



## Cabinet

<b>Title</b>	<b>Fire safety in timber framed and timber/UPVC clad properties</b>
<b>Date of meeting</b>	Tuesday 12 March
<b>Report of</b>	Deputy Leader and Cabinet Member for Homes and Regeneration, Councillor Ross Houston
<b>Wards</b>	Burnt Oak, Brunswick Park, Totteridge and Woodside, West Finchley
<b>Status</b>	Public with exempt Appendix B. Appendix B is exempt information under paragraph 5 of Schedule 12A of the Local Government Act 1972 because it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
<b>Key</b>	Key
<b>Urgent</b>	No
<b>Appendices</b>	Appendix A – Net Zero Tool Report Exempt Appendix B – Legally privileged advice
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<b>Summary</b>	

This report is to provide Cabinet with details of the council's strategy following a fire at Moss Hall Grove, and subsequent investigations by Barnet Homes and Housing Regulatory Services which have identified over 580 properties in the borough with potential fire safety issues. The report highlights significant risks in relation to the current situation and the approach proposed by the Council to ensure that work is completed to the properties to reduce the risk in the event of fire.

## Recommendations

### That Cabinet:

- 1. Note and approve the report and the proposed approach to remediation of the affected properties.**
- 2. Note that a budget of £3.6 million in the Housing Revenue Account capital programme has been allocated for remediation of council owned properties.**
- 3. Approve the principle of providing a Loan and Repayment Plan to affected Freehold homeowners and delegate authority to the Deputy Chief Executive in consultation with the Director of Finance, to agree the eligibility criteria, amounts and the policy to make the loans and agree the repayment terms.**
- 4. Note the allocation of £13.072 million capital approved by Cabinet in February 2024 and by Full Council on 27 February 2024 to cover the upfront cost of works to freehold properties, where freeholder homeowners opt for a loan and repayment option.**

### 1. Reasons for the Recommendations

- 1.1 A fire occurred in the Summer at Moss Hall Grove, West Finchley in a council owned property. The fire spread rapidly across the terrace of 4 properties due to the way the properties had been constructed.
- 1.2 Following this incident expert building consultants, Capital, working on behalf of The Barnet Group (TBG) have identified 153 council owned homes, seven leasehold homes and 426 freehold properties which were sold by the council under the Right to Buy Scheme which are believed to be of similar construction to the homes affected by the fire. The houses are understood to have been built between the 1930's and 1960's.
- 1.3 In order to obtain an understanding of the council's obligations in relation to the private stock a sample of inspections were completed by Housing Regulatory Services under the Housing Act 2004. An assessment was undertaken under the Housing Health and Safety Rating System (HHSRS). This is a risk-based evaluation tool to help local authorities identify and protect against potential risks and hazards to health and safety from any deficiencies identified in dwellings. It applies to all residential premises. This assessment method focuses on the hazards that are present in housing. Tackling these hazards will make housing healthier and safer to live in. Category 1 hazards are the highest risk where the council has a mandatory duty to take action to reduce the risk and category 2 hazards are a lower risk, where the council may still take action but is not mandated to do so.
- 1.4 Following the inspection, Category 1 hazards were identified for fire due to the timber frame and UPVC cladding plus fire stopping issues. Further sample investigations identified additional timber framed, timber clad properties with Category 1 hazards for fire.
- 1.5 The work to the council stock will be funded through the HRA and £3.6m has been ringfenced for this work.

- 1.6 The freehold properties are in terraces interspersed with council owned properties. Capital have confirmed that the work to the council stock cannot be completed without works to the freehold properties being completed in tandem. The council has therefore explored ways in which Barnet Homes could work with private residents to remediate their properties in parallel with council owned properties.
- 1.7 There are a small number of properties that are owned by Housing Associations. The Housing Associations have been notified and the council will work with them in relation to the remediation works.
- 1.8 It is expected that works to each of the freehold and leasehold properties may cost up to £23,000. Freeholder owners will have the option of organising the works to be undertaken themselves or allow the work to be undertaken by Barnet Homes. A budget of £13.072m has been secured to facilitate the up-front costs of these works, but the costs will ultimately be payable by freeholders. Subject to eligibility, freeholders will be offered the option of a loan and repayment plan to help manage these costs.
- 1.9 In the event that a property owner refuses to undertake the work to their property, appropriate enforcement action will need to be taken to secure completion of the work.
- 1.10 Affected leaseholders (7no.) will be fully consulted by Barnet Homes, to explain the necessity for the works and the calculation of their proportionate share of the remediation costs in accordance with the terms of individual leases and consultation requirements under Section 20 of the Landlord and Tenant Act 1985. Leaseholders will be able to utilise the existing repayment plans in place to support them during such high value works.
- 1.11 It is anticipated that the works will be undertaken over a three-year period. The work is set to commence in April 2024 with a programme of pilot properties with the larger programme commencing in November 2024. The final completion of the programme is scheduled for December 2026. Whilst these properties contain a significant hazard there is no imminent risk to occupiers. Fire safety advice has and will continue to be provided and battery powered smoke detectors will be provided to all residents on request. We are also liaising with the London Fire Brigade. Any properties identified as being of a higher priority than others due to construction, mode of occupation, or issues affecting the resident's ability to vacate the property quickly will be prioritised for work completion or individualised household specific mitigation measures as appropriate.

