

<p>Cabinet</p> <p>24 November 2021</p>	 <p>TOWER HAMLETS</p>
<p>Report of: Ann Sutcliffe - Corporate Director, Place</p>	<p>Classification: Unrestricted</p>
<p>Shadow (Residential) Building Safety Framework</p>	

Lead Member	Councillor Danny Hassell, Cabinet Lead Member for Housing
Originating Officer(s)	Karen Swift, Divisional Director of Housing & Regeneration
Wards affected	All wards
Key Decision?	Yes
Reason for Key Decision	Is significant in terms of its effects on communities living or working in an area comprising two or more wards.
Forward Plan Notice Published	13 September 2021
Strategic Plan Priority / Outcome	A borough that our residents are proud of and love to live in; A dynamic outcomes-based Council using digital innovation and partnership working to respond to the changing needs of our borough.

Executive Summary

This report seeks Cabinet's approval to develop a LBTH/THH Shadow (Residential) Building Safety Framework (the framework) as outlined in Appendix 1 of this report.

The framework is recommended to be implemented in the interim to prepare for the impending Building Safety Act. The framework outlines new roles which will be established within the Council and THH that will support the delivery of the new building safety regime for HRA/Council-owned residential stock including commercial units which are in scope of the Building Safety Bill. The Council has 74 blocks within scope of the Building Safety Bill.

Recommendations:

Cabinet is recommended to:

1. Approve the LBTH/THH's Shadow (Residential) Building Safety Framework as outlined in Appendix 1 to this report, noting that it is an interim framework which is subject to change pending the Building Safety Bill progressing through Parliament.
2. Approve delegated authority for Corporate Director of Place to recruit to the new Council role of Building Safety Lead (Client Team).
3. Appoint THH as the Interim Building Safety Manager.
4. Note that in due course amendments will be required to the Council's Constitution to delegate appropriate responsibilities to the Building Safety Lead (Client Team).
5. Note that any required budget to fund the new building safety roles will be applied for through the budget setting process.
6. Consider a further report on the recommended final (Residential) Building Safety Framework pending the Building Safety Bill passing through the final stages in Parliament or when the requirements of the impending Act become clear.

1. REASONS FOR THE DECISIONS

- 1.1. It will be a statutory requirement for all landlords of applicable high-rise buildings to adhere to the Building Safety Act once implemented, which is anticipated to be between April 2023 to January 2024. The Shadow Building Safety Framework will enable the Council in collaboration with THH to prepare for the emerging Act by having a framework, which will enable the preparation and planning for the forthcoming Act and providing safe homes for our residents.
- 1.2. The framework will provide clear lines of responsibilities.
- 1.3. To mitigate any risk to the Council of prosecution by the soon to be established Building Safety Regulator, the Council must be prepared to comply with the upcoming Building Safety Act.
- 1.4. To receive approval for the recruitment to a new post of Building Safety Lead (Client Team) as outlined in 3.6.1 of this report
- 1.5. The new framework would need to be in place prior to the Building Safety Bill receiving royal assent, which is anticipated to be between April to July 2022. See Appendix 2 for the Transition Plan for the Building Safety Bill.
- 1.6. For the Cabinet Member for Housing to note their responsibility as portfolio

lead in the Building Safety Management Framework for residential properties.

2. ALTERNATIVE OPTIONS

- 2.1. **Outsource the building safety statutory responsibilities to THH or a third-party organisation.** This will not be possible as the Accountable Person needs to be the person or entity which holds a legal estate in possession of the building (i.e., the Council as freeholder/landlord in this case).
- 2.2. **Do nothing** – this is not an option as it is a statutory responsibility for the Council as the landlord, to comply with the upcoming Building Safety Act. The Council needs a framework in place to properly prepare for the Act which will have significant risks of prosecution for non-compliance.

3. DETAILS OF THE REPORT

- 3.1. **Government Context:** Following the fire at Grenfell Tower, the Government commissioned a review of building regulations and fire safety. The independent review which was led by Dame Judith Hackitt was published on 17 May 2018 and made recommendations regarding the physical aspects of building safety and how landlords engage with residents on fire safety matters.

As a result of the recommendations, the Building Safety Bill (the Bill) which sits alongside the recent Fire Safety Act 2021 was introduced on 5 July 2021 and is anticipated to receive royal assent between April 2022 to July 2022 (with full implementation 12 to 18 months later).

