

The valuation of high-risk residential buildings and the role of EWS1

Received (in revised form): 30th October, 2020

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ABSTRACT

In response to the tragic fire at Grenfell Tower in June 2017, the UK Government proposed regulatory reform with the purpose of ensuring residents feel safe and are safe in their own homes. This paper examines the advice that has been given by the government and traces how this advice has had disastrous consequences for the mortgage lending market for flats located in high-risk residential buildings. This has been compounded by the unfortunate effect that the EWS1 form has had on the same market. The paper opens with a review of the independent expert advisory panel set up to provide advice and make recommendations to the Secretary of State for Housing, Communities and Local Government

on urgent building safety measures that should be carried out to high-risk residential buildings with aluminium composite material (ACM) external wall cladding. The panel formulated the much-criticised advice note 14 which provided guidance to building owners to take general fire precautions with non-aluminium composite Material (non-ACM) cladding in their external wall systems to ensure that the systems are safe. Although advice note 14 was superseded in January 2020 by the Ministry of Housing, Communities and Local Government's consolidated advice document, the binary approach to defining safe external wall systems is still adopted. This has caused unintended consequences for the valuation of flats in high-risk residential buildings as many valuation surveyors take the position that if compliance with the consolidated advice document cannot be demonstrated, then the flats within that building will have a valuation of £nil. The industry's response has been to produce the EWS1 form which was intended to unblock the market. This aim has not been achieved, however, and the paper details why the EWS1 form has, to date, failed and suggests ways of restoring confidence within the market.

Keywords: valuation, Grenfell Tower, fire safety, cladding, EWS1

BACKGROUND

In the wake of the Grenfell Tower fire, the UK Government set up an independent expert advisory panel (the expert panel) to provide advice and make recommendations to the Secretary of State for the

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Journal of Building Survey,
Appraisal & Valuation
Vol. 9, No. 4, 2021, pp. 305–314
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2046–9594

Ministry of Housing, Communities and Local Government (MHCLG) on immediate building safety measures that should be implemented to identify high-risk residential buildings (HRRB) of 18m or more in order. The 18m threshold is stated in Approved Document B to the Building Regulations as the point at which additional fire safety provisions are required.

The expert panel combines a wealth of experience and knowledge around fire prevention, building safety and testing processes with a remit that allows them to engage additional technical expertise if necessary. The expert panel includes a former London Fire Commissioner, the Chair of the National Fire Chiefs Council and the Chief Executive of the Building Research Establishment.

The original terms of reference¹ for the expert panel included the provision of advice on fire safety issues in relation to: a) aluminium composite material (ACM) cladding systems including polyethylene fillers which was the material used at Grenfell Tower; b) fire doors and other building safety products; and c) assisting the government in implementing the Hackitt Review. The expert panel was tasked to consider whether any changes or clarifications to existing regulations were necessary. Similarly, the panel also considered whether current processes for assessing building safety were adequate and whether any amendments were necessary. Specifically excluded from the remit of the expert panel was the determination of government policy, nor could they cut across the public inquiry and police investigations into the Grenfell Tower fire.

On advice received from the expert panel the government amended Regulation 7 of the Building Regulations 2010 to effectively ban the use of combustible materials in the external walls and balconies of new buildings over 18m in height with effect from 21st December, 2018. Only materials classified A1, A2-s1, d0 as non-combustible are permissible and no other combustible materials

may be used.² The government also directed that ACM external wall systems should be removed from HRRBs and provided support for local authorities to undertake emergency works to remove and replace ACM cladding.

ADVICE NOTES

In addition to the amended legislation addressing the issues around ACM cladding, the MHCLG has also published a series of fire safety advice notes detailing what owners of HRRBs should do to satisfy their obligation to take reasonable fire precautions to ensure the building is safe for residents as required by the Regulatory Reform (Fire Safety) Order 2005. The MHCLG issued 22 advice notes in total and in January 2020 these were consolidated into a single document entitled 'Advice for Building Owners of Multi-storey, Multi-occupied Residential Buildings' ('the consolidated advice document').³ In order to understand the full implication of this document for the valuation of HRRBs it is necessary to explore the effect that Advice Note 14 (AN14)⁴ had on the market prior to the publication of the consolidated advice document.

