

Agenda item 14

Report title: Essex County Council Response to the findings of the Independent Property Review Commission	
Report author: Cllr David Finch, Leader of the Council	
Date: 15 May 2018	For: Decision
Enquiries to: Nicola Beach, Executive Director Infrastructure and Environment	
County Divisions affected: All Essex	

1. Purpose of Report

- 1.1 On 11 July 2017, following the Grenfell Tower tragedy on 14 June 2017, Council passed the following resolution:

'This Council recognises and applauds the heroic effort of the London Fire Service attending the horrific Grenfell Tower fire; action which demonstrates the very best of public service. We further pay tribute to and commend the community and voluntary organisations who pulled together to support the victims of this tragic fire in their hour of need.'

This Council believes that all councils must take action to ensure people are safe and remain safe. Therefore this Council asks the Leader to arrange for a thorough investigation into all buildings owned and maintained by Essex County Council to be undertaken to ensure that any cladding is reviewed as appropriate and action taken.

In addition, the Council calls for the Leader to establish an independently chaired all-party commission involving partner organisations to look into the whole system of fire safety for employees and other users of our buildings.

This would take into account the size, scale, location and use of the particular building and consider the tools and technologies available to protect human life and the building.'

- 1.2 In response to the motion, the Leader set up a cross-party Independent Property Review Commission (IPRC) to investigate fire safety in Essex County Council's (ECC) property portfolio.
- 1.3 The IPRC published their final report in February 2018 and in recognition of both the scale of importance and the interest of Members in the issue, the Leader has decided to bring ECC's response to the findings of the IPRC Report to Council.

2. Recommendations

- 2.1 That the Council endorses the proposed response to the IPRC as set out in section 5 of this report.
- 2.2 That the Council formally thanks the members of the IPRC for their work on the Commission.

3. Background

- 3.1 The independent, cross party panel was created to investigate the fire safety of ECC's property portfolio. The IPRC scrutinised fire safety measures in ECC buildings, explored written evidence, heard expert testimony, and attend site visits with a view to presenting findings and recommendations in a report to the Leader.
- 3.2 The aim of the IPRC was to conduct a comprehensive review of the ECC estate to:
- i. Ensure that any external cladding on ECC buildings was reviewed, and necessary action taken to ensure appropriate fire safety standards; and
 - ii. Undertake a whole system review of fire safety for employees and other users of ECC buildings, taking into account the size, scale, location and use of the buildings, and consider the tools and technologies available to protect human life and the buildings themselves.
- 3.3 After engagement with potential independent Chairpersons, Andy Fry OBE was selected to chair the IPRC.
- 3.4 Members of the IPRC were nominated by political Group leaders – with one councillor being selected by each of the Liberal Democrat, Labour and Non-aligned Groups, and three from the Conservative Group:

Conservative Group representatives:	Councillor Lesley Wagland Councillor Michael Hardware Councillor Anthony Jackson
Labour Group representative:	Councillor Julie Young
Liberal Democrat Group representative:	Councillor Barry Aspinell
Non-Aligned Group representative:	Councillor Chris Pond

- 3.5 Nominated councillors brought a wealth of expertise to the IPRC in a broad range of areas relating to fire safety, construction, property law, and facilities management.

