

LONDON BOROUGH OF CAMDEN	WARDS: ALL
REPORT TITLE: Government Consultation -Defining Higher-Risk Buildings and introduction of Building Safety Act Leaseholder Protections	
REPORT OF: Director of Property Management	
FOR SUBMISSION TO: Fire Safety & Compliance Advisory Panel	DATE: 12 th October 2022
<p>SUMMARY OF REPORT</p> <p>This report summarises the Council's response to government consultation</p> <p>Local Government Act 1972 – Access to Information</p> <p>No documents were used in the preparation of this report which required to be listed</p> <p>Contact Officer: Melissa Dillon, Resident Safety, Engagement & Governance Lead</p> <p>Tel: 0207 974 3100</p> <p>Email: Melissa.dillon@camden.gov.uk</p>	
<p>WHAT DECISIONS ARE BEING ASKED FOR?</p> <p>The Panel is asked to comment on the recommendations at paragraph 6.2 and consider what other information about higher-risk buildings should be provided to residents on the Council's website.</p>	

Signed: 

Director Property Management
Date: 26th September 2022

1. What Is This Report About?

- 1.1 This report is about the Council's response to Government consultation on the definition of what is a higher risk building for the purposes of the Building Safety Act 2022.
- 1.2 The report also provides information about the leaseholder protections from the costs of fire safety remediation works that government is introducing.

2.0 Higher-Risk Building Consultation

- 2.1 The Building Safety Act 2022 introduced the standards for the regulation of building safety in higher risk residential buildings. at least 7 floors or 18m in height. The Act means that building meeting the height threshold and contain at least two residential units will be covered by the new building safety rules.
- 2.2 A residential unit means an individual dwelling or any other unit of living accommodation, for example a flat or rooms in a university hall of residence where amenities are shared. During Summer 2022 Government ran public consultation on their planned higher risk building regulations.
- 2.3 Consultation covered proposals for the overall definition of buildings included and excluded in the design and construction part of the Building Safety Act. It also set out which buildings are excluded in relation to the occupation part of the Building Safety Act regime and confirmed the method for measuring height and number of storeys of buildings covered by the Act.

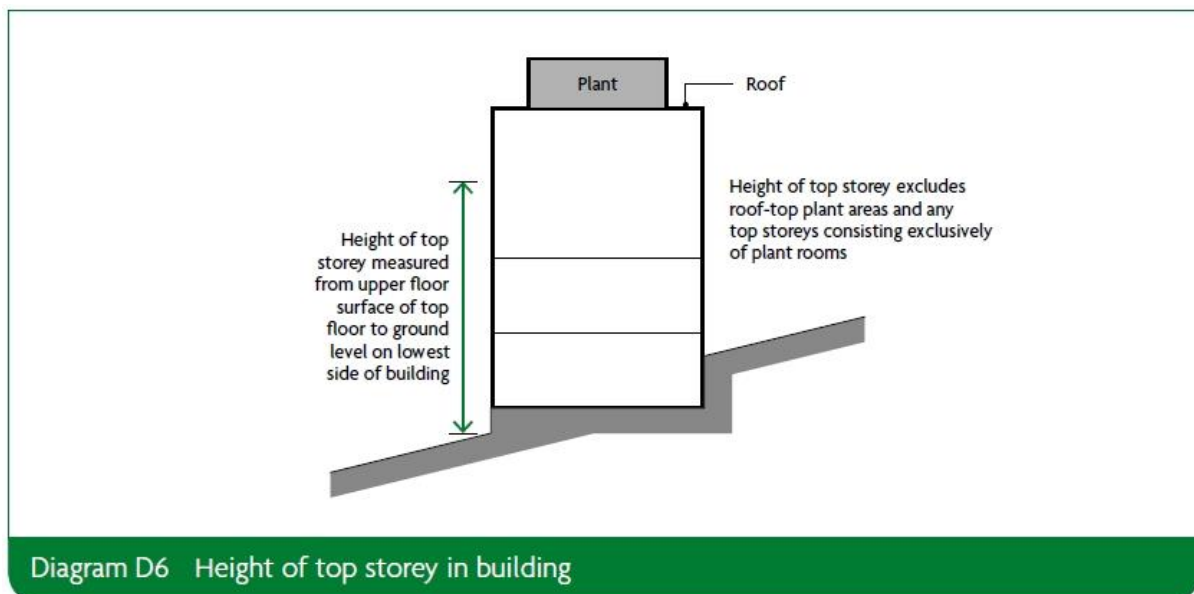
Buildings included and excluded

- 2.4 Higher-risk buildings are defined by their height and use. Buildings meeting the height threshold in paragraph 2.1 and containing at least two residential units will be covered by the Act during their design and construction and when they are occupied.
- 2.5 Sheltered housing, hospitals and care homes will be included, secure residential institutions, temporary leisure establishments and military premises will be excluded.