In December 2018, the MHCLG issued AN14 which covered the fire safety of external wall systems on those buildings above 18m in height which do not contain ACM within the cladding system. AN14 confirmed the government's endorsement of the recommendations of Dame Judith Hackitt in her Independent Review of Building Regulations and Fire Safety.⁵ The scope of AN14 encompassed all HRRBs that have any type of external cladding system, other than ACM, which is potentially combustible, including metal composite cladding (MCM) faced with other materials such as zinc, copper and stainless steel, high pressure laminates (HPL) and rendered insulation systems.

AN14 also highlighted the fact that a responsible person under the Regulatory

Reform (Fire Safety) Order 2005 (RRO 2005) has a duty to consider ‘general fire precautions’ requiring them to reduce the risk of fire and the spread of fire within the building they are responsible for. The MHCLG implied in the advice note that the scope of this duty has now been extended so that it includes the responsible person (or their agent) assessing and reviewing the construction of the external wall systems as part of a fire risk assessment. This includes not only the type of external panels that are used, but also insulation, cavity barriers, fire stopping and other elements of the external wall detailing.

One of the main problems with AN14 was that it contained an extremely narrow definition of whether an external wall system is safe or not. With regard to existing buildings, an external wall system can only be safe if it is comprised of materials of specified limited combustibility or it has successfully passed the BS8414 test and achieved BR135 classification as set out in the Building Research Establishment (BRE) publication ‘Fire Performance of External Thermal Insulation for Walls of Multi-storey Buildings’.⁶ This issue is exacerbated by the fact that even if a building owner is able to demonstrate that their system complies with the BS8414 test, they must also show that the system is demonstrably safe, ie that the construction of the system on the building unequivocally matches the system that was tested and that it has been correctly installed and adequately maintained.⁷ The definition of ‘safe’ does not include any reference to fire engineered solutions that may have been implemented within a HRRB and so assessments cannot take into account the amount of any material used, whether sprinklers have been installed, or even if a waking watch system has been implemented.

Manifestly the external wall systems of the majority of HRRBs will not have been subject to the BS8414 test. On the contrary, it would be reasonable to assume that

designers would have sought compliance by applying the guidance provided within Approved Document B of the Building Regulations. We are now aware the guidance and recommendations stated in the Approved Document have often been applied incorrectly.⁸ As a consequence, it is also reasonable to assume that most HRRB owners will now be unable to demonstrate that the external wall system to their building is safe and they will need to commission surveys or inspections to ascertain whether or not the materials used in the external wall system have been adequately installed and maintained and, where appropriate, determine whether the construction of the external wall system complies with the BS8414 test.

The most significant consequence of AN14 is that it has, in effect, created a retrospective obligation on all HRRB owners not only to undertake inspections to ensure that the construction of the external wall systems is safe but, more importantly, to undertake remedial works to any external wall systems that are not safe. In addition to this, the owners will also need to implement mitigation measures until the wall can be deemed to be ‘safe’.

The publication of the consolidated advice document in January 2020 showed that the expert panel had not simply amalgamated all the previously issued advice notes into one document. It has also extended the remit of the advice so that owners of all multi-occupied residential premises of any height must consider and mitigate the risks of any external wall system and fire doors when discharging their duty under the RRO 2005. The remit was extended because the expert panel had serious concerns that Requirement B4 of Schedule 1 of the Building Regulations was not considered in full detail. The report states:

‘Requirement B4 is clear and requires that “the external walls of the building shall adequately resist the spread of fire

over the walls and from one building to another, having regard to the height, use and location of the building”. The need to assess and manage the risk of external fire spread applies to buildings of any height.⁹

In effect, the definition of a HRRB has been extended to include all multi-occupied residential buildings, with cladding or without cladding and of any height. The expert panel also advised that building owners should not wait for the regulatory system to be reformed but should actively be checking the construction of their buildings to ensure the safety of their residents.