- 3.6 The group's terms of reference were agreed at the first meeting of the IPRC in October 2017. These are set out at **appendix A**. The group followed a number of specific Key Lines of Enquiry, under the following headings:
- Management of fire safety issues associated with external cladding on ECC buildings.
 - Fire safety standards in the design and construction of new ECC buildings
 - Fire safety standards in existing ECC buildings
 - Fire safety standards in ECC buildings undergoing refurbishment
 - What recommendations does the IPRC propose?
- 3.7 'ECC buildings' were defined as buildings owned or occupied by ECC, and other buildings within which third parties deliver services on behalf of ECC. Individual private dwellings, i.e. those not covered by the Regulatory Reform (Fire Safety) Order 2005, were deemed as out of scope for the IPRC.
- 3.8 ECC buildings were grouped into three categories¹:
- The ECC core estate:** Buildings maintained and/or owned by ECC, where ECC is the employer and 'Responsible Person' under the Regulatory Reform (Fire Safety) Order 2005. There are approximately 300 such buildings.
 - ECC Maintained schools:** ECC has responsibility as the employer at 167 community schools and 59 voluntary controlled schools. It also has 227 academies, 56 Voluntary Aided Schools and 39 Foundation Schools, where ECC is neither the employer nor the 'Responsible Person' for fire safety.
 - Buildings not owned or controlled by ECC in which statutory services are provided by third parties under contract to ECC (e.g. social care sites):** Whilst primary legal responsibility for fire safety standards in these premises rests with the third-party providers, it was recognised that ECC has a secondary duty of care towards, and some moral responsibility for, the safety of potentially vulnerable residents who resort to, or reside in these buildings. On that basis, they were included in the scope of the IPRC.
- 3.9 The ECC core estate is a mixture of buildings, ranging from Victorian construction to modern buildings. Construction types vary from traditional brick construction with tiled roofs, to timber frame. There are only three high-rise buildings in the portfolio (i.e. those over 18-metres in height), Seax House in Chelmsford, Goodman House in Harlow, and Magnet House in Clacton. ECC also has a stock of Heritage sites and Historic buildings for which it has responsibility for maintenance.

¹ The figures provided below were accurate at the time of the IPRC's investigation however, may have subsequently changed.

4. Government Requests to local authorities after the Grenfell Fire

- 4.1 In the immediate aftermath of the Grenfell Tower tragedy, the external cladding was identified as a potentially major contributor to the rapid spread of fire. The cladding in question is generically referred to as Aluminium Composite Material (ACM), which is a flat panel that consists of two thin aluminium sheets bonded to a non-aluminium insulating core. Samples of the ACM cladding fitted to Grenfell Tower were subsequently tested and the core was found to be highly combustible. This finding raised serious safety concerns about other buildings fitted with ACM cladding, as well as those incorporating alternative cladding systems with insulating materials that could be similarly combustible.
- 4.2 In response to these concerns, the then Department for Communities and Local Government (DCLG)² initiated urgent safety checks on high-rise residential buildings, i.e. buildings of over 18 metres in which sleeping accommodation is provided. The checks were intended to identify buildings that were potentially fitted with hazardous cladding. Where such cladding was suspected, interim safety measures were introduced while samples of the cladding were sent to the Building Research Establishment (BRE) for testing, to determine whether or not they complied with Building Regulations.
- 4.3 Beyond the initial DCLG response, the Education and Skills Funding Agency (ESFA) wrote to all local authority Directors of Children's Services, Chief Executives of academy trusts, and those responsible for the governance of other types of schools, asking them to complete a fire safety questionnaire. The questionnaire sought information on school buildings with more than four floors that may be fitted with hazardous cladding.
- 4.4 In addition to the above actions, in the care industry, the Chief Executive of the Care Quality Commission, Sir David Behan, wrote to all care providers, reminding them of the greater duty of care owed to those with various impairments, as well as the need for providers to carry out, and periodically review, fire risk assessments to ensure their continued validity.
- 4.5 How ECC reacted to these central requests can be summarised as follows:

The ECC Core Estate

- 4.6 ECC responded swiftly to the information request from DCLG about high-rise buildings within its core estate (i.e. those over 18m). No schools are above 18m. The only three buildings which meet this criterion; Seax House in Chelmsford, Goodman House in Harlow, and Magnet House in Clacton are office buildings and none of them are fitted with potentially hazardous cladding.

The ECC Maintained Schools Estate

² In January 2018, as part of Theresa May's Cabinet Reshuffle, the department was renamed the Ministry of Housing, Communities and Local Government (MHCLG).

- 4.7 Again, ECC responded swiftly to requests for information from the Education and Skills Funding Agency (ESFA) about schools over four storeys high, or those in which residential accommodation was provided. As with the ECC Core Estate, the response was informed by a desk-top audit undertaken by officers, which confirmed that there were no Maintained schools over four storeys. It also established that ECC was responsible for one school that provided sleeping accommodation, but that the school was not fitted with cladding.