## **2. Alternative Options Considered and Not Recommended**

- 2.1 Complete work only to council owned properties and leave the freehold properties without work completed – due to the level of risk to residents in the event of fire, and the council's statutory duties to deal with category 1 hazards, Housing Regulatory Services and Counsel have confirmed that this approach is not appropriate.
- 2.2 Offering no Loan and Repayment Plan to affected homeowners- The council however appreciates that the costs to freeholders are significant and unplanned for. The offer of a Loan and Repayment Plan should make the situation more manageable and expedite the completion of these works.
- 2.3 Serving Improvement Notices under the Housing Act 2004 suspended until sale of the property- due to the risk to the current occupiers and neighbouring premises in the event of fire this has not been considered appropriate, although enforcement decisions will be made as necessary on a case-by-case basis.

2.4 Serving a Hazard Awareness Notice under the Housing Act 2004 - due to the risk to the occupiers and neighbouring premises in the event of fire this has not been considered appropriate, although enforcement decisions will be made as necessary on a case-by-case basis depending on the issues identified on inspection, the council's statutory powers and duties, and consideration of the council's Enforcement Policy.

### **3. Post Decision Implementation**

- 3.1 Communication with affected residents and other relevant parties has already begun and details collected in relation to vulnerability of occupiers, interest in the loan and repayment scheme etc.
- 3.2 Systems will continue to be put in place to administer the loan and repayment Scheme.
- 3.3 Drop in sessions will be undertaken to enable residents to raise any concerns that they have, discuss the loan and repayment scheme, meet the council's contractors etc.
- 3.4 Planning permission is in the process of being obtained for a prototype. Once obtained and the works to the prototype are undertaken, this will enable residents to see what the completed works look like and understand timings.
- 3.5 Housing Regulatory Services is in the process of procuring a partner to assist on this project and this will be completed in 6-8 weeks.
- 3.6 Officers will continue to work with affected Housing Associations to ensure completion of the necessary works to their stock.
- 3.7 The council and Barnet Homes will continue to work closely, as necessary, with other boroughs, the London Fire Brigade, the Regulator of Social Housing, the Department of Levelling up Housing and Communities (DLUHC), the GLA, LGA, and other relevant parties.
- 3.8 The council will work with the Department for Levelling Up, Housing and Communities to see whether any Government support can be provided to homeowners.
- 3.9 Starting with council tenants who are known as having a disability and/or be elderly (54 in number), Barnet Homes will physically visit all tenanted households as an immediate priority, based on information already held regarding diverse needs and protected characteristics, to undertake Personal Emergency Evacuation Plans (PEEP's) for each household. This process will highlight where additional support and/or specific risk-mitigation measures are required and also to prioritise remedial works, where this is technically feasible. Barnet Homes aim to complete PEEP's for all 153 tenanted households by the end of March.
- 3.10 Fire safety advice has been provided to all residents and smoke detectors are being offered to all residents who do not currently have them. These will be installed on request.

### **4. Corporate Priorities, Performance and Other Considerations**

#### **Corporate Plan**

- 4.1 A key priority of the Quality Affordable Homes theme of Our Plan for Barnet 2023-2026 is to improve the quality and energy efficiency of existing housing in the borough. This includes improving fire safety and ensuring homes are healthy by tackling damp and mould.

#### **Corporate Performance / Outcome Measures**

4.2 There are currently no specific measures relating to this project.

#### **Sustainability**

4.3 In addition to reducing the risk of fire the remedial work will improve insulation of the properties supporting the decarbonisation of housing stock in the borough.