As announced in the Queen's speech of 11 May 2021, a new Building Safety Regulator will be established, which will sit under the Health and Safety Executive (HSE). The new Regulator will provide oversight of building safety in the housing industry and will have the power to prosecute property developers and landlords that do not meet safety standards as set out in the Bill. The Regulator will work closely with dutyholders in the Council and THH throughout the lifecycle of Council-owned housing stock. The Government anticipates the Regulator to be fully established in 2023.

- 3.1.1. **Building Safety Bill:** This report and the shadow framework's focus is on the building safety regime for HRA residential buildings in occupation. The new regime will apply to all landlords including Councils, registered providers, housing associations and private property owners who have legal entity in high-rise/high-risk buildings that are 18 meters or 7 storeys and more in height with two or more residential units.

- 3.1.2. The new regime includes our existing housing stock, new developments that are ready for residents to move into and some commercial units located on the ground floor of residential blocks in scope of the Bill.
- 3.1.3. The upcoming Act will apply to all landlords of high rise buildings in England and Wales. This includes private building owners and registered providers, who account for an estimated 1,000 plus high-rise buildings in the borough. Although, this report is focused on the Council's responsibilities in being compliant with Building Safety Bill/Act, the Council will communicate the importance of landlords being compliant with the upcoming Building Safety Act on the Council's website and through various correspondence.
- 3.1.4. All buildings in scope of the upcoming Building Safety Act will need to have a building safety case which is a live document that will contain all the information, also known in the Bill as the "golden thread of information" to be used to manage the risk of fire spread and the structural safety of our Council residential buildings.
- 3.1.5. The Bill will improve the fire and structural safety of new and existing residential buildings and focuses on accountability at each stage of a building's lifecycle. Duty holders during the planning, design, construction and in-occupation stage of a building are outlined in Appendix 3.
- 3.1.6. Non-compliance with the Building Safety Act could result in fines and/or imprisonment.
- 3.1.7. The Bill establishes two new dutyholder roles for buildings in occupation which are:
- **the Accountable Person** who will have a series of statutory duties and be the lead for overseeing building safety risks. The Accountable Person can be an individual or entity and there can be more than one Accountable Person for one building. Where a building has more than one Accountable Person, one of them must be identified as the Principle Accountable Person. The Council as an entity is deemed to be the Accountable Person for the London Borough of Tower Hamlets as advised by external solicitors.

This role will be supported by a new position; the Building Safety Lead (Client Team) - see 3.6.1 for further details regarding this role.
 - **the Building Safety Manager** will be appointed by the Accountable Person to assist with delivering the building safety regime for managing all building and fire risk within high-rise blocks that are at least 18m or 7 storeys high. Final approval of the Building Safety Manager must be made by the Building Safety Regulator, once set up. See sections 3.6.3 for further details regarding the Building Safety Manager role.
- 3.1.8. In addition, residents of new buildings up to 15 years old will be able to seek compensation for building failures/defects and to make complaints via a New Homes Ombudsman which will be established.

3.1.9. On 27 October 2021, the Bill passed the Committee stage in the House of Commons and is now at the Report stage. The Bill is anticipated to receive royal assent between April 2022 to July 2022 and be fully implemented 12 to 18 months after receiving royal assent.

3.2. **Fire Safety Act 2021:** The Fire Safety Bill received royal assent on 29 April 2021. We are yet to see the detailed regulations associated with the Fire Safety Act 2021; however, we know that the Act:

- has the requirement to consider the spread of fire across external surfaces of our buildings. This means that there is a need to prioritise and implement a programme of external wall system (EWS) surveys which will require significant resources and expertise. It is proposed that THH’s new Fire Safety Manager will take a leading role in this respect and manage the programme of inspections. See sections 3.6.3.1 for more details regarding the Fire Safety Manager role.
- has the requirement for landlords of residential buildings above 11 meters to carry out quarterly checks of all fire doors in common areas in addition to checking individual flat entrance doors on an annual basis.
- has the requirement to ensure that front entrance doors and balconies are included within the scope of fire risk assessments and that they are in good condition and fit for purpose. This applies equally to tenanted and leasehold properties and it is envisaged that the new Building Safety Officers will play a key role in enforcing this. See sections 3.6.3.2 and 3.6.3.3 for more details regarding the Building Safety Officer roles.
- will likely have the requirement to consider those residents who may need assistance in the event of the building being evacuated and put in place appropriate “personal emergency evacuation plans” (PEEPs). Again, the Building Safety Officers will lead on this for high-rise buildings.

3.3. The Fire Safety Act and Building Safety Bill are commensurate with the Council’s strategic plan priorities and outcomes as detailed below:

3.3.1. **A borough that our residents are proud of and love to live in** – implementing the shadow building safety framework will help promote that the Council in collaboration with THH, prioritises our tenants’ and leaseholders’ safety in their living environment, whilst maintaining its housing stock.