Measuring the Height of Residential Buildings covered by the Building Safety Act

- 2.6 The proposed new regulations say that the height of a building should be measured from ground of the lowest side of the building to the upper surface floor of the top storey (excluding any top storeys consisting exclusively of plant rooms). This is the method set out in Diagram D6 of Approved Document B under the Building Regulations 2010.

Figure 1 below shows the D6 measurement method



2.7 Consultation on higher risk building definition closed in July 2022 and new regulations will be published by Spring 2023.

3. Building Safety Act - Leaseholder Protection

3.1 When the Building Safety Act came into law on 28th June 2022 it introduced protection for 'qualifying leaseholders' from having to pay bills to make their homes safe. Instead, those who own the property or are responsible for any historical safety defects will be legally obligated to pay for any essential safety repairs. Qualifying leaseholders living in building above 11 metres in height or with at least 5 floors will be covered by the protection.

3.2 The leaseholder protections cover work to correct a relevant building safety defect, as defined in the Building Safety Act; this includes any defect caused during the construction or refurbishment of a building in the past 30 years that causes a risk to people's safety from the spread of fire or the collapse of the building.

What is a relevant building safety defect?

3.3 For a defect within a building to be defined as a 'relevant defect', it must meet all of the following criteria:

a. it puts people's safety at risk from the spread of fire, or structural collapse

b. it has arisen from work done to a building, including the use of inappropriate or defective products, during its construction, or any later works (such as refurbishment or remediation)

c. it has been created in the 30 years prior to the leaseholder protections coming into force (meaning the defect had to be created from 28 June 1992 to 27 June 2022), and

d. it relates to at least one of the following types of works:

- the initial construction of the building,
- the conversion of a non-residential building into a residential building
- any other works undertaken or commissioned by or on behalf of the building owner

3.4 Work done before or after 28 June 2022 to remediate a relevant defect that was itself created during one of the above pieces of work is also covered by the leaseholder protections.

3.5 Defects that have arisen in relation to professional services are also covered by the definition of relevant defect. This would include, for example, if an architect or building designer specified the inappropriate use of flammable materials on a building and the contractor followed those designs. This definition of relevant defect covers work needed to put right and ease historical building safety issues, **but not** wear and tear or routine maintenance.

4. Who is a Qualifying Leaseholder?

4.1 A qualifying leaseholder is someone who lives in a property over 11 metres/or five floors in height, and on 14 February 2022:

- Is their main home
- Owned no more than three UK residential properties in total

4.2 A person can also be a qualifying leaseholder if they bought their property after 14 February 2022 and either the main home or three UK residential property conditions were applicable for the property on this date. The protections will automatically transfer to any future buyers of the property. This means that all new owners of a property that was eligible for the protections on 14 February 2022 will be covered, even if they bought the property after that date.

5. Who is Liable for Building Safety Costs?

5.1 The Building Safety Act means that building owners are now liable to pay to fix historical fire safety defects if:

- they are (or are linked to) the developer of a building with fire safety defects
- they meet a wealth threshold and have a net wealth of at least £2 million per relevant building

When are Building Owners allowed to pass on costs?

- 5.2 If a building owner does not have a net wealth of at least £2 million they will be able to recover a capped contribution from leaseholders to help pay for the required works. The cap is normally £15,000 in Greater London and £10,000 in other parts of England and Wales. The Building Safety Act makes it illegal for building owners and landlords to pass on costs above the cap to qualifying leaseholders.
- 5.3 Should building owners or landlords be legally entitled to recover some historic building safety costs from qualifying leaseholders, they will have to issue new invoices for any such charges and prove that they are legally entitled to do so.
- 5.5 At the time of writing government is preparing statutory guidance for building owners on the reasonable steps they must take to recover the costs of remediation before they can pass on capped costs to leaseholders. Current government advice on how Building Safety Act Leaseholder Protection works can be found on the GOV.UK website at [What are my building owner's legal obligations? - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/what-are-my-building-owner-legal-obligations)

6. Next Steps

- 6.1 Between April and October 2023 building owners will have to register higher-risk buildings with the Building Safety Regulator. From April 2024 they must submit Building Safety Case reports to the Regulator explaining how these buildings are maintained safely and how residents are involved and informed about the safety of their building.

Recommendations

- 6.2 In preparation for the next stage of implantation of the new building safety regime the Council should:
- i. Publish a list of LB Camden residential buildings that will be registered with the Building Safety Regulator and where Building Safety Case will be submitted to the Regulator from April 2024.
 - ii. Pending the publication of detailed guidance on charging leaseholders for capped remediation costs, the Council should provide links to the government Leaseholder portal and fact sheets about leaseholder protection on the LB Camden website

7. Environmental Implications

- 7.1 There are no immediate environmental implications arising from the EEIS measures described in the report.

8. **LEGAL COMMENTS**

8.1 Legal Comments were incorporated in the preparation of the report.

9. **FINANCE COMMENTS**

9.1 Contents of the reports are noted pending further guidance in relation to charging leaseholders regarding 6.2 ii.

ENDS