Fire and Rescue Services (FRS) have not had regulatory powers to enforce the remediation of unsatisfactory external wall systems. FRS' have had the legal power, through the existing Fire Safety order, to require a suitable and sufficient fire risk assessment, which includes the external wall system, but could not legally enforce the findings if the EWS was judged to be inadequate. Enforcement powers to date sat with LA Housing however the biggest blocker to remediation has arguably not been a lack of regulation, but rather the financial challenges involved in doing so. A significant proportion of freeholders and leaseholders want to comply, as they want to be safe in their homes and be able to buy/sell them, so regulation isn't necessarily the only component of compliance.

The current position with regard to access to remediation funding and interim measures such as waking watch relief funding etc – which apply only to buildings over 18m – are available at [Building Safety Programme - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

The Fire Safety Bill received Royal Assent on 29 April 2021 and latest indications are that it will come into force [as the Fire Safety Act] on the 19 October 2021. The Act seeks to expand the scope of the existing Fire Safety Order (FSO) and clarifies that where a building contains 2 or more sets of domestic premises, the FSO applies to:

- the building's structure and external walls (including windows, balconies, cladding, insulation and fixings) and any common parts
- all doors between domestic premises and common parts such as flat entrance doors (or any other relevant door)

[Fire Safety Act - addendum - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

LFRS has been advised that the Fire Safety Act will be accompanied by an assessment tool that freeholders and managing agents will be able to use to prioritise the speed with which they have their external wall systems assessed. This is a necessary addition to the implementation of the Act to manage the regulatory impact as nationally the new legislation brings an additional 1.7m premises into scope and there are not enough qualified and chartered engineers to assess all premises of all heights immediately.

At time of writing the prioritisation tool has not been published however LFRS has been verbally informed (through national strategic briefings from the NFCC) that the tool is likely to take into account factors such as building height, occupancy etc and result in 5 outcome tiers, the highest risk requiring almost immediate assessment and the lowest around 18 months. The briefing indicated that premises under 18m area likely to fall into the lower priority tiers.

In addition to the Fire Safety Act changes, Parliament are also shortly due to consider the addition of eight new Regulations to the Fire Safety Order resulting from the Grenfell Tower Inquiry Part I recommendations. Indications are the Regulations could potentially come into force as early as April 2022. The regulations will include the need for Responsible Persons (for varying heights of residential premises) to:

- Provide Floor Plans to FRS' electronically;
- Provide Information Boxes containing building and emergency plan information;
- Have, and provide to FRS', external wall construction information;
- Notify FRS' if firefighting lifts or equipment are unavailable for more than 24 hours;
- Undertake fire door checks on common areas and apartment entrance doors;
- Provide fire fighter's way finding signage;
- Provide FRS' with current evacuation plans
- Provide residents with relevant fire safety information regularly.

All of the above will apply to HRRBs above 18m, some will apply to residential premises below 18m. Each regulation will be accompanied by a guidance note setting out how compliance can be achieved.

To support local freeholders, leaseholders and managing agents through the regulatory change the LFRS Protection Support team will update the LFRS website content as and when new guidance becomes available and intends to write to larger premises advising of the forthcoming changes and the need to prepare. The primary purpose of the letter will be to raise awareness of the importance of effective fire doors and encourage early and self-motivated compliance as intelligence from audits to date suggests fire door maintenance is an area where compliance may be lacking.

Risk Based Inspection Programme

LFRS allocates finite inspecting officers time in accordance with its Risk Based Inspection Programme (guidance attached as appendix 1).

Sub 18m premises are included in the Risk Based Inspection Programme and will be prioritised in 2022/23 which will be the optimal time to do this as the new Powers are placed on Fire and Rescue Services and national guidance / prioritisation tools (against which any inspection / enforcement must be undertaken in order to satisfy the regulators code and enforcement concordat) will hopefully have been released.

It is important to emphasise that the Fire Safety Order is goal-based H&S legislation with an assumption towards self-compliance i.e. premises should seek to understand and comply with legislation irrespective of whether they have been audited. A significant

number of residential premises do this, are responsibly managed, and employ competent experts who follow legislation and ensure their premises comply irrespective of whether they are audited by a regulator. In these cases, LFRS needs to provide minimal business support to assist compliance.

In some cases, particularly those which are not part of national managing agent chains or are small scale tenant management companies, knowledge of regulatory change can be lower and these are the premises where LFRS will focus business support to raise awareness and assist compliance.

Consequently audits by LFRS inspectors are intended to verify compliance and should not be the means by which premises are prompted to achieve it.

Financial Implications

HIGH – If LFRS embarks on enforcement action/s with sub 18m residential premises, ahead of detailed guidance, which is then subject to appeal, the subsequent costs in terms of resources and finances could be significant.

Sustainability or Environmental Impact

Low

Equality and Diversity Implications

Low

Human Resource Implications

Low

Business Risk Implications

HIGH – see Financial Implications.

Table 2 Details of any background papers

Paper:	CFA Planning Committee
Date:	12 July 2021
Contact:	Ben Norman, ACFO
Reason for inclusion in Part 2 if appropriate:	