

Meeting date: 2 December 2020
Report to: Resources & Delivering Value Scrutiny Board



Subject/report title: Follow up report – ‘Implications arising from the Hackitt Review post Grenfell’
Report from: Chief Finance Officer SCH/Assistant Director of Finance and Property Services & Executive Director of Assets and Development – Solihull Community Housing
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Wards affected:

All Wards | Bickenhill | Blythe | Castle Bromwich | Chelmsley Wood |
 Dorridge/Hockley Heath | Elmdon | Kingshurst/Fordbridge | Knowle |
 Lyndon | Meriden | Olton | Shirley East | Shirley South |
 Shirley West | Silhill | Smith’s Wood | St Alphege

Public/private report: Public

Exempt by virtue of paragraph: N/A

1. Purpose of Report

1.1 To Provide the Scrutiny Board with an update on current Building Safety legislation and activities undertaken and planned to be undertaken as a direct result of the proposals from the Hackitt review of Building Regulations and fire safety.

2. Decision(s) recommended

2.1 To note and comment on the implications arising from the Draft Building Safety Bill to provide to Cabinet.

3. Matters for Consideration

3.1 Members will recall in December 2019 a report was presented at Scrutiny Board to provide a brief overview of the proposals from the Hackitt review of Building Regulations and fire safety and the potential financial implications for SMBC and its partners. Whilst the legislation relates to all buildings, this report focuses particularly

on the Council's housing stock managed by Solihull Community Housing (SCH).

- 3.2 Further to existing legislation the government published the draft Building Safety Bill (BSB) on 20 July 2020, setting out proposed reforms to the building safety regulatory system introducing a new regulatory regime for all buildings classed as higher-risk and any new build as well as proposed regulatory changes that will impact all building work.
- 3.3 The Bill also refers to strengthening the residents' voice and aims to deliver better performance of all buildings including the management of fire and structural safety risks in new and existing buildings.
- 3.4 The broad outline of the Bill is in keeping with the Hackitt Review recommendations ensuring there is a 'golden thread' of fire safety and building information that will be digitally held to specific standards and carry through from the design and construction stages into the occupation and management phase. At the occupation stage there will be duties imposed on the 'accountable person' and a 'Building Safety Manager' (BSM) to ensure that the building is safe and that any risks are thought about in advance and, where possible, steps are taken to reduce them.
- 3.5 The initial assessment of the strategic impact of the draft bill can be summarised under the following headings:
 - **Resources**
 - **Resident Engagement**
 - **Financial**
 - **Stock Viability – (Options Appraisal)**
 - **Record keeping and processes**
 - **Oversight**
- 3.6 **Resources** required include the need to employ competent staff to increase the depth and resilience of departments across the Council and SCH to meet the requirements of the draft Bill. This will involve not only BSMs but also administration officers (Building Safety Coordinators) would also be required to support the BSM role and additional onsite staff and specialist contractors will also be required. Work is currently ongoing to quantify the scale of the resources required.
- 3.7 **Resident Engagement** is key to capturing the voice of residents. We need to be able to demonstrate an auditable process of capturing safety related issues, dealing with them and closing the circle with a response and/or action. This will involve additional IT systems and potentially more staff resources. We also need to ensure our residents are aware of the duties that the Bill will put on them and consider how we will monitor and act where there is non-compliance.
- 3.8 **Financial** implications resulting from additional resources whether staff or equipment are also yet to be quantified.

- 3.9 **Stock Viability** the investment and ongoing financial requirements arising from the Bill may bring into question the viability of retaining some of the existing stock. Work to define an options appraisal will be required in the longer term and may not be deemed practical.
- 3.10 **Record keeping and Processes** will be required to ensure legislative requirements are met and provide an auditable record of all activities undertaken. All stakeholders need to be aware of individual and corporate requirements and this will require training for new ways of working collaboratively.
- 3.11 **Oversight** - Due to the size of the Council's housing stock, and risks associated, we will need a clear framework of accountability for all. The Council as the registered provider of social housing is the 'Accountable Person' will need to have detailed oversight, with some level of technical input, and a robust governance framework in order to be satisfied that all duties and responsibilities are being delivered in line with the new regulatory and legislative framework.