3.3.2. **A dynamic outcomes-based Council using digital innovation and partnership working to respond to the changing needs of our borough** – the Council will use technology to record and gather the golden thread of information related to all our high-rise blocks which need to comply with the impending Act. This information will be stored on a live digital document that will be used for management of the 74 blocks that fall within the scope of the Bill.

- 3.4. **LBTH/THH Shadow (Residential) Building Safety Framework:** A shadow framework is recommended to be implemented in the interim to prepare for the impending Building Safety Act. The shadow framework outlines the Council's and THH's roles related to responsibilities and associated decision-making for the building safety regime for Council HRA residential stock and HRA commercial units in scope of the Bill. The full list of blocks impacted by the Building Safety Bill/Act can be found in Appendix 4.

There may be changes made to the Building Safety Bill as it passes through Parliament, therefore the Shadow Building Safety Management Framework will be reviewed to ensure that the final framework is fit for purpose and reflects the requirements of the upcoming Building Safety Act.

- 3.5. **Existing building safety responsibilities within the Council**

The lead member for housing has the ultimate responsibility for building safety for the Council's housing stock but it should be noted that an interested person such as the Building Safety Regulator may apply to the tribunal for a determination, of who is accountable for a building or building risk. This may impact Cabinet, Directors and other decision makers as outlined in the Council's constitution.

- 3.6. **New LBTH and THH (Residential) Building Safety roles**

Tower Hamlets Homes has made significant progress in delivering many of the recommendations from the Dame Judith Hackett Report; "Building a Safer Future", but due to the new responsibilities arising from the Building Safety Bill, there will be the need for additional/new expertise to deliver the Building Safety regime. The resources outlined in the Shadow Building Safety Framework will be an interim arrangement. The Council may find once the new regime has been fully integrated within the Council and THH, with building safety cases fully developed for each of our blocks in scope of the Bill/Act, that the number of staff could be reduced. The new roles that will be introduced are outlined in this report; items 3.6.1 to 3.6.3 including sub-sections.

- 3.6.1. **Permanent Building Safety Lead (Client Team) x 1**

The Building Safety Lead (Client Team) will be a new position that will report to the Corporate Director of Place. This role will be key in advising the Cabinet Member for Housing and other officers on building safety matters and will be the Regulator of Building Safety's main contact.

In the interim the role will focus on preparations for the building safety regime. When the Building Safety Act is implemented, the post will have accountability for overseeing THH as Building Safety Manager, ensuring the Council is compliant with the new building safety regime and reviewing all statutory returns before submission to the Building Safety Regulator. The Regulator will refer any enquiries that may arise to this person.

Main duties will include:

- working with various departments, the already established Building Safety Bill Working Group and THH to prepare for the building safety regime as noted in below items.
- working with various departments and THH to forecast budget requirements to deliver the building safety regime.
- Working with LBTH IT department to ensure all ICT requirements are in place prior to the Bill receiving royal assent.
- appointing the Building Safety Manager and seeking final approval of the appointment from the Building Safety Regulator.
- working with THH who will deliver some of the Accountable Person duties on behalf of the Council.
- registering high-rise/risk buildings with the Regulator.
- applying for Building Assessment Certificates which need to be displayed in the relevant buildings.
- overseeing the Building Safety Manager is taking all reasonable steps to prevent a major incident from occurring and reducing the severity of any potential incident.
- reviewing and submitting all building safety cases to the Regulator.
- notifying the Regulator of any revised building safety case and providing a copy when requested.
- in collaboration with THH producing and carrying out reviews of the Resident Engagement Strategy. In addition, ensuring every Council resident aged 16 years or over is provided with a copy of the strategy.
- ensuring that the Council's Insurance Team has adequate insurance against loss under building safety management (subject to the terms of any Regulations enacted).
- establishing and operating a mandatory occurrence reporting system.
- retaining set information, following the prescribed standards and ensuring the information is kept up to date.
- set up a complaint's process for the investigation of relevant building safety complaints including new builds.
- ensuring requests for residents to comply with duties concerning resident safety have been issued. In addition, ensuring the relevant notices have been issued where there is a breach of resident duties.
- application to court for the purposes above.
- providing the Cabinet Member for Housing and other Council staff building safety advice.

The salary range for this post pending evaluation will be within the Grade P (LP09) pay range of between £73,218 to £80,25 plus on costs. A market supplement may also be necessary to attract the right person.