4.4 The Net Zero Tool has been completed. See Appendix A for a summary of the results of this.

#### **Corporate Parenting**

4.5 The decision has no direct or indirect impact on looked after children and care leavers.

#### **Risk Management**

4.6 High number of corporate and member complaints- Significant steps are being taken to be as informative, helpful and supportive as possible on this matter, including the appointment of an Independent Resident Advisor, a dedicated Project Manager and dedicated Resident Liaison Officers. This will require resource that then cannot be used towards other aspects of the project. The situation will be monitored, and additional resource drawn in as necessary.

4.7 Financial risk to the council- The loan and repayment scheme and completion of any work in default of the owners will carry a high level of potential financial risk. The council will take the necessary steps to try and recover all costs in relation to Freehold properties. A condition of the Repayment Scheme will be the agreement to certain conditions including the registering of the loan at the Land Registry as a charge against the property.

4.8 Speed of completing the work- there are over 586 properties requiring completion of works. The different ownership scenarios, financial scenarios, contractors involved in completing the work i.e. council or resident procured, vulnerability of occupiers and any enforcement activities, will need to be balanced to complete work block by block. Each property will also require planning permission and building regulation approval. As such this will not be a quick programme to mobilise or complete.

4.9 There is a risk that freeholders do not undertake remedial action. Statutory action can be taken against freeholders, however it is unusual for the council to serve Improvement Notices against freeholders. Such action is usually in relation to tenanted properties. In the event of a category 1 hazard being identified in a freeholder property, unless there is an imminent risk, the more likely course of action would be a Hazard Awareness Notice, making the owner aware of the risk, but leaving the onus on them to take the appropriate action. However, given the nature of the hazard and the implications in the event of a fire, although decisions will be made on a case-by-case basis in line with the council's Enforcement policy, an Improvement Notice will most likely be served. In so doing there may be access and compliance issues, both of which bring financial and legal risks and may elongate timescales. Each property will be managed on a case-by-case basis and if the risk is found to be reduced to an acceptable level due to the location between Barnet Homes stock, no action will be required. The project team will meet weekly to monitor performance and discuss any complex issues and work closely with HBPL and the Communications Team.

4.10 Appeal to First Tier tribunal- in the event of the service of notices under the Housing Act 2004 an appeal may be lodged by the residents to First Tier Tribunal. This suspends the notice until the appeal is heard. Appeals can take many months to be heard which would elongate timescales on completing the work. In the event that the council loses the appeal the notice may need varying or withdrawing which could have further implications.

- 4.11 Substandard works completed- in the event that freeholders employ their own contractors there is a risk that the standard of work may not be in line with the council's specification. There is also a challenge as these are terraced houses and the work relates to the linked external walls. However, all work will require planning permission and building regulation approval, and so whilst more complex to manage on site, a safe solution should be possible.
- 4.12 Reputational risk- the fire safety issue became known in Summer 2023. There was no knowledge of it before this time. Since then, Barnet Homes and the council have worked together to identify the issue, the scale of the issue, and the swiftest and most efficient solution. The issue may be unexpected by freeholders and leaseholders, and the costs are significant and unplanned for. As part of the council's responsibility as a public authority, relevant authorities have and continue to be advised including the London Fire Brigade, all London Boroughs, relevant Housing Associations, the GLA, the Local Government Association (LGA) and the Department for Levelling up, Housing and Communities (DLUHC).
- 4.13 Escalation of costs- given the number of variables in this project and the recent volatility in relation to construction costs there may be an escalation of costs. Finances will be monitored with the Finance Team on a monthly basis and a project review completed in the event that it appears that the allocated budget may not be sufficient.
- 4.14 Imminent risk to occupiers – whilst these properties contain a significant hazard there is no imminent risk. To mitigate the risk to occupiers fire safety advice has been provided, and battery powered smoke detectors will be provided to all residents on request. The council referred the details of all affected premises to the London Fire Brigade in October 2023, so they are aware of the increased risk to residents caused by rapid spread in the event of a fire. Any properties identified as being of a higher priority than others due to construction, mode of occupation or issues affecting the resident's ability to vacate the property quickly will be prioritised for work completion or individualised household specific mitigation measures as appropriate.
- 4.15 Financial hardship for freeholders- the cost of the works is significant and may place some people into financial hardship. As such the council is making a loan and repayment scheme available to assist in meeting and managing the costs. BOOST will also provide support as necessary to residents.