Buildings in which services are being provided for ECC by third-parties

- 4.8 Whilst the primary legal responsibility for fire safety standards in residential care premises run by third party providers rests with the providers, it was recognised that ECC has a secondary duty of care towards, and moral responsibility for, the safety of potentially vulnerable residents of such buildings. In line with this recognition, ECC decided it would seek assurance that issues associated with potentially hazardous cladding fitted to residential care premises managed by third parties were being appropriately addressed.
- 4.9 In an attempt to build an accurate picture of the position regarding such cladding across care premises in high-rise buildings, a telephone survey of all ECC care providers was undertaken in July 2017. This survey sought to establish if the provider was using buildings more than 18 metres high to provide residential services and whether they were clad in ACM panels.
- 4.10 The telephone survey identified 7 buildings that had cladding fitted. Of the 7 buildings identified as having cladding fitted, the following commentary on the cladding in question was provided by those responsible for the buildings:
- Adults with Disabilities Residential (4)
 - 1 – “some cladding but not thought to be ACM, being checked”;
 - 1 – “some cladding to a balcony which is being checked for flammability”;
 - 1 – “some cladding on 2nd floor but it is attached directly to wall.”
 - 1 – “two storey building with some wooden cladding that has been passed as ok by fire service”.
 - Supported Living (3)
 - 1 – “not of Grenfell type”;
 - 1 – “of Grenfell type, being reviewed”
 - 1 – no info
- 4.11 The providers of premises meeting the criteria were asked to provide a copy of the current risk assessment for the building and a photograph of the outside of the part of the building where the cladding is fitted.

5. IPRC Recommendations and ECC Response

- 5.1 In the IPRC’s view, ECC responded swiftly and effectively to requests for information that were made by the DCLG, and the ESFA in the immediate aftermath of the Grenfell Tower fire.
- 5.2 Further, the IPRC commended the proactive approach taken by ECC in broadening its focus to encompass all buildings in the ECC Core Estate, and

every Maintained school, regardless of their height. Although recognising that a definitive position was not achieved due to the 'desk-top' nature of the reviews undertaken.

- 5.3 In relation to residential care homes being operated by third party providers, the IPRC considers that ECC took a responsible step in attempting to achieve assurance that fire safety issues associated with potentially hazardous cladding on high-rise buildings were being appropriately addressed.
- 5.4 When considering their response to the recommendations of the IPRC involving third party providers officers recognise that ECC has a duty to monitor the health and safety standards of the providers it uses. However, ECC does not have the authority, degree of control or jurisdictions, to ensure that such issues are adequately addressed. Further, it is important to ensure that ECC does not exceed the obligations placed upon it by health and safety legislation as ECC would take on an additional risk if it did so. Action has been taken to address concerns so far as is reasonably practicable and is outlined below.
- 5.5 The fourteen recommendations and the current position with respect to them is set out below:

Recommendation 1: ECC should take urgent action to ensure appropriate steps are taken to address fire safety issues in high-rise buildings fitted with potentially hazardous cladding, in residential care homes operated by third parties where ECC places residents.

Implemented – officers have conducted desktop research and spoken with providers that concluded that there were no care premises used by ECC which were over 18m tall and had ACM cladding.

Recommendation 2: ECC should consider the introduction of a sample auditing programme, to assess the suitability and sufficiency of fire risk assessments in residential care homes operated by third parties where ECC places residents.

Implemented - ECC already has a sample auditing programme in place to assess the suitability and sufficiency of fire risk assessments in residential care homes operated by third parties where ECC places residents. Officers from the Quality Improvement team intend to introduce more robust checking of the quality of the fire risk assessments inspected during site visits by June 2018.

Recommendation 3: ECC should issue guidance to all maintained schools, aimed at ensuring that the potential implications of hazardous external cladding on any multi-storey buildings are systematically assessed and managed, and share it on a 'for information' basis with other Essex schools.

Implementation underway - A desktop study has been undertaken of all ECC maintained schools to determine the presence of potential ACM cladding

and this study showed that there are no schools in excess of 3 storeys that have external cladding of this type.

Given the quality of existing data which does not provide extensive information on cladding types, guidance will be issued to schools by June 2018 to enable them to review their buildings and provide ECC with a response.

