

The role of local authorities

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Housing Act 2004

May 2018 – Direction under s.3(3), HA 2004 requiring local housing authorities to review housing conditions in their area and pay particular regard to ACM cladding on residential buildings over 18m

Must notify MHCLG of what they find

Must also review fire safety (generally) at those buildings

HHSRS assessment

Carry out a Housing Health and Safety Rating System assessment

- Assess risks to hypothetical occupier in respect of prescribed list of hazards
- Operating Guidance (2006) and Supplemental Guidance (2019)

“presence of ACM... cladding, or any other cladding and filler or core that is combustible, would be a deficiency that contributes to the Hazard”

Cladding is an “external common part” (*cf* RR(FS)O 2005)

Should survey interior and exterior common parts “private balcony areas and terraces, service risers and ducting” and look for *all* fire safety issues

HHSRS assessment (cont...)

Interim measures *cannot* reduce the risk that a hazard poses but *can* go to the time allowed for compliance

Category 1 or Category 2

- Duty or Power

What notice to serve?

Improvement notice most likely (‘tho prohibition notice also possible)

Specify remedial works and a time for compliance

And who do you serve?

- Cladding is a “common part” so the improvement notice should be served on the person who is both the ‘owner of the building’ and, in the opinion of the LA, ‘ought to take’ the remedial action (Sch 1, para 4).

Owner?

- Owner is
 - a person . . . who is for the time being entitled to dispose of the fee simple in the premises' (the freeholder); or,
 - 'a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceeds 3 years'; or
 - for common parts, an owner of the building or part of the building concerned, or (in the case of external common parts) of the particular premises in which the common parts are comprised' (s.262 and Sch 4)

Owner (cont)

So freeholder, intermediate leaseholder of the whole or part of the common parts and a flat leaseholder are probably all owners.

But an RMC or RTM company isn't (*Hastings BC v Braear Developments Ltd* [2015] UKUT 0145 (LC))

So need to identify owner who ought to take the action specified

- Identify the “practicality of compliance”
- Serve the notice on members of the RTM company?!

Appeals

Full merits appeal to the FTT

- Has the right owner been served?
- Are the contents of the notice sufficient?

Appeal acts to suspend the effect of the notice. So building remains unsafe.

Other problems

Funding works in default?

Criminal prosecution of off-shore landlord?

Thank you for listening

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