3.6.1.1. The Council's Constitution's scheme of delegations will have to be amended to reflect that the Building Safety Lead (Client Team) has budget and decision making responsibilities related to the new requirements for the Council to deliver in line with the new building safety regime.

3.6.2. Temporary IT Support - Project Manager or Project Analyst x 1

A temporary IT specialist will be required to provide advice regarding the ICT requirements for the Council and THH to deliver the new building safety regime. The IT specialist will also lead on updating the changes to existing ICT and procure new ICT where necessary, such as BIM which is required for holding evidence on each of the Council's high rise buildings. This will be in collaboration with the new Building Safety Lead (Client Team) and THH. The IT Project Board and Digital Portfolio Board will advise regarding the ICT support available or that needs to be appointed to. The IT support will most probably be provided by an agency member of staff and could be a mixture of ICT specialist appointed at various stages during the preparations for the Building Safety Bill.

3.6.3. Interim Building Safety Manager (THH) Framework

THH as an entity will become the Council's Interim Building Safety Manager and will support the Building Safety Lead (Client Team) with preparing for the building safety regime, assessing and managing building safety risks, ensuring compliancy with relevant standards, delivering some of the Accountable Person role and assisting with developing systems for completing statutory returns to the new Building Safety Regulator, once set up. THH's Head of Asset Management will become the Council's main contact with any requests related to the Act or Regulator.

THH will recruit to three new roles, to meet the requirements of the Building Safety Manager role, with duties being aligned with the necessary competencies once confirmed by the industry standard.

3.6.3.1. Permanent THH Fire Safety Manager x 1

This postholder will be the named individual for the Building Safety Manager role and will have the necessary experience and qualifications to meet the requirements of the 'Building Safety Manager' role. They will likely be a fully qualified/part qualified building surveyor with experience in fire safety.

Main duties will include:

- professional leadership on all matters relating to fire safety
- management of programmes of fire risk assessments, external wall system surveys and type 4/compartmentation surveys
- ensuring compliance with the requirements of PAS9980 which relates to the holistic risk assessment of external walls

- managing the wider team of building safety officers who will primarily focus on the portfolio of 74 high-rise buildings
- informing THH’s investment programme based on the Council’s and THH’s priorities
- providing advice within the organisation and supporting the Capital Programme project managers and delivery of fire safety remedial works.
- provide support to the Building Safety Lead (Client Team) for the duties related to the building safety regime outlined in the Building Safety Bill.

The salary range for this post pending evaluation will be within Grade O (LP08) between £63,207 to £67,521 plus oncosts.

3.6.3.2. Permanent THH Senior Building Safety Officer x 1

The Senior Building Safety Officer will have team leader responsibilities, overseeing and supporting the seven individual Building Safety Managers in undertaking their duties as outlined in 3.6.3.3.

The salary range for the Senior Building Safety Officer post pending evaluation will be within Grade K (P04) between £45,594 to £48,576 plus oncosts.

3.6.3.3. Permanent THH Building Safety Officer x 7

Seven individual Building Safety Officers will be recruited. Main duties will include:

- managing all 74 high-rise buildings as defined by the Building Safety Bill/Act and other buildings as may be deemed appropriate.
- each Building Safety Officer will be responsible for a portfolio of 10 to 11 buildings each which will include being the public face with all residents in those buildings and leading on activities related to the resident engagement strategy.
- leading on resident enforcement action concerning all fire safety issues such as gates/grills, combustible material left in corridors, etc
- working with suitable third parties in ensuring that all front entrance doors across all 74 high-rise buildings meet the relevant standard. This includes leasehold properties. It is envisaged that THH will train the officers to carry out formal inspections of doors.
- Building Safety Officers will have a high profile in each building and carry out regular inspections, working with caretakers.
- their remit will extend beyond fire safety to include monitoring communal repairs and servicing, management of asbestos etc.
- completing a comprehensive training plan to build the necessary knowledge to be effective in their roles.

The salary range for the Building Safety Officer post pending evaluation will be within Grade I (P01) of between £37,491 to £40,632 plus oncosts.

3.6.4. Recruitment to the New Building Safety Roles

In the lead-up to the Bill receiving royal assent, the Building Safety Lead (Client Team) will be responsible for preparing for the building safety regime. Therefore, the role is required to be recruited to by November/December 2021. As this will be a senior strategic role, an external recruitment agency will lead with the recruitment, organised by the Council's Human Resources Department.

THH's priority will be to appoint the Fire Safety Manager initially to help client external wall system surveys, type 4 fire risk assessments and assist with developing the building safety cases. Ideally, this post will be in place by December 2021. THH will look to establish the Building Safety Officer Team by 31 March 2022.