#### **4.16 Insight**

- 4.17 Following the fire in 2023 extensive research was undertaken by Capital on behalf of Barnet Homes, and Housing Regulatory Services to identify the addresses of all properties affected and their tenure.
- 4.18 Rent deposit data has been obtained to identify private rented properties affected.
- 4.19 The register of licensed HMOs has been checked. One licensed house in multiple occupation may be of this construction and an inspection has been arranged.

#### **Social Value**

- 4.20 Completion of this project will reduce the risk to circa 580 households in the community, some of whom will be vulnerable.
- 4.21 Barnet Homes will seek to secure social value through the procurement of the works association with the programme.

### **5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)**

- 5.1 A capital allocation of £13.072m has been established to facilitate the works to the freehold properties. This includes the estimated costs of the remediation works alongside Barnet Homes project management costs, legal, planning, private sector housing enforcement, loan administration, management and debt recovery costs, PAS2035 Assessment and retrofit coordinator.
- 5.2 In instances where Barnet Homes undertake the work on behalf of a Freeholder, the cost of the work will be charged back to the Freeholder. The council acknowledges that the costs to Freeholders are significant and so will offer a loan and repayment plan to those who need it subject to certain conditions being agreed including a legal charge being registered on the property.
- 5.3 If a resident pays for the works to their home directly without the need for a loan or repayment plan, there is the potential that the full allocated sum might not be required and therefore a potential deletion to the capital programme in the future is possible, thereby reducing the associated borrowing requirement.
- 5.4 The proportionate share of the costs of works to Leasehold properties will be sought in accordance with the terms of individual leases and Section 20 of the Landlord and Tenant Act 1985. Leaseholders will be able to utilise the existing repayment plans in place to support them during such high value works.
- 5.5 A budget of £3.6m has been ringfenced in the Housing Revenue Account (HRA) to fund the remediation works to council owned properties.
- 5.6 Works will be procured in accordance with statutory regulations, including public procurement rules, and The Barnet Group's (TBG) policy and procedure in order to deliver value for money and maximise public benefit. The works will be competitively tendered.
- 5.7 An Independent Resident Advisor has also been commissioned to support the council and Barnet Homes with resident engagement.

## **6. Legal Implications and Constitution References**

- 6.1 Under sections 3-5 of the Housing Act 2004 (HA 2004) the council must keep the housing conditions in their area under review and inspect residential premises with a view to identifying any action that may need to be taken by them in relation to category 1 or 2 hazards existing on those premises.
- 6.2 Under the Housing Act 2004 fire risk is a category 1 hazard within the meaning of the Housing Health and Safety Rating System. Where a category 1 hazard is identified the council has a duty under section 5 of the Housing Act 2004 to take prescribed appropriate enforcement action, including serving an Improvement Notice, in any case where it considers that a category 1 hazard exists, and it must prepare a statement of reasons for their decision to take the relevant action. If any of the buildings affected are HMOs or buildings containing flats, then the council also has a duty to consult with the relevant Fire and Rescue authority for the area. Recipients of Improvement Notices have the right to appeal them.
- 6.3 If the council serves an Improvement Notice under section 35 of the Housing Act 2004 a court can require the occupier of a premises who has received reasonable notice of works done in relation to a premises but is preventing them from taking place to permit that work to be done.
- 6.4 An Improvement Notice also allows the council to take further direct action if the notice has not been complied with or reasonable progress is not being made. Under Schedule 3 of the Housing

Act 2004, where an Improvement Notice has been served and the council has the agreement of the person on whom it was served, the council can itself take any action that the recipient of the notice is required to take at the expense of the recipient. The council also has an equivalent power if the notice is not complied with or reasonable progress is not being made towards compliance with the notice and can recover expenses reasonably incurred by it in taking such action from the person on whom the notice was served.

- 6.5 Any statutory action taken will need to be in line with the Council's Enforcement Policy.
- 6.6 The council has statutory power to provide the loan and repayment scheme under the general power of competence under sections 1-8 Localism Act 2011, and the incidental powers under section 111 of the Local Government Act 1972, linked to the council's various housing powers, including the Housing Act 2004 enforcement powers and duties.
- 6.7 The procurement of a partner to assist on this project must be undertaken in compliance with the Public Contracts Regulations 2015.