VALUATION ISSUES

Although the MHCLG has stated that the consolidated advice document is neither a statutory instrument nor a compliance document and is only intended to assist building owners to take action should they have any concerns over the safety of their external wall systems, it has had a significant, albeit unintended effect on the valuation market. This has occurred because building owners are required to provide technical information about the construction of their buildings prior to a lending decision being made. Many freeholders, however, simply do not hold the information that is required, not least because the owners must provide absolute assurances that there is no combustible material contained within the tall building.

Many building owners will be property organisations that own multiple HRRBs and may not be able to locate all the appropriate records, including as-built information, necessary to determine what materials make up their external walling systems. Even if the data can be located, it may be inaccurate or unclear on the classification of materials used. For instance, materials of limited combustibility are defined by reference to the Building Regulations that were in force at

the time of construction and expert advice may need to be sought to determine the exact nature of the materials used. The problem is exacerbated where a building contains material which is not of limited combustibility as there is a much greater likelihood that the HRRB will not be considered safe.

As a result of the implementation of AN14 and owners of HRRBs checking compliance of their properties with the requirements of the Building Regulations, the industry has become aware of a serious problem with both the design and construction of external wall systems. The defects are not confined to the use of combustible external cladding materials but include the forms of insulation used and the installation of defective cavity barriers.¹⁰ Consequently, this issue has caused valuers and lenders difficulties in producing a valuation for a HRRB and the individual flats therein. If the necessary technical information cannot be provided, then lending institutions have instructed valuers to put a £nil value against the property ensuring that it cannot pass through any credit approval process. A £nil valuation does not mean a flat is worthless, but it prevents a mortgage advance being made against a property at least until more information from an intrusive inspection by competent professionals becomes available and an accurate valuation can be produced.¹¹

Carrying out an inspection of HRRB to demonstrate compliance with the consolidated document can be a complex process, however, and the Royal Institution of Chartered Surveyors (RICS) has stated that cladding and fire safety may be the biggest technical challenge the profession has faced in several decades. A typical inspection may include the input of a chartered fire engineer and a specialist cladding engineer with a contractor in attendance. The services of a testing laboratory will be required to determine the materials used in the cladding system. It is crucial to understand whether

the existing cavity barriers are adequately fixed, so samples from multiple points within the cladding system may need to be taken to provide a comprehensive picture of how the barriers have been fitted and whether they are fit for purpose. Due to these issues, professional indemnity insurance (PII) providers are reconsidering policy coverage in order to reduce their exposure to fire safety claims due to external cladding systems.¹²

The unintended consequence of these various factors is that sales of new flats and the remortgaging of existing flats including shared ownership staircasing transactions are placed in abeyance. Valuers and lending institutions are insisting on assurances from competent professionals that buildings comply with the new guidance and the steps set out in the consolidated advice document have been successfully carried out and confirm the building is either safe or does not present a significant fire risk. It has been estimated that the problem could have an impact on between one¹³ and three million¹⁴ flats, with between four to five million residents affected.

THE EXTERNAL FIRE REVIEW PROCESS

In order to address this blockage within the mortgage market, the RICS led a cross-industry working group to determine best practice in the reporting and valuation of tall buildings. On 19th December, 2019, the RICS together with the Building Societies Association (BSA) and UK Finance agreed a new external wall fire review process (EWS), which is a standardised process for the valuation of HRRBs with actual or potential combustible materials to external wall systems and balconies. The review process (see Figure 1) requires a fire safety assessment to be undertaken by a qualified, competent construction professional. Only one assessment is required per building and the assessment will be valid for a five-year

period. It is envisaged that the new industry-wide process can be used by valuers, lending institutions, freeholders, construction professionals and fire safety experts and will help people buy or sell homes and remortgage flats in HRRBs.¹⁵