In respect of other Essex schools (not maintained by ECC) information will be issued, on a “for information only” basis, through the schools info link system by June 2018.

Recommendation 4: *Three months after the guidance referred to in recommendation 3 has been issued, ECC should undertake a sample audit to assess the extent to which the guidance has been followed.*

Proposed for implementation - In line with the response to recommendation 3, it is proposed that officers will work with maintained schools to undertake a thorough review of the risk to ECC maintained school buildings, this will be completed by October 2018. As a result it is not anticipated that a sample audit will be required as responses from schools will be logged and chased if not received.

Officers will make contact with a sample of non-maintained schools by October 2018 to enquire if they are taking any action as a result of the information provided.

Recommendation 5: *ECC should issue guidance to organisations providing residential care in premises where ECC places residents, aimed at ensuring that the potential implications of hazardous external cladding on any multi-storey buildings are systematically assessed and managed.*

Alternative implemented - Officers in the Procurement team wrote to all residential care providers in April 2018, reminding them of their obligations under the legislation to employ or engage competent persons to carry out fire risk assessments of their premises to the appropriate national standards, including that these consider potential external fire spread.

Recommendation 6: *Three months after the guidance referred to in recommendation 5 has been issued, ECC should undertake a sample audit to assess the extent to which the guidance has been followed.*

Audit systems already in place, but will be strengthened - ECC already has a sample auditing programme in place to assess the suitability and sufficiency of fire risk assessments in residential care homes operated by third parties where ECC places residents. Officers in the Quality Improvement team will be supported by the Health and Safety team to introduce more robust checking of the quality of the fire risk assessments inspected during site visits by June 2018.

Recommendation 7: ECC should put in place clear arrangements for the provision of ad hoc specialist fire safety advice in connection with relatively complex fire safety issues.

Implemented - ECC already has clear arrangements for the provision of ad hoc specialist fire safety advice in connection with relatively complex fire safety issues. Advice can be accessed via the Mitie contract, the Lead Building Control Partnership agreement (with Chelmsford City Council) or existing arrangements with specialist consultants.

Recommendation 8: ECC should introduce arrangements for Essex County Fire and Rescue Service to be invited to be involved at an early stage in the building design process for all its 'upper-tier' construction projects, i.e. those with a capital value in excess of £2m.

Implemented - Essex County Fire and Rescue Service have been invited by the ECC Infrastructure Delivery Team (IDT) to engage earlier on construction projects with values in excess of £2m. The fire service have agreed in principle and a protocol is being prepared to ensure they are engaged at an early stage.

Recommendation 9: ECC should introduce a requirement for property protection and business continuity risk assessments to be undertaken as an element of all future design briefs for new buildings.

Implementation underway - The IDT team will develop a risk assessment to be undertaken in conjunction with the client at the design stage by June 2018. Clients are best placed to advise on property protection and business continuity risk as they understand the risks to the service should a building suffer a total or partial loss. This risk assessment will be used as appropriate.

Recommendation 10: Three months after publication of this report, ECC should review progress on the steps being taken by MITIE to improve arrangements for ensuring the competence of those involved in undertaking fire risk assessments, as well as reviews of such assessments.

Implementation underway. MITIE compliance officers under fire risk assessments. These assessments are reviewed on an annual basis by MITIE Assistant Facilities Managers.

MITIE had already put arrangements in place to have to their compliance scheme assessed and accredited by Tyne & Wear Fire & Rescue Service. This is anticipated to be completed by June 2018 and should achieve the recommendation. The Head of Facilities Management will monitor this to ensure that MITIE achieve this accreditation.

Recommendation 11: ECC should undertake a detailed review of arrangements for quality assuring its programme of fire risk assessments (FRA), and the annual reviews of these assessments.

Implemented - FRAs have been completed for all core estate sites by a competent person from the Mitie compliance fire risk assessors, these assessments are then reviewed on an annual basis by MITIE or whenever any work is undertaken that may give rise to change of building layout or functional operation

There is a nominated representative of the Infrastructure Delivery Team who quality assures this process. Further, the Essex Fire and Rescue Service visit ECC sites on an ad hoc basis. The EFRS has never issued an improvement notice since 2011 when the ECC/MITIE partnership came into operation.

