From: JACK, ANDY
Sent: 02 November 2015 13:12
To: JACK, ANDY
Subject: FW: Enforcement of the Regulatory Fire Safety Order in respect of protection of means of escape

From: carlsstokes[redacted]
Sent: 16 August 2013 16:24
To: JACK, ANDY
Subject: Re: Enforcement of the Regulatory Fire Safety Order in respect of protection of means of escape

Good afternoon Andy

Thank you .

Carl Stokes

-----Original Message-----
From: ANDY.JACK <ANDY.JACK@london-fire.gov.uk>
To: carlstokes <carlstokes@firesafety-consultant.co.uk>; Anju.Sidhu <Anju.Sidhu@rbkc.gov.uk>; Cynthia.Vachino <Cynthia.Vachino@rbkc.gov.uk>; jwray <jwray@kctmo.org.uk>; David.Webber <David.Webber@rbkc.gov.uk>; Richard.Buckley <Richard.Buckley@lbhf.gov.uk>
CC: nicolas.comery <nicolas.comery@london-fire.gov.uk>; victoria.lowry <victoria.lowry@london-fire.gov.uk>; NICHOLAS.COOMBE <NICHOLAS.COOMBE@london-fire.gov.uk>; ROGER.GIESS <ROGER.GIESS@london-fire.gov.uk>
Sent: Fri, 16 Aug 2013 15:52
Subject: Enforcement of the Regulatory Fire Safety Order in respect of protection of means of escape

Dear all,

At our meeting on 8 November last year, we discussed enforcement of fire safety in blocks of flats and HMOs and in particular the repair or renewal of flat front doors.

I believe of the basis of our meeting that we all accept that the front doors (or windows etc.) of flats that open onto a protected common means of escape in case of fire are covered by the RRO. This is the case whatever the ownership of the front door.
You will recall that I gave LFBs position as being that we consider that it should be for the person responsible for the common escape corridor (usually the landlord) to work with individual leaseholders in accordance with Article 17 of the Regulatory Reform (Fire Safety) Order 2005 in order to achieve compliance.

Where leases provide for the doors to remain the landlord's property we therefore expect the landlord to ensure they are of a specification to act as a door opening onto a protected escape route. This is the case regardless of whether the landlord can then recover their costs from the leaseholder.

Where leases provide for the doors to be part of the demised property, so that they are owned by the leaseholder, we expect the landlord to accept responsibility for enforcing lease covenants that will ensure that the front doors are of the required specification. These covenants could be that the leaseholder will conform to statutory/regulatory requirements or more general leaseholder covenants concerning the condition of their flat.

We do not consider that this is in any sense a burdensome task for the landlord, who will be able to incorporate this into their existing practices for ensuring leaseholders comply with lease covenants. In that we have noted the generic advice to leaseholders from the Leasehold Advisory Service (an Agency of CLG):

"What are your responsibilities?
Principally, these will be the requirements to keep the inside of the flat in good order, to pay (on time) a share of the costs of maintaining and running the building, to behave in a neighbourly manner and not to do certain things without the landlord's consent, for example, make alterations or sublet. The landlord has an obligation to ensure that the

leaseholder complies with such responsibilities for the good of all the other leaseholders. These rights and responsibilities will be set out in the lease."
and would draw particular attention to the penultimate sentence.

We have also considered the cases that were provided to us after the meeting together with others. The Sheffield case appears to us to strengthen the argument that a local authority landlord retains responsibilities for doors/windows onto an escape route. It supports a notion that in ambiguous cases front doors are likely to be regarded as part of the "structure" and more likely to be taken to be the retained property of a landlord. That would make it directly the landlord's responsibility to ensure compliance with the Order. Alker restates the uncontroversial point that a covenant to "repair" or "maintain" is not to be construed as a covenant to improve or make safe. This might be of relevance as to whether the costs of replacing non-compliant front doors with fire doors can be recovered from leaseholders under a landlord 's repair covenant. However, the question of recovery of costs is not relevant to a question of whether the work is required of the landlord by the Fire Safety Order.

If it provides some comfort, you may be aware of cases such as Denmark Court Management Ltd v The Lessee's of Denmark Court (Case number. CHI/23UE/LSC/2012/007 – copy attached for ease of reference). Although we recognise the case was about payment of service charges, as in this case the flat front doors were apparently in the ownership of the Landlord (although changed by the lessees), it supports the view that the LVT will readily approve the levying of charges to make front doors RRO compliant.

In those rare cases where the leases provide no effective way for the landlord to ensure relevant front doors are made compliant our view is that the local authority should use its powers under the housing health and safety rating system (HHSRS) in the Housing Act 2004. This is of course the usual regulatory tool for ensuring the safety of residential premises, and includes provisions relating to fire safety.

We regard the alternative approach of direct enforcement action under the RRO against individual flat owners as a speculative and untested legal notion. There was no intention behind the RRO for each owner of a dwelling to be made individually subject to enforcement action. It would in any case be extraordinarily inconvenient for the Authority to issue Enforcement Notices against numerous individual flat owners. This would require considerable wasted resource in research to track down correct owners' details and the management of potentially hundreds of compliance cases that relate to premises that are not otherwise subject to the RRO. They are however premises over which the local authority has HHSRS regulatory powers in the Housing Act 2004. We would anticipate any first use of the RRO in this way to be likely to result in an appeal and considerable delay and public expense. It seems an entirely inappropriate option to us given a suitable regulatory regime for residential premises is already available.

We would further point out that where a block has tenants occupying flats on the usual secure tenancies of local authorities and other social landlords, the flat front doors invariably remain owned and controlled by the landlord. The Authority will in these cases expect such landlords to ensure their tenanted flats' doors comply, and will take enforcement action on the point if necessary. Consequently, for many local authority blocks the Authority would in any case be serving an Enforcement Notice on the local authority landlord alongside any served on leaseholders.

Overall, despite extensive review in the light of our discussions we have found nothing to suggest to us that our usual practice of service of an enforcement notice on the person responsible for the escape route corridor (or staircase or balcony escape route) would be incorrect. Any notice would be served in the knowledge that the responsible person has legal routes open to them to achieve compliance (and a central government expectation that they will utilise this "for the good of all the other leaseholders").

Consequently we will be proceeding on that basis. You may wish to note that this approach has in fact now been in use in all other boroughs for some months but has not been applied in your boroughs pending conclusion of our review.

Regards

Andy

Andy Jack

Head of Regulatory Enforcement
Fire Safety Regulation Department
London Fire Brigade Headquarters
2nd Floor 169 Union Street.
London SE1 0LL

Tel [redacted] ext [redacted]