Draft Building Safety Bill – Summary

Part 1 Overview

- 3.12 Introduces the Bill and gives an overview of the more stringent regulatory regime which involves the **introduction of dutyholders** that will have accountability and statutory responsibilities for managing risks across the design, construction, and occupation of buildings on an ongoing basis.
- 3.13 In the draft Bill, a higher-risk building is defined as a building that:
- Is 18m and over, or has more than six storeys – whichever is reached first.
 - and contains two or more rooms for residential purposes, or two or more dwellings, or student accommodation
 - However, the definition of 'room' excludes a room in a residential care home, temporary accommodation such as a hotel, or a secure residential institution such as a prison

The 18m height is currently under review and is expected to be reduced to 11m for all new build activity.

- 3.14 This definition equates to 37 Council dwelling buildings currently within scope and there are a further 9 buildings that we manage in the same way:-
- Saxon Court – 52 units
 - Ipswich House – TA accommodation
 - 7 buildings known as 'ex-sheltered schemes'

3.15 There will be **gateway points** (stop/go decision points) which will provide rigorous inspection of regulatory requirements to help ensure building safety risks are considered during planning, design and construction. These are:-

- Creating building information to be stored and updated through the Gateway process and throughout the building's lifecycle;
- Mandatory reporting to the new Building Safety Regulator of fire and structural safety occurrences which could cause a significant risk;
- Building registration and a certificate that confirms a building is fit for occupation. This will be periodically reviewed;
- Creating an ongoing duty on the Accountable Person (who is the dutyholder in occupation). This duty will be to assess building safety risks, taking all reasonable steps to prevent the occurrence of a major incident in the building as a result of these risks;
- A statutory requirement for the Accountable Person to provide a 'Safety Case Report' which demonstrates how building safety risks are being identified, mitigated and managed on an ongoing basis;
- Requiring the Accountable Person to appoint a competent Building Safety Manager to support them in managing fire and structural safety risks in the building day-to-day;
- Requirements to engage and develop a strong partnership with residents to keep the building safe through greater transparency and effective complaints handling.

Part 2 – Sets up the new Regulator

3.16 The Bill establishes the Health and Safety Executive as the Building Safety Regulator. One of the Building Safety Regulator's three functions is to implement the new regime for higher-risk buildings. It contains definitions of "building safety risk" and "higher-risk building" and sets out the new process of regulation for the planning and development of higher-risk buildings.

Part 3 – BUILDING ACT 1984

3.17 Amends the Building Act 1984 as it applies in relation to England to provide that the regulator is the building control authority in relation to higher-risk buildings, and requires the regulator to establish and maintain registers of building control approvers and building inspectors.

Part 4 – Higher Risk Buildings

3.18 This is the part of the draft bill that refers specifically to occupied higher risk buildings, imposes duties on accountable persons and building safety managers.

- 3.19 Section 61 sets out the definition of the Accountable Person. It is currently understood that where the council own the buildings and the ALMO manages them on their behalf the council will be the accountable person but the ALMO will be the accountable person for any homes it owns itself.
- 3.20 Section 62 then sets out that the accountable person must register the building with the regulator in a prescribed fashion. Section 64 sets out a duty to then make an application under section 65 for a building assurance certificate in relation to the building.
- 3.21 To get a building assurance certificate the accountable person must show it has fulfilled all of its requirements: appointed a suitable building safety manager, assessed the building safety risks and taken steps to prevent major incident, developed a safety case report and be fulfilling their duties under the mandatory occurrence reporting system and providing relevant information to the regulator. They must also have produced a residents' engagement strategy. The certificate should then be displayed in a conspicuous place within the building.
- 3.22 The regulator will have powers to veto the appointment of a particular building safety manager if they believe them to be unsuitable. A Building Safety Manager can be the ALMO but then the building safety manager must as soon as reasonably practicable appoint an individual acting under its control to be the nominated individual for the building.
- 3.23 Where a council or Arms-Length Management Organisation (ALMO) has many higher-risk buildings MHCLG officials have stated that this gives organisations scope to nominate different individuals to different buildings in order to be able to carry out the functions. The regulator will also have the power to direct the building safety manager to change its nominated individual within the specified period if it feels they are unsuitable.
- 3.24 It will be for the accountable person to assess the building safety risks relating to the building, draw up the fire safety case, carry out any work to prevent a major incident and develop a resident engagement strategy. Again all or any of these tasks could be delegated to the building safety manager to actually carry out as long as the accountable person has oversight and understands they are ultimately accountable for fulfilling those duties.
- 3.25 Section 76 provides for the management of the building by the building safety manager and they have to manage it in accordance with the safety case report for the building.
- 3.26 Section 77 sets out a duty for the accountable person to have adequate insurance against loss (or loss of a prescribed kind) arising as a result of a building safety risk materialising as regards to the building. The accountable person must establish and operate a mandatory occurrence reporting system but it is the building safety manager

