

REPORT TO: Scrutiny Committee People, Executive and Council

Date of Meeting: 7th September 2017, 12th September 2017 and 17th October 2017

Report of: Bindu Arjoon, Director

Title: Fire Safety Management Policy (Housing)

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council.

1. What is the report about?

This report recommends a new Fire Safety Management Policy in respect of the Council's housing stock and asks Members to decide whether escape routes should be managed under a 'managed' or sterile approach.

2. Recommendations:

- 2.1 That the Council adopts a new Fire Safety Management Policy meaning that designated escape routes and alternative routes which could be used for escape should be maintained free from all obstacles in order to secure tenant safety and the Council's compliance with statutory duties.
- 2.2 That members note that the approach to implementing the policy will be phased over time to include awareness raising, consultation on storage requirements and fire safety education.
- 2.3 Council approves the additional funding required to implement the adopted option for the management of the Council's Housing Stocks, those costs to be met from the Housing Revenue Account (HRA), as shown in section four below.

3. Reasons for the recommendation:

The Housing Service's new Fire Safety Management Policy is written to ensure that the Council meets all of its statutory duties (appendix 1).

While acknowledging that the choice between a 'managed use' or 'sterile' strategy will be made by Members, officers and the fire service are clear in their view that the a sterile approach is by far the best option from a tenant safety perspective, from an efficient use of resources perspective and for best ensuring statutory compliance because it maintains escape routes in the safest condition and removes all possible uncertainty about what is and is not allowed.

Amongst the duties imposed by the Regulatory Reform (Fire Safety) Order 2005, is a requirement for landlords to ensure that escape routes and associated fire exits from premises are kept clear at all times.

4. What are the resource implications including non financial resources.

The existing Fire Policy has not been effective in managing escape routes, as evidenced by our Fire Risk Assessments. A list of acceptable items (to be stored in marked 'safe areas') provides for pot plants, bicycles, pushchairs and prams. There is an extensive list of items not permitted yet these are the items most often found, for example, doormats, carpets, tables and mobility scooters. Furniture, shelving and net curtains are not uncommon.

Officers have reviewed the resources currently available to the Housing department (both Assets and Customer Relations) and then considered what additional resources may be required for each of the two approaches.

Calculations (shown in Appendix 3) indicate:

- **Sterile Policy** will require at least one extra FTE employee for the enforcement stage. This is because officers have determined that monthly inspections¹ would be the minimum practicable precaution to ensure escape routes are kept sterile, have dialogues with tenants and take enforcement when necessary. Officers estimate this would most likely be job evaluated as a Grade 6 post the costs would be £26,280. However a further report will be brought to Executive and Council regarding the resources required for the pre- implementation phase.
- **Managed** is likely to require at least five extra FTE employees. This is because officers have determined that weekly inspections¹ would be the minimum to monitor unauthorised encroachments into escape routes, have dialogues with tenants and take enforcement when necessary. On the basis of this post being evaluated as a Grade 6 the cost would be £131,400.

It should be noted that for both options, existing Housing Officers would find the new policy difficult to enforce. Aside from the additional work which comes from inspecting and enforcing either option (see footnote), an inspection regime must be carried out methodically to be effective. All 437 locations will need to be inspected either monthly or weekly on a recorded, managed schedule.

Fire alarms

Continuing a situation where escape routes are not kept clear will necessitate the installation of new fire alarm systems. This is a consistent recommendation of our fire risk assessor.

This goes against official guidance for most blocks of flats because of the increased number of false activations generated. In effect, we would be increasing the alarm response burden on Devon and Somerset Fire and Rescue Service (DSFRS) because we are not adequately managing the escape routes. DSFRS may start to charge for attendances.

¹ Inspections (all of which need to be recorded) will require follow up action where the policy is not being complied with. Such action may include: letters to all or individual tenants; potential work with tenant to locate alternative storage facilities; gathering evidence such as photos and statements; visiting the alleged perpetrators; writing to the alleged perpetrators; applying to court for injunctions; attending court if contested; if injunction obtained then enforcing the terms contained within it; subsequent increased inspection to ensure injunction not breached. The burden for these activities will fall on Housing Officers.

Alarm system costs would need to include installation, maintenance, monitoring centre, out-of-hours response and fault repair services. It is difficult to provide costs without individual site surveys and quotations but a reasonable figure would be £750 per site for installation and £500 per annum thereafter.

We estimate about 80 sites are likely to require alarms so a first year outlay would be in the region of £100,000 (£60,000 installation plus £40,000 annual service) and £40,000 service costs annually thereafter.

