



Common Ground Approach to Fire Safety

Introduction

At the October 2023 meeting of the Fellows of the IRPM, Andrew Bulmer, MD of The Property Institute asked the Fellows if they would like the Property Institute to assume responsibility for training with respect to fire safety.

It's fair to say that little else was discussed beyond that question and that EVERY single Fellow was in favour of this. The prevailing view was that utter confusion and fear reigned specifically;

1. The distinction between legislation and recommendation.
2. How do we implement good fire safety without bankrupting leaseholders.
3. How do I ensure I don't get sued (all parties who could be classed as either "responsible" and/or "accountable" persons).

Question 3 was also a salient issue for the TPI who expressed concern that if they DO press ahead with training that they could open themselves up to potential legal challenges in the future if something goes wrong.

Post Grenfell

Grenfell was a truly horrible event and precipitated the expansion of the Fire safety Order 2005 via the Fire Safety Act 2021.

As an active managing agent at the time of the Grenfell fire, I can only describe the experience immediately after as "government bombardment". It seemed like every agency that thought it might have some sort of legal obligation towards fire safety was now bombarding managing agents with information; It was extremely difficult trying to sort out the wheat from the chaff and actually determine the true risk of fire within the Common Ground portfolio.

Internally, we reviewed every single fire safety review we'd had done and attempted to determine if any of our sites were genuinely at a level of fire risk that could be deemed unacceptable. At that time, we deemed only one site in that category due to a clear lack of fire-stopping within communal areas and the flats themselves.....It still took some 7 years and an MP's intervention before we were able to rectify these issues due to apathy of the building insurers and original developer.

The initial Government response was to attempt to legislate and they initially thought that, as with all things leasehold, they could dump the costs on leaseholders. The subsequent backlash from leaseholders meant the Government had to approach the original building developers to help subsidise the costs and this all took time.

The Government eventually settled on implementing much more stringent health and safety measures on buildings above 18 metres in height. The fire safety Act 2022 is fairly clear on what has to be done if your building is 18 metres or higher.

For buildings between 11-18 metres, there are certain additional actions now required such as checks of flat front doors and fire doors in communal areas.

For buildings under 11 metres, there is very little guidance as to what is good practice versus what is a legal requirement.



Guidance in the Legislation

With reference to the Fire Safety Order (2005)

Under Part 2, (Fire safety duties), clause 11 states as follows

Fire safety arrangements

11.—(1) The responsible person must make and give effect to such arrangements as are appropriate, having regard to the size of his undertaking and the nature of its activities, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

(2) The responsible person must record the arrangements referred to in paragraph 1

Could this be any more open to interpretation especially in buildings below 11 metres?

...and the somewhat menacingly, *part 4, (Offences and appeals) states*

"Onus of proving limits of what is practicable or reasonably practicable

34. In any proceedings for an offence under this Order consisting of a failure to comply with a duty or requirement so far as is practicable or so far as is reasonably practicable, it is for the accused to prove that it was not practicable or reasonably practicable to do more than was in fact done to satisfy the duty or requirement."

The use of terms such as "appropriate arrangements" and "reasonably practicable" are extremely subjective especially in the context of cost vs benefit.

Fire-safety assessments post-Grenfell

Given the enormity of the Grenfell disaster, the subsequent publicity and enquiry, our experience with fire safety assessments post-Grenfell is that every possible action that could be taken to mitigate fire risk is included in the reports with no thought about what is realistic, achievable and proportionate.....or to use Government legal parlance what is "appropriate" or "reasonably practicable"

Many freeholders/RMC's/RTM's/managing agents have felt duty-bound to attempt to implement everything suggested in their post-Grenfell HSFRA's with little appetite for carrying the liability of a fire-incident in their building.

Much of this stems from fear but also extremely poorly-drafted legislation which offers little in the way of clear guidance and is massively open to interpretation. No doubt case law will follow to guide us but this won't happen quickly; In the meantime, the Government appears to have left the residential leasehold management industry to figure it out.....but following Grenfell, not many want to raise their head above the parapet.

This has left the residential leasehold management sector paralysed with respect to guiding leaseholders on reasonable and appropriate arrangements for fire safety.



Conclusions

I have interpreted the menacing wording of clause 34, Part 4 as “Your damned if you do and damned if you don’t”. In other words, no action is not an option and a “wait and see” approach could be as dangerous, if not more, than affirmative action.

The scale of the Grenfell disaster was, in my opinion, largely down to failings with command and control. Incredibly, a period of one hour and seventeen minutes elapsed between the emergency services being aware of fire penetrating the flats and the “stay put” advice being revoked. Indeed, the stairs (the sole means of escape) were found to be compliant with the legislation of the day and had the capacity to allow residents sufficient time and opportunity to escape the fire.

A whole building catching fire in the way that the Grenfell tower did is an unprecedented event but compliance with the regulations of the day would have saved many more lives.

I agree with the legislative changes that have occurred relating to buildings above 18 metres. Unfortunately, for buildings below 18 metres, the legislation is far too vague and the culture of fear that has permeated the entire fire safety industry means that fire risk assessors are making recommendations that are simply not achievable or proportionate to the risk.

I have concluded that all the Government has now achieved is poorly drafted legislation that does nothing to guide but everything to create fear, confusion and uncertainty”

Actions

In this regard, as the Owner of Common Ground (and almost certainly a “responsible person”) I have decided that we will work to the following principles;

1. Where compliance actions can be 100% controlled by Common Ground, we will implement these (e.g record keeping, communication).
2. We will look at each building below 18 metres in isolation and determine what can be done in relation to the service charge budgets in place and what is VIABLE in terms of increasing these budgets. Section 19 of the LLTA 1985 requires “reasonableness of service charge expenditure” so, in theory, over-egging the fire safety could be construed as “unreasonable”
3. We will attempt to determine actual risk rather than fall into the trap of spending leaseholder funds to alleviate fear. We will use a data-based approach. i.e. we will implement fire safety recommendations based on the statistical risk of fire starting with the highest risk factors (leaseholders setting fire to their own flat) and working towards the lowest.
4. We will assess each building we manage based on its individual characteristics and try to define a framework for each building we manage as to what is “reasonable and appropriate” and with reference to Section 19 of the landlord and tenants act 1985.



References

Grenfell Tower Inquiry: Phase 1 Report Review, published October 2019

Fire Safety in purpose-built flats. Local Government Association published May 2012

<https://www.gov.uk/government/publications/fire-safety-england-regulations-2022>

The Fire Safety Order 2005

PAS 79-2:Fire risk assessment, British Standards Institute published December 2020

A selection of risk assessments compiled for Common Ground managed properties (all assessors details withheld).

Footnote

In writing this article, I have sought the advice of the following organisations:

- Oxfordshire Fire Service
- The All Party-Parliamentary Group - fire safety and rescue group
- 4-Site Consulting
- The Institute of Residential Property Management
- Dwellant

The content of this article is the authors interpretation of face to face meetings with officials from each of the above organizations and may not necessarily be the views of those officials or organizations.