These arrangements have been reviewed by the Head of Facilities Management who finds the current arrangements satisfactory.

Recommendation 12: ECC should review its approach to ensure that remedial fire safety works recorded as being necessary in fire risk assessment documentation are addressed within a reasonable period.

Implemented - A project management resource has been allocated to the Facilities Management team to enable logging and tracking of the risks identified in FRAs to enable action based upon findings to be undertaken appropriately.

The actions identified by fire risk assessments are classified as either major or minor works.

Major: Remedial works that will usually require project management to complete. As an indication this will usually be works with a value of £10,000 or higher, however this may not always be the case. Any major works are run through the EPF / MITIE capital works program.

Minor: Smaller works that can be completed. These works will usually be of a value under £10,000. The completion of these works in a timely manner is ensured through the SLA in place within the MITIE / EPF contract.

Recommendation 13: ECC should complete the work that has been started to mitigate fire safety risks associated with maintenance and construction projects which are commissioned and managed by ECC maintained schools.

Implementation underway - Officers are reviewing the risks associated with the delivery of maintenance and construction works directly by schools. This is an extensive piece of work that does not just focus on fire risk, as a number of other potential risks are present such as the management of Asbestos and Gas safety. Engagement will be required with schools themselves to determine workable solutions and once these have been identified, time will be required to implement them. It is anticipated that a final report setting out the preferred strategy will be completed by the end of the 18/19 financial year.

Recommendation 14: *Twelve months after publication of this report, ECC should undertake a scrutiny exercise to assess the extent to which the recommendations made have been effectively implemented.*

Implementation proposed for future- The Leader will ask the Corporate Policy and Scrutiny Committee to undertake a scrutiny exercise to assess the extent to which the recommendations as amended made have been effectively implemented.

6. Issues for consideration

6.1 Financial implications

6.1.1 There are several work streams underway to address the recommendations in the report but it is noted that many of the recommendations have already been implemented. It is not anticipated that any additional ECC funding is required at this stage and any costs arising are expected to be contained within existing budgetary allocations and the MTRS, with the exception of the following set out below

6.1.2 With regards to Recommendation 9, there is a potential unquantifiable future capital cost increase to individual projects arising from additional property protection and business continuity risk mitigation. 2% - 4% could be added to a scheme's costs as a result of a decision to install fire suppression systems in excess of life safety requirements. So on a £2m design project, an additional cost of £40,000 - £80,000 could be experienced. Funding will be secured through the Business Case and Decision process as appropriate. The report applies this recommendation to future, rather than past, design briefs

6.1.3 With regards to Recommendation 12, issues have been raised arising from Fire risk assessments where potentially works are required to address these. However, these are still being worked through at this time. It is anticipated at this stage that these requirements can be contained within existing budgetary allocations

6.1.4 It is understood that Essex County Fire and Rescue Service will continue to provide support on a consistent basis to that provided currently.

6.2 Legal implications

6.2.1 There are three main ways in which the Council is responsible for fire safety:

- The Regulatory Reform (Fire Safety) Order 2005 which places responsibility on certain owners and occupiers of property to carry out fire risk assessments.
- The Health and Safety at Work Etc Act 1974 which makes ECC and other employers responsible for the health and safety of people affected by its business.

- The common law of negligence whereby ECC may incur civil liability if it breaches a common law 'duty of care' to people.

6.2.2 The recommendations in the report may extend beyond ECC's legal duties but they will help to promote fire safety as experienced by people using schools and ECC services.

6.2.3 Since fire safety relates to functions for which the Cabinet is responsible, under the law and the ECC constitution it is for the Leader and the Cabinet to decide the Council's response to the commission.

7. Equality and Diversity implications

7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc on the grounds of a protected characteristic unlawful
- b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

8. List of appendices

Appendix A – Terms of reference

Appendix B – Equality impact assessment

9. List of Background papers

IPRC Report. This is available here -

<https://www.essex.gov.uk/News/Pages/Independent-Commission-recommends-raft-of-actions-to-improve-the-fire-safety-of-Essex-County-Council-property.aspx>