The EWS form can only be completed by competent, chartered professionals with the requisite experience of fire design and safety within buildings and cannot be completed by the valuer even though they may have the necessary fire expertise. The EWS provides two options for recording the findings of an HRRB inspection. Option A is completed where the primary materials (ie the cladding system, forms of insulation system, etc.) do not support combustion. Under this option a competent professional will certify that the HRRB contains materials that do not support combustion or while it does contain some materials that support combustion, they are limited to attachments or additions to the external wall (eg balconies) and do not require high-value remedial works. Remedial works will normally be subject to guidance supplied by the relevant lending institution and combustible materials to, say, balconies could be reflected either in the valuation itself or by the retention of a set amount. Where lender guidance is not provided or does not reflect the impact on the valuation, then it would be reasonable to assume that necessary remediation costs would be detailed and reflected in the property valuation.¹⁶

The second option, option B, is invoked where the primary materials in the external wall system are known to be combustible. In this case, a chartered fire engineer (or equivalent) will need to undertake a risk assessment to provide an opinion on whether the fire risk is low, or whether remediation works will be required. In order to make this determination, the fire engineer will need to assess whether or not the external wall system of the HRRB complies with the functional requirements of the Building

Regulations. Does it resist the spread of fire and smoke so as to inhibit the spread of fire within the building? Will the unseen spread of fire and smoke be inhibited within confined spaces? Does it resist the spread of fire over the walls with regard to the height, position and use of the building?

DISCUSSION: THE PROBLEMS WITH EWS1

The core aspiration of the EWS process is to move away from the binary process invoked by AN14 and reinforced within the consolidated advice document which advises that all external walls on HRRBs must be

checked and if the materials are combustible then they must pass the BS8414 test. The EWS process is meant to be a more nuanced one, insofar as the assessment of risk in respect of the fire safety of a building has been delegated to a competent chartered professional. Their role is either to identify HRRBs that need remediation work or to give assurance to lenders when buildings are deemed to be safe with respect to fire. The crucial part of this process is the assessment of risk, as this was initially believed to be the factor that would start to unclog the mortgage market. The expert must assess whether only materials of limited combustibility are contained within the external wall system