who has a duty to give prescribed information to the regulator by the prescribed time and in the specified way.

- 3.27 The accountable person must keep copies of prescribed documents in accordance with prescribed standards, give those to the Regulator, residents, owners or others as directed by the Regulator. They must also pass all of these documents on to a new accountable person if that changes.
- 3.28 Section 84 sets out the complaints procedure which the accountable person must follow as soon as reasonably practicable after the relevant time establish a system for the investigation of relevant complaints.

Organisational Delivery Implications

- 3.29 Whilst the accountable person has most of the duties in the bill, MHCLG have agreed that all or any of these tasks could be delegated to the building safety manager to actually carry out as long as the accountable person has oversight and understands they are ultimately accountable for fulfilling those duties.

Table 1 below lists the duties and the role accountability.

Table 1

Duty	Accountable Person	Building Safety Manager
Register the building with the Regulator	✓	
Apply for a Building Assurance Certificate and display it in the building	✓	
Appoint a suitable Building Safety Manager	✓	
Assessed the Building Safety Risks	✓	
Take steps to prevent a major incident	✓	
Develop a Safety Case Report and keep it up to date	✓	
Produce a Resident Engagement Strategy	✓	
Have adequate insurance against loss under building safety management	✓	
Appoint an individual as the nominated individual for the building		✓

Manage the building according to the safety case report		✓
Establish and operate a mandatory occurrence reporting system	✓	
Provide information to the Accountable person and the Regulator as required		✓
Set up a complaints procedure for the investigation of relevant complaints	✓	

Actions taken to date in response

- 3.30 Although some legislation is in draft and subject to a parliamentary process the Council and SCH have started to make preparations.
- 3.31 A Council-led Building Safety Board has been established chaired by the Assistant Director (Communities and Partnerships) to oversee and inform the approach to Building safety across the Council housing stock. The Board has representation from SCH, Building Regulation, Finance, Property Services, Housing and Health and Safety to ensure appropriate levels of collaboration, support and challenge.
- 3.32 The Building Safety Board will be supported by an external building safety specialist and an internal Project Manager yet to be appointed. This approach has been supported by the Strategic Housing Framework Board and confirms the commitment to keeping residents safe.

4. What options have been considered and what is the evidence telling us about them?

- 4.1 The “do nothing” approach is not acceptable. The Council and SCH will need to act upon the changes to be compliant with the latest regulations.

5. Reasons for recommending preferred option

- 5.1 The Government has advised that they plan to adopt all of the recommendations from the Hackitt review. The process of implementing these is underway and it will be implicit on all authorities to ensure they understand and plan for the impact.
- 5.2 Although subject to further Parliamentary approval the Draft Building Safety Bill is expected to become legislation in its entirety.