5. Section 151 Officer comments:

The financial implications in the report are noted. Members will note that there is a significant underspend within this financial year, although the funds remain committed. Regardless of the option picked by members, the funds will be included within the Housing Revenue Account's medium term financial plan.

6. What are the legal aspects?

Appendix one provides a list of relevant legislation and accompanying guidance material. Based on the findings of our fire risk assessments, we are clearly in breach of our statutory duty and therefore vulnerable to enforcement action and prosecution by the fire service.

If we were prosecuted because escape routes were not maintained in a clear condition, then under the new sentencing guidelines for health and safety offences, the courts will consider what harm could have occurred. For example, an item burning in an escape route could have prevented escape and trapped tenants and/or fire fighters. They could have died. We would be sentenced as if they had.

Fines in excess of £100,000 can be expected – as demonstrated by the recent prosecution of Southwark Council following the fire at Lakanal House; they were fined £270,000 plus £300,000 costs.

Further, under new sentencing guidelines for Corporate Manslaughter offences, prison sentences can now reach a maximum of 18 years. Courts would seek to identify a 'responsible person'; i.e. the person or persons who had ultimate control for the element that failed. This in normal circumstances would be the most senior operational manager of the organisation which for the council would be the Chief Executive and Growth Director.

7. Monitoring Officer's comments:

- 7.1 Paragraph 14 of the Regulatory Reform (Fire Safety) Order 2005 states:
"Where necessary in order to safeguard the safety of relevant persons, the responsible Person must ensure that routes to emergency exits from premises and the exits themselves are kept clear at all times.
- 7.2 The Guidance produced by the LGA indicates that 'zero tolerance' should be adopted as the default position. More pertinently, the Guidance suggests that zero tolerance shall apply where there is doubt over the ability of residents to apply a 'managed use' policy.

7.3 In regard to the managed approach, it is clear that this is only appropriate if the risk assessment indicates that it should be applied, and if it is applied must give rise to clear requirements imposed upon residents that they must follow. This in turn will require a regular system of inspections and enforcement actions, to ensure that we are not in breach of our obligations.

7.4 The other point to consider is that our tenancy agreement, at Part C1, paragraph 4 states that tenants must *'co-operate with us and your neighbours to keep any communal areas clean, tidy and clear of obstruction. If you share balconies and stairways with other tenants, you must keep these areas clean and free of all items (floor coverings etc.).'*

This indicates that our position is that we require a sterile area in the common parts, as we have included an express term to that effect, but yet we allow tenants to breach this obligation, suggesting that we are currently turning a blind eye to the actions of tenants.

7.5 The Guidance is of course only that and so does not have the same status as legislation, but it is almost certainly going to be regarded as the benchmark for landlords.

7.6 Given the above, to have a “managed” approach increases the risk of harm to residents, staff and fire fighters, and so potentially could put the Council at risk of prosecution and or civil action. My advice is that we should adopt the sterile policy suggested by the guidance, i.e. that the default position is zero tolerance of obstructions i.e. sterile areas, unless the risk assessment suggests that a managed approach is appropriate.

8. Report details:

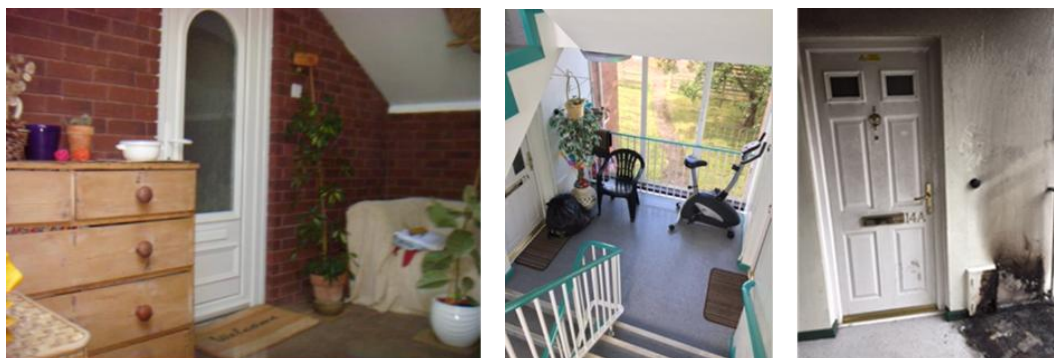
What are often and commonly referred to as ‘communal areas’ are actually escape routes, which start at the tenant’s front door and end at the fire exit, include the stairwells, landings and lobbies which serve them and are protected areas designed and constructed to facilitate escape, prevent the spread of heat and smoke and provide ‘refuge’ should escape prove impossible.

