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Sent: 22 November 2012 12:56
To: TUREK, STEVE
Cc: PHILLPOTTS, LEE; COOMBE, NICHOLAS; LOWRY, VICTORIA; GOODMAN, RAYMOND
Subject: Flat front doors - RB Kensington and Chelsea (and others)

Steve,

As discussed yesterday, following correspondence between RB Kensington and Chelsea, in company with SM Nick Comery, I met with representatives of RBKC and Hammersmith and LB Hammersmith and Fulham to discuss enforcement of fire safety in residential blocks of flats. The specific issue in question was that of flat front doors that are owned by leaseholders. RBKC led discussion for the councils with other reps saying little.

The Council's position was that:

- * In their view, under the protocol between LFEPA and RBKC (attached) it should be for LFEPA to take enforcement action as the lead authority' for RBKC owned residential blocks. RBKC representatives pointed out that the protocol had taken a long time to agree because they would not accept the national or generic LFEPA version.
- * The position taken by RBKC representatives was that having identified (through fire risk assessment) sub-standard doors for which they did not have direct control (i.e. they are demised to a leaseholder) they would tell the relevant leaseholders to change the door but if the leaseholder did not do so that issue should be passed to LFEPA to take enforcement action against the leaseholder. They felt that if LFEPA did not take enforcement action this was contrary to the protocol.
- * RBKC stated that they do not believe it is appropriate for them to use the Housing Act 2004 to get leaseholder front doors changed or repaired because this would entail carrying out Housing Health and Safety Risk Assessments for 24 separate hazards for the flat in question and sample of others in the block together with the common parts. This they felt was not appropriate use of resources and pointed out they had 9000 flats to cover..
- * RBKC felt that LFEPA should regard leaseholders as persons with responsibility under Article 5(3) of the Fire Safety Order and serve enforcement notices on them.
- * RBKC lawyers explained that in their view it was not open to RBKC to take civil court action (injunction, forfeiture or specific performance) to enforce terms of lease. They stated that they did not think the Land Valuation Tribunal would agree to enforce the lease (The reason given was that an alternative means was available (an enforcement notice from us) However, they also indicated what appears to be a contradictory position they thought the LVT may agree to enforce terms of lease if an enforcement notice had been served by LFEPA.

(In relation to the preceding paragraph I asked if they have ever attempted to use an LVT for this purpose – the representatives stated they had not. I also asked that they forward any relevant legal judgement that supported their view of the position the LVT may take. To date nothing has been forthcoming.)

The position taken in response to this (which had previously been discussed in FSR and is the approach we are seeking to take following consultation with legal) was:

- * The protocol is specific in saying that either authority being the lead does not preclude the other authority from taking enforcement action.
- * The number of residential buildings to which the fire safety applies (and so for which we could be considering enforcement action) on a pan-London basis is believed to be in the region of 334,000 . Clearly the number of individual flat contained within those buildings (which could therefore have inadequate doors owned by leaseholders) would be many times that figure.
- * That there is some legal doubt about the application of Article 5(3) to leaseholders as the flats are not directly covered by the fire safety order (noting that leaseholders are not expected to be subject to

any direct offence under article 17 of the Fire Safety Order and that CLG guidance is that breaches of contract are principally for the parties to the contract and not the enforcing authority.).

* We believe that in the first instance that it is the role and responsibility of the responsible person to use all means reasonably at their disposal (such as enforcing the terms of a lease) to ensure appropriate general fire precautions are in place (within which it was noted that if the breach of terms of lease were for a matter such as making alterations to a flat or preventing others quiet enjoyment of their own flat than civil action to enforce the lease would likely be used and fire safety should be no different.)

* Were we to take enforcement action it would be likely to be against the landlord requiring them to take action to ensure the protected escape routes in the block is appropriately protected from a fire in a flat. Within that we would expect the landlord to use any legal means open to them (under the lease or otherwise) to give effect to that.

The conclusion of the meeting was that we would consider our position in the light of what the Council representatives had said and to assist in that RBKC lawyers would send me details of any relevant legal cases in support of their position about taking civil action to enforce terms of lease for repair or renewal of flat front doors (as fire doors). To date nothing has been reviewed. We have nonetheless reviewed the position taking into account previous legal advice from Counsel. In the absence of anything to the contrary from the Councils we have not found any reason to consider the approach we propose should change.

That position is that we would take enforcement action against the landlord requiring maintenance of the protected escape route under Article 17 of the fire safety order. Article 17 provides that maintenance extends into parts of buildings to which the order does not apply and requires the leaseholder to co-operate with the landlord. It was intended by CLG that this duty could and should be used or preyed in aid by landlords when taking civil action to enforce terms of lease without the need for further intervention by the enforcing authority.

Our intention is to provide model enforcement notice text to local fire safety teams for them to use where problems are found with flat front doors. This will replace text currently under article 14 (means of escape) that has not found favour with the courts .

A substantive reply to RBKC and LB H&F is still outstanding pending confirmation of the review of the proposed enforcement mechanism as explained above.

Regards

Andy

Andy Jack

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Attachments:

[Fire safety protocol.pdf](#)

(2.6 MB)