6. Implications and Considerations

- 6.1 State how the proposals in this report contribute to the priorities in the [Council Plan](#):

Priority:	Contribution:
<p>Economy:</p> <ol style="list-style-type: none"> 1. Revitalising our towns and local centres. 2. UK Central (UKC) and maximising the opportunities of HS2. 3. Increase the supply of housing, especially affordable and social housing. 	<p>Meeting the requirements from the bill will ensure the Council's housing stock is more attractive to tenants.</p>
<p>Environment:</p> <ol style="list-style-type: none"> 4. Enhance Solihull's natural environment. 5. Improve Solihull's air quality. 6. Reduce Solihull's net carbon emissions. 	<p>Some of the work detailed will have a beneficial impact on reducing the net carbon emissions within the Council's housing stock.</p>
<p>People and Communities:</p> <ol style="list-style-type: none"> 7. Take action to improve life chances in our most disadvantaged communities. 8. Enable communities to thrive. 9. Sustainable, quality, affordable provision for adults & children with complex needs. 	<p>All of the proposals set out in the Draft Building Safety Bill should further improve safety and ensure risks are reduced.</p>

6.2 Consultation and Scrutiny:

- 6.2.1 The Council have set up a Building Safety Board to oversee all aspects of Building Safety. In addition Quarterly health and safety updates, including fire safety are reported to the SMBC/SCH Quarterly Monitoring Board (QMB), SMBC Corporate Health and Safety Board, the SCH Executive Leadership Team and SCH Full Board. We also work closely with West Midlands Fire Service to inform our policy and approaches to fire safety. In addition SCH are advised on all Health and Safety issues and legislation by the Councils Health and Safety Support Team.
- 6.2.2 Additional layers of operational scrutiny and oversight comes through the SCH Corporate Health and Safety Group and Building Safety Management Group, both of which includes representation from the Councils Health and Safety Support Team.

6.3 Financial implications:

- 6.3.1 The Council currently has a capital programme of £23.451M for the Housing Revenue Account (HRA) for 2020/21 managed by SCH. Of this budget, £13.766M is used to invest in maintaining the current stock. In the event the Hackitt Review leads to material investment being required in the Council's housing stock, the capital programme may need to be reprioritised to accommodate an early implementation.

- 6.3.2 Future long term financial planning will also be considered as part of the Council's HRA Medium Term Financial Strategy and additional financing may be considered through either the use of HRA funds in year, or through additional borrowing if required.
- 6.3.3 Where there are minor changes to repairs and maintenance plans, there is further funding available through revenue budgets held by SCH totalling £8.782M in 2020/21.
- 6.4 Legal implications:
- 6.4.1 Details on the legislation are highlighted within the report. The Council will need to comply with the requirements of the legislation once the Act is passed. Whilst this remains a draft parliamentary Bill, its progress through parliament will be monitored to ensure any changes re identified and incorporated into the work identified in this report.
- 6.5 Risk implications:
- 6.5.1 There are two relevant risks listed on the corporate risk registers at SCH and SMBC which are relevant to this report:
- (a) Failure to have adequate fire safety arrangements in place for buildings that SCH has delegated duty for i.e. High Rise Buildings, Low Rise Buildings with Communal Areas.
 - (b) Failure to have adequate fire safety arrangements in place for buildings that SCH does not have delegated duty for i.e. Domestic Houses.
- 6.5.2 These risks have been scrutinised by the SCH Board and SMBC Audit Committee respectively for the SCH and SMBC risks. Both organisations recorded that the risk is being appropriately managed through existing mitigations.
- 6.6 Equality implications:
- 6.6.1 As highlighted above, SCH will carry out extensive consultation with tenants and leaseholders affected by any significant scheme. SCH will ensure that wide-ranging opportunities for participating in the consultation are made available to tenants and leaseholders to get diverse opinions and views.
- 6.6.2 All written information for tenants and leaseholders about the works will be in plain English and, where unavoidable jargon is used, it will be clearly explained.
- 6.6.3 SCH will arrange one-to-one discussions with people who have communication barriers, for example because of hearing and visual impairment or do not speak or read English.

7. List of appendices referred to

- 7.1 N/A

8. Background papers used to compile this report

8.1 Building Safer Futures - Independent Review of Building Regulations and Fire Safety - Dame Judith Hackitt, published May 2018.

8.2 Draft Building Safety Bill

8.3 Grenfell inquiry Phase 1 – Moore-Bick

9. List of other relevant documents

9.1 N/A