The Regulatory Reform (Fire Safety) Order requires that escape routes are kept clear. This is because combustible and flammable items and sources of ignition not only create obstacles, slip and trip hazards but should they ignite, produce thick, hot, toxic smoke. Some survivors of the recent Grenfell Tower fire disaster reported the almost instantly debilitating and disorientating effects of smoke in the escape route.

The existing regime, based on the Fire Policy agreed by the Council in 2009 had the unintended effect of prioritised tenant storage issues and natural desire to ‘soften’ the look of escape routes over their safety and our compliance with regulations.

This is evidenced by the continual finding of our fire risk assessment reports (which have to be undertaken for all escape routes); i.e. fire escape routes, including stairwell landings and floor lobby protected areas, are being compromised by the items and materials that our residents leave in them.

The three recent images below illustrate some of the items which can be found in escape routes. The first image was taken by our fire risk assessor, the second was taken during a fire safety tour with a representative from DSFRS and the last was taken subsequent to a fire on an escape stairwell landing.



In determining which strategy (sterile or managed) is the best option to ensure compliance and tenant safety, officers carefully considered the comprehensive guidance provided by the publications *Fire safety in purpose-built blocks of flats* provided by the Local Government Association (Appendix 2), *Fire Safety Advice for Landlords* provided by the Devon and Somerset Fire and Rescue Service and ***Fire Safety Risk Assessment – Sleeping Accommodation*** provided by central government.

Officers also considered the strategies adopted by other councils and housing associations and the findings of our own fire risk assessments which are conducted by a fire risk assessor independent to the Council.

There was an informal consultation from officers and our Insurance provider Zurich and contacts within the Devon and Somerset Fire and Rescue Service (DSFRS) who were all clearly in favour of a zero tolerance strategy because it is easier to enforce and improves the probability of compliance.

Managed strategy

A managed policy will simply see the re-introduction of an 'exemptions' list. As discussed in section 4, the enforcing of this approach would require weekly checks to be made.

However, any item left in an escape route increases the risk to residents and fire fighters. Ultimately, only the Courts would decide if our measures were suitable and sufficient. Members may wish to consider the likely success of our mitigation

Zero tolerance

A sterile policy has the benefit of being unambiguous, provides the best safety and defence in court. Guidance dictates that sterile policy should always be adopted when there is doubt over the likelihood of residents to comply with a managed use policy.

In making their recommendation, officers recognise that one particular area of the policy could prove contentious with some tenants, namely:

"Ensure tenants understand the need to keep all communal corridors, stairwells and lobbies clear of any articles which may impede escape, hinder and endanger fire

fighters or allow fire to spread. In practical terms, this requires all clear areas and storage facilities not designated for personal use to be kept 'sterile'."

Initial concern can be reduced through a carefully phased introduction and implementation of the new policy. If approved by Members, officers will implement the introduction along the following lines:

Phase one – facilitation

These two activities have already commenced.

- Article in the next publication of our Insight magazine regarding the benefits of clear escape routes and dangers of obstructed ones.
- Talks to residents by Officers regarding fire safety in general at sheltered schemes – DSFRS are happy to participate.
- Overcrowding is considered to be an issue contributing to the escape routes being used to store items. Officers are working proactively with the ECC tenants identified as registered on Devon Home Choice lacking bed-space(s) to, where appropriate, assist them to move to more suitable properties either via mutual exchanges or management transfers.

Because storage is such an issue for tenants, the Council could consider installing external additional storage for items such as mobility scooters (with charging facilities) and secure storage facilities for larger items. Costs are difficult to anticipate but officers estimate that the estates improvement budgets may need to be increased from £50k to £200k per annum for the next 5 financial years to allow for additional storage space which include mobility storage areas and bin storage areas.

Phase two – implementation

- Following phase one, a three month lead-up time to enforcement
- Letter drops, Insight magazine update and notices in communal areas
- Assistance for the vulnerable where possible
- Removing the larger and more hazardous items

Phase three – enforcement

- Reminders and warning letters
- Visits by Housing Officers
- Removal of articles left in escape routes
- Eventual zero tolerance

East Devon have successfully implemented a zero tolerance policy which, after 18 months, is now accepted as the norm and increasingly appreciated by their residents, especially post-Grenfell. East Devon's Members and DSFRS fully supported the Council at every stage and this seems to have reduced the negative response from residents.