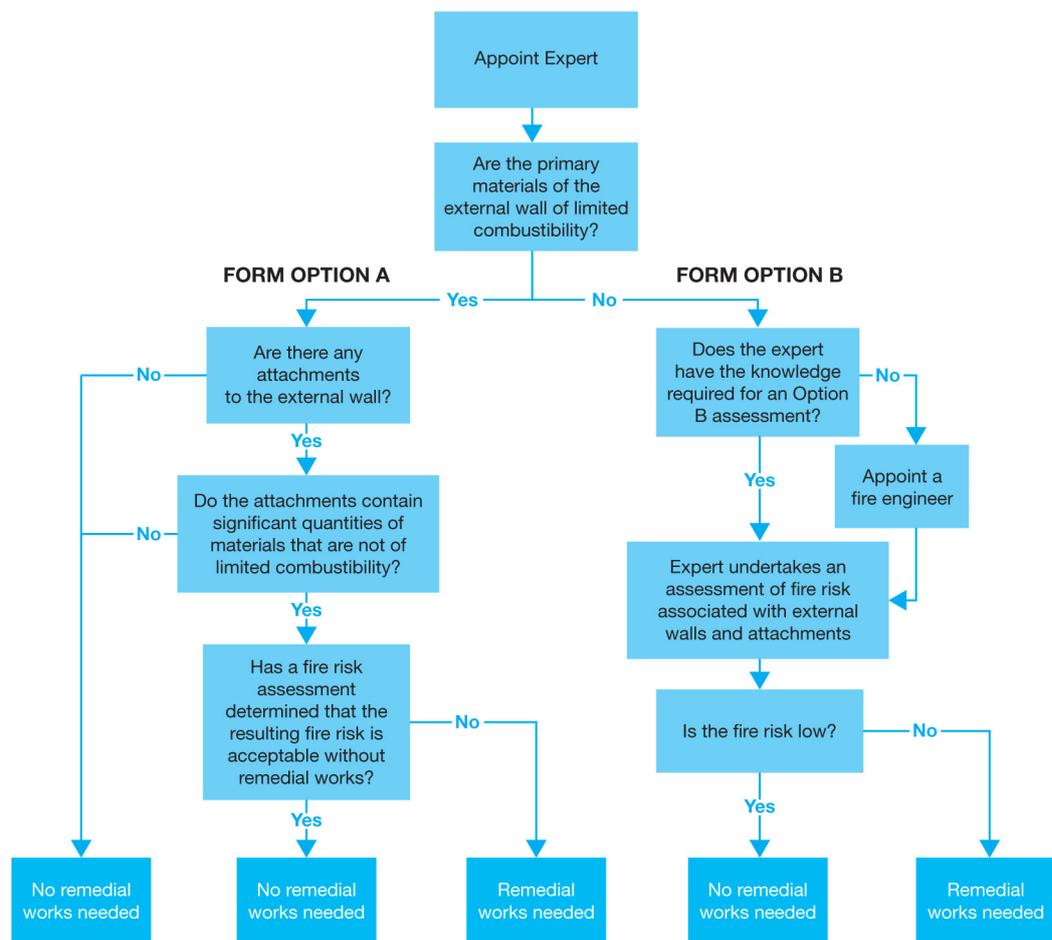


Figure 1: The EWS process
Source: Inside Housing¹⁷

and/or attachments such as balconies. If this is the case, then the building can be deemed safe for the purpose of the mortgage companies. Similarly, if the materials are found to be combustible but are deemed to be low risk, then the building can still be deemed to be safe for lending purposes. Both outcomes will restore fluidity to the mortgage market.

At the present time, however, it is clear that the EWS1 is not the solution to the difficulties experienced within the mortgage lending market. The EWS1 does not provide a simple, clear-cut way of assessing whether an external wall system is safe. All the processes that a HRRB owner would need to have carried out to satisfy the requirements of the consolidated advice document (and the RRO 2005 when it is amended) also have to be undertaken in order to sign off the certification that is required under EWS1. The often inadequate and inaccurate nature of specifications and as-built drawings provided by developers means that any survey undertaken with the aim of EWS1 certification will almost inevitably be intrusive in nature so that construction detailing can be inspected, and materials tested if necessary. It is difficult to foresee any circumstances in which a competent professional would be satisfied to provide the necessary certification without undertaking a detailed and intrusive inspection of the HRRB.

An emerging issue with respect to EWS1 inspections is that buildings may contain limited combustible materials but still fail EWS1 inspections when balconies have timber or composite materials in their construction. This is because the CCP/inspectors deem that those buildings require remediation works, which leads to lending institutions refusing to allocate mortgage monies for any flats within that particular HRRB. Anecdotal evidence is suggesting that inspectors are recommending remediation works on most EWS1 forms. This may reflect the number of buildings that have combustible materials in some form within

their external wall system and, perhaps, a reluctance on the part of inspectors to deem the presence of any combustible material to represent a low risk. This issue is compounded by the time it takes for the recommended remediation work to be undertaken, which may mean that, in the worst case scenario, it could be some years before flats affected can be sold or mortgaged.¹⁸