The IT Project Board will advise when the temporary ICT support should commence on the project.

Other social landlords have already started to recruit to their building safety manager frameworks with competitive salaries to attract candidates with the anticipated competencies for the roles.

4. EQUALITIES IMPLICATIONS

- 4.1. At this stage, there are no specific equalities implications to consider. However, Cabinet should note there will be a positive impact on tenants and leaseholders who live in high-rise Council housing stock.
- 4.2. Having a focused shadow framework for preparing for the upcoming Building Safety Act will make our residents feel the Council and THH are taking steps to ensure their safety in their homes.

5. OTHER STATUTORY IMPLICATIONS

- 5.1. This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
 - Best Value Implications,
 - Consultations,
 - Environmental (including air quality),
 - Risk Management,
 - Crime Reduction,
 - Safeguarding.
 - Data Protection / Privacy Impact Assessment.
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- 5.2. There are no other statutory implications identified at this stage. The Council's work going forward on building and fire safety is commensurate with all its best value, environmental and safeguarding responsibilities.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1. As part of the 2020/21 budget setting process, Cabinet approved £350k of growth within the HRA to meet the cost of implementing a shadow building safety framework allowing THH to prepare for the Building Safety Bill following the Hackett review post Grenfell. This growth was one-off money and not a permanent budget increase. However, it was unspent in 2020/21 and Cabinet approved that it would be carried forward into 2021/22.
- 6.2. The HRA is planning to spend £104k on additional staffing in year to meet its obligation in preparing for implementing the building safety review. This will be funded from the growth outlined in para. 6.1. As this growth is time limited, the balance will be paid back to HRA balances at the end of the financial year.
- 6.3. There is no funding for implementing the Building Safety Bill in future years. As a result, a growth bid will be submitted for consideration as part of the 2022/23 budget setting process.
- 6.4. This growth is expected to be time limited, with the requirements of the Building Safety Bill being completed by 2025/26 and it is anticipated this would be funded from HRA balances. However, this will need to be reviewed as there is a risk that the requirements of the Bill will be expanded and require further work. This is unknown at present. Any ongoing budget requirement would need to be met from existing HRA budget allocations.
- 6.5. If approved, the impact of utilising HRA balances to fund this work will be modelled and monitored through the HRA business plan. This will be considered with other competing priorities in the HRA.
- 6.6. The Building Safety Bill sets out the introduction of the Building Safety Charge. This outlines the charges that the Council can recharge to cover the building safety regime to leaseholders who have leases of 7 years or longer.

7. COMMENTS OF LEGAL SERVICES

- 7.1. The Building Safety Bill contains a series of reforms to building safety and is the most substantial legislative response to the Grenfell Tower fire in 2017 to date.
- 7.2. The Government established the Building Safety Programme and the Independent Review of Building Regulations and Fire Safety (Hackett Report) in response to the fire. The Building Safety Programme has meant remediation work has been required across thousands of high-rise residential buildings. The Independent Review concluded that a new system of regulation is required for the design, construction and occupation of high-rise residential buildings.
- 7.3. This Bill once enacted will make significant changes to building regulation, management and law, taking forward the Government's plans to implement the review as well as other building-related measures.

- 7.4. The proposals contained within this report to Cabinet reflect the current position but may be subject to change as the Bill has yet to pass a number of further stages before its enactment.
- 7.5. Advice has been taken from External solicitors and this advice is reflected in the contents of this report. If changes are made to the Bill that require alterations to the current proposals a further report will be put before Cabinet.
- 7.6. The Bill provides for the appointment of an accountable person. The “accountable person” may be an individual or a corporate entity such as the Council. The Accountable person will normally be the owner of the Building. They will be responsible for assessing building safety risks on an ongoing basis and taking all reasonable steps to manage those risks by way of a Safety Case Report which must be submitted to the Regulator.
- 7.7. In addition, in due course appropriate changes will be required to the Constitution to reflect the decision-making process

Linked Reports, Appendices and Background Documents:

Linked Report

- N/A

Appendices

- Appendix 1 Shadow (Residential) Buildings Safety Framework
- Appendix 2: Building Safety Bill and Transition: Timeline (Courtesy MHCLG)
- Appendix 3: Dutyholders as outlined in the Building Safety Bill (5 July 2021)
- Appendix 4: Blocks Impacted by the Building Safety Bill

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

Links to the Building Safety Bill explanatory notes and related documents:

<https://publications.parliament.uk/pa/bills/cbill/58-02/0139/en/210139en.pdf>

<https://www.gov.uk/government/collections/building-safety-bill>

Officer contact details for documents:

- N/A