9. How does the decision contribute to the Council's Corporate Plan?

A decision in favour of zero tolerance will promote a strategy far more likely to succeed, more of the time, in meeting statutory obligations so reducing corporate risk.

The published corporate plan points to working closely with other organisations, and zero tolerance aligns with the strong preference voiced by DSFRS. It also supports both the HRA objective to deliver a robust health and safety compliance regime and Health and Place endeavour to keep the city green, clean, safe and healthy.

10. What risks are there and how can they be reduced?

The risks are that there is a major fire in one of its council blocks and that there is injury/fatality, major damage to the property, major costs for decanting/ relocating of tenants and leaseholders and repairs. Additionally, a further risk is that the council faces prosecution for Corporate Manslaughter potentially leading to a significant fine and or incarceration of the person(s) considered responsible. There is also the reputational damage an incident like this would cause.

The council will never be able to completely remove all risks of a fire in its stock but as a responsible landlord should take all reasonable actions to mitigate the likelihood and the impact.

Both a managed and sterile area policy both present some risk and ultimately as already stated in the report in the event of a fire the courts would decide if the actions and measures taken by the council were appropriate and reasonable.

With a managed policy the risk would be our ability to resource and enforce this policy ensuring consistency across all our stock. This risk would be mitigated by providing the appropriate levels of resources as already set out in the report.

With either a managed or sterile policy the council may be able to mitigate the risk by providing additional storage areas to accommodate some of items currently placed in the escape routes and give further assistance in moving to tenants who are overcrowded in our properties. A sterile policy would be introduced in a phased way and it is anticipated that the estate improvements budget would need to be increased from £50k per annum to £200k for approximately the next 5 years.

11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?

If Members support the sterile policy recommendation, the new strategy will improve the safety of our more vulnerable residents. Sterile escape routes will improve access and egress for the less mobile.

However, those with mobility scooters, the disabled, elderly, infirm and those with young children may prefer to live on the ground floor if at all possible.

12. Are there any other options?

No other options have been identified by officers to satisfy our statutory duties.

Bindu Arjoon
Director

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

Appendix one

The Fire Safety Management has been written to satisfy the following statutory and regulatory requirements:

- Regulatory Reform (Fire Safety) Order 2005
- Health and Safety at Work etc Act 1974
- Management of Health and Safety at Work Regulations 1999
- Landlord and Tenant Act 1985
- Housing Act 2004
- Building Act 1985 and Building Regulations 2010/2013
- Gas Safety (Installation and Use) Regulations 1998
- Electrical Equipment (Safety) Regulations 1994
- Smoke and Carbon Monoxide Alarm (England) Regulations 2015

In order to do so, the author referenced the following guidance documents issued by central and local government and other authoritative bodies, many of which are supported by or have received contributions from the Chief Fire Officer's Association:

- Guide to Choosing a Competent Fire Risk Assessor (Version 2, published 09/10/2014 published by the Fire Risk Assessment Competency Council)
- PAS 79:2012: Fire risk assessment, guidance and recommended methodology (BSI)
- Housing fire safety - Guidance on fire safety provisions for certain types of existing housing (LACORS)
- Fire safety in purpose-built blocks of flats (LGA)
- Fire safety advice for landlords, managing agents, private dwellings, blocks of flats and owners of houses in multiple occupation and social housing (Devon and Somerset Fire and Rescue Service)
- Fire safety in construction (HSE)
- Fire safety risk assessment: sleeping accommodation (HMGov)
- Fire safety risk assessment: means of escape for disabled people (HMGov)
- Fire safety risk assessment: residential care premises (HMGov)
- Fire safety risk assessment: (HMGov)

Appendix two

The Local Government Association (LGA) led work commissioned by Government to develop a sector-led guidance on fire safety in purpose-built blocks of flats, which was written by experts in the field of fire safety and was published in July 2011. This was after landlords voiced a number of concerns about how best they can deliver an appropriate level of fire safety in purpose-built blocks of flats.

LGA worked alongside local authorities, private sector landlords and management agents, housing and environmental health professionals and fire and rescue services to produce the guidance from which the following extracts are produced.

Zero tolerance or managed

44.10 Unrestricted use of common parts is clearly not acceptable. It will, therefore, be necessary to adopt one of the following alternatives:

- i. 'zero tolerance'
- ii. 'managed use'

44.11 A 'zero tolerance' approach is one in which residents are not permitted to use the common parts to store or dispose of their belongings or rubbish. No exceptions would apply. It would ensure that the common parts are effectively 'sterile' i.e. free of combustible material, ignition sources and obstructions.

