Dated: 22 February 2019

RESIDENTIAL LANDLORDS ASSOC.

Mr. Clive Betts MP
Chair
Housing, Communities and Local
Government Committee
House of Commons
London
SW1A 0AA

Dear Mr. Betts

I am a Policy Consultant to the Residential Landlords Association representing landlords in the private rented sector as well as being a Solicitor in private practice. I was formerly the Association's Policy Director but have subsequently retired from that position. I know that you have had contact with the Association in the past.

I read with interest the transcript of the evidence session the Minister, Mr. Malthouse, and Mr. Ledsome to the Housing Communities and Local Government Committee at their Evidence Session on 28th January. I feel that on behalf of the Association I have some relevant matters to put before you.

In answer to Question 504 Mr. Malthouse said "For the moment we think the powers within the Act (i.e. the Housing Act 2004) are sufficient to get the work done". I regret that this is not the reality. Many years ago, subsequent to the implementation of the 2004 Act I pointed out a flaw in the Act to the Government, which is highly relevant to the current situation relating to ACM cladding.

This arises out of the current wording of Paragraph 11 in Part 3 of Schedule 1 to the 2004 Act (appeals relating to improvement notices) which does not allow ex owners/former freeholders to be joined in on an appeal against an improvement notice; only the current owners.

The situation I was involved with at the time related to a seriously defective roof on a newly built block of flats but equally you could regard the presence of ACM cladding as the same as the roof defects. I was instructed to act by a residents owned management company which by then had acquired the freehold from the Developer. To bring pressure to bear the local authority served an improvement notice on the Company requiring remedial work to the roof. The problem, however, was caused by the original Developer whose subcontractors had laid the roof tiles etc., incorrectly. The National House Developers Council became involved. However, the original developer was not prepared at that stage to take action. The management company did not have the funds nor did it (nor the individual residents) see why they should pay when it was the Developer's responsibility. The Developer of course by then had no ownership interest.

To protect the management company I lodged an appeal against the notice. What I wanted to do was join in the Developer who was the cause of the problem. I was thwarted by the current wording of Paragraph 11. What this says is that an appeal may be made by a person served with the notice on the grounds that one or more other persons, as owner or owners of the specified premises ought to take the action concerned or pay the whole or part of the cost of taking that action. Please note the use of the present tense.

As the Developer was no longer the owner this paragraph did not apply.

Importantly, under Paragraph 16 of the Schedule the Tribunal then has power to vary the improvement notice so as to require the action to be taken by the owner in question or for that owner to pay for the work. This was not possible however for the reasons explained. The Developer could not be served direct with an improvement notice anyway.

When I approached the Ministry at that time we agreed that this was a gap in the legislation and they promised to put it on a list of items to be considered at a later date. This later date has never occurred so no action has been taken to amend the legislation. I felt that I therefore ought to draw this situation to your attention.

Leading on from this I can answer Question 500 for you as a result of this case. I recall speaking to the Environmental Health Officer concerned and asked would the Council do works in default. This would have costs £¼million at the time. His response was quite clear. It would wipe out most of his Departmental budget and there was no way his manager would let this happen. The notice has purely been served to bring pressure to bear to resolve the ongoing situation. This is why local authorities do not intervene and carry out works in default because they have to run the risk of being successful in recovering them. Incidentally in this particular case ultimately it was resolved and this was due to involvement by the NHBC.

A lot of emphasis was placed in the Minister's answers on Part 1 of the 2004 Act. The problem is in that in reality the Fire and Rescue Service take enforcement responsibility for larger blocks of flats. Part 1 of the Act is not engaged at all. At the Residential Landlords Association we have constantly highlighted the problem around the divided responsibilities for blocks of flats between Part 1 on the one hand which is administered by local authorities and the Fire Safety Order on the other hand which is administered by the Fire and Rescue Services. The fundamental problem is that the latter legislation only relates to common parts; not individual flats. We have urged the introduction of a new general residential fire safety duty to address this problem. The situation results from the Westminster City Council case decided under Health and Safety at Work Etc., legislation. This decided that the common parts of blocks of flats are non domestic premises. This has bedevilled fire safety legislation since the current system was introduced in 2004/5. We have made some detailed submissions to the Hackitt Review on this issue and in their report they noted this problem. This is a problem of general application; not just in high rise buildings.

This leads me to Question 499 where witnesses commented on the "envelope of a building". There should never have been any doubt that under Part 1 of the 2004 Act external cladding is within the scope of HHSRS powers because Section 1(5) of the Act is quite clear that it includes the structure and exterior.

What was not touched on however is another key issue in relation to the Fire Safety Order. There seems to be a possible urban myth that this Order cannot retrospectively require works to be carried out which go beyond Building Regulation requirements in force at the time the building work was carried out or for them to require improvements. The Association has taken the view that this is wrong and there is such an obligation. However, the key problem with the drafting of the Fire Safety Order (which the Residential Landlords Association have also pointed out) is the exclusion of domestic premises and what this extends to for the purposes of the Order (as opposed to Part 1 of the 2004 Act) is not clear. The position could well be that this depends on the wording of individual leases. Often, the main structure and exterior would be retained in the ownership of the freeholder/management company but this is not always the case as the lease (demise) of the individual flats may extend to the external walls in individual cases. This is another area which has been brought to the Government's attention in our submissions.

It is therefore a little surprising in answers to the question why the Fire Safety Order was not focused on rather than HHSRS and Part 1 powers, especially as it is the Fire and Rescue Service which normally takes responsibility for larger blocks of flats. They can only enforce the Fire Safety Order but not exercise HHSRS powers.

I hope that this is of assistance to the Committee in its deliberations on these issues.

Yours sincerely

RICHARD JONES
POLICY CONSULTANT
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