The pragmatic difficulties involved in undertaking an EWS1 inspection are not the only issue delaying the external fire review process. The situation has been exacerbated by the low number of qualified inspectors available against the huge number of buildings that need to be surveyed. It has been estimated that there are fewer than 300 chartered fire engineers who can undertake an EWS1 inspection, which has inevitably led to long delays in arranging inspections. It can reasonably be foreseen that this pool of engineers may become even smaller as concerns around liability issues will lead to them either refusing to carry out EWS1 instructions or being unable to obtain PII cover for this work. Post Grenfell, PII insurers have become increasingly cautious about providing cover for fire safety inspections due to the potential financial liability should a similar tragedy occur again. It is difficult to foresee any situation where an inspector would undertake an EWS1 inspection without having the benefit of PII cover. This cautious approach is not limited to insurers but extends to banks and, despite UK Finance backing the process, some lending institutions are disinclined to agree mortgages even after a signed and completed EWS1 form has been provided. The fact that not all banks and lending institutions accept EWS1 forms has added confusion to an already disordered situation.

The final factor that may potentially delay the external fire review process is the cost of the inspection itself, which can be between £10,000 and £50,000.¹⁹ This means leaseholders in HRRBs may have to contribute

substantial sums of money via their service charges simply to enable the survey process to commence, with the prospect that they may need to pay even more monies should remediation works be required. Reports of fraudulent inspections have added further complications to an already challenging scenario.²⁰ The EWS1 process was developed with the best of intentions to assist in resolving the difficult situation that has arisen. While there is no doubt that the EWS1 form has been accepted by some lending institutions and sales on some flats are proceeding, it is clear that the external fire review system has not had the intended effect and the related property market is still not functioning effectively.

CONCLUSION

Three years on from the Grenfell Tower fire, no effective pragmatic approach has been formulated to address the external wall system issues that are affecting HRRBs all around the country. Initially, after Grenfell, the government focused on risk issues surrounding the installation of ACM cladding on buildings over 18m in height and moved quickly and correctly to form an expert panel to advise on the testing and replacement of these cladding materials. Since then, however, the issuing of a number of advice notes, including the widely criticised AN14, has turned the focus to multi-occupied residential buildings that may contain any combustible material, irrespective of height, and scrutiny applies not only to the external wall system but to attachments to the building such as balconies. The result is that the scope of buildings that need to be investigated for risk to fire safety has become so wide that the industry is unable to cope with the number of inspections that need to be undertaken and the extent of the consequent remediation works required to ensure that HRRBs are deemed safe. The consequence of this is that, despite all the measures

undertaken to date, residents are still living in HRRBs that are unsafe and, particularly in the private sector, it seems unlikely that the necessary remediation works will be carried out to their homes in the foreseeable future.

The advice notes have also had the unforeseen effect of blocking the market for the sale and remortgaging of flats. The EWS1 form has not had its intended effect of unlocking the market and, in retrospect, the development of the external fire review process should perhaps have included initial input from representatives of the insurance industry. In its existing form the process is virtually unworkable, not least because some insurers are loath to provide cover for the inspections because the EWS1 form is considered to be a matter of concern to insurers across the market. The resolution to this complex situation will not be easy, but easing the crisis and reducing the stress of concerned residents could be made by adjustments to the existing process and it would seem imperative that the insurance industry is included in these decisions. A relaxation of the rules on the professionals who are empowered to sign off option B of the EWS1 form could be considered. For example, in addition to chartered fire engineers, both chartered building surveyors and chartered building engineers could reasonably and safely carry out this function. Further risk analysis should be done to define which buildings should fall within the scope of the consolidated advice note and more explicit guidance to determine the correct prioritisation of HRRBs should be formulated. The government should provide the necessary funding to ensure that all affected HRRBs are inspected and necessary remediation works completed so that residents are not forced to wait years to be able to either sell or mortgage their properties. If these steps are taken, then the government may be able to fulfil its initial intention to create regulatory reform that ensures residents feel safe and are safe in their properties.

ACKNOWLEDGMENTS

I would like to record my grateful thanks to the Executive Chairman of Martin Arnold Chartered Surveyors, Jim Martin FRICS and his fellow director, Ross Hailey MRICS, for generously giving their time to help with this paper.

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