44.12 The benefits of this approach are:

- it is the simplest policy to adopt
- it removes not only the risk from accidental fires, involving items in the common parts, but also denies fuel for the arsonist
- there is no ambiguity regarding what is allowed and therefore residents know exactly where they stand
- it is easier for landlords to 'police' when carrying out inspections
- enforcing authorities usually favour this approach
- it is simpler to audit by those carrying out fire risk assessments
- it arguably reduces the liability on landlords.

44.13 There are, however, disadvantages including:

- by not taking into account the specific circumstances, this policy might not be risk proportionate
- it unduly penalises those who could manage their common parts effectively
- it denies residents an opportunity to personalise and improve their living environment

A 'zero tolerance' policy should:

- be adopted by way of 'default'
- always apply when there is doubt over the ability of residents to apply a 'managed use' policy
- be adopted where flats open directly onto stairways unless 'managed use' is considered acceptable by the fire risk assessment
- always apply where the escape stairway is of combustible construction

- always apply where the building needs to be evacuated immediately ie where the standard of fire protection does not support a 'stay put' policy.

44.14 The alternative is 'managed use'. This approach allows strictly defined use of common parts and limits the items allowed, to control fire load and ease of ignition. It includes strict conditions on where such items can be kept. For example, a 'managed use' policy might permit residents to:

- place pot plants and door mats outside their front doors
- have framed pictures and notice boards on walls
- store bicycles, prams and mobility scooters in places that are out of the way and not likely to cause obstruction.

44.15 This approach also has advantages and disadvantages. The benefits include:

- by making the common areas 'homely', it fosters a sense of pride and value in the block, which can impact positively on anti-social behaviour
- it benefits older and disabled people in particular, by allowing them to store mobility aids at the point of access
- it allows the specific risk factors in the building to be taken into account.

44.16 The disadvantages include:

- it is more difficult to adopt as it requires a clearly defined policy with a list of 'dos and don'ts'
- there is more scope for misunderstanding, requiring more education of, and communication with, residents
- while it might be possible to minimise accidental fires with an appropriate 'managed use' policy, deliberate ignition may still be a significant concern
- by allowing valuables to be left on view, it can encourage crime and subsequently increase the risk of deliberate ignition
- it is more difficult for landlords to 'police', and for enforcing authorities and fire risk assessors to audit
- it is likely to require more frequent inspections by landlords
- failure to adopt the policy effectively could result in liability for landlords should a situation occur that places residents at risk of serious injury or death in the event of fire.

When adopting a 'managed use' policy:

- carry out a specific risk assessment taking into account the particular circumstances in the building
- consider whether residents are disposed towards keeping 'rules', and avoid 'managed use' where this is not the case
- ensure that there are clearly defined 'do's and don'ts' that residents can easily follow
- only apply it where there is a suitable standard of fire protection – particular care should be taken when applying it to situations such as single stairway buildings and 'dead end' corridors
- limit it to buildings in which the main elements of structure are made of concrete, brick and other non-combustible materials

Appendix three

FULLY MANAGED	Number	Stories	Inspection minutes per floor	Annual frequency	Annual minutes	Annual hours	Monthly hours	Weekly hours
Communal areas non-sheleterd	22	4	5	52	22880	381.3	31.8	7.3
Communal areas non-sheleterd	184	3	5	52	143520	2392.0	199.3	46.0
Communal areas non-sheleterd	201	2	5	52	104520	1742.0	145.2	33.5
Sheltered	17	3	10	52	26520	442.0	36.8	8.5
Sheltered	1	11	10	52	5720	95.3	7.9	1.8
HMO	10	3	5	52	7800	130.0	10.8	2.5
Travel	425		15	52	331500	5525.0	460.4	106.3
					642460	10707.7	892.3	205.9
FTE weekly								37.0
FTE required								5.6

ZERO TOLERANCE	Number	Stories	Inspection minutes per floor	Annual frequency	Annual minutes	Annual hours	Monthly hours	Weekly hours
Communal areas non-sheleterd	22	4	5	12	5280	88.0	7.3	1.7
Communal areas non-sheleterd	184	3	5	12	33120	552.0	46.0	10.6
Communal areas non-sheleterd	201	2	5	12	24120	402.0	33.5	7.7
Sheltered	17	3	10	12	6120	102.0	8.5	2.0
Sheltered	1	11	10	12	1320	22.0	1.8	0.4
HMO	10	3	5	12	1800	30.0	2.5	0.6
Travel	425		15	12	76500	1275.0	106.3	24.5
					148260	2471.0	205.9	47.5
FTE weekly								37.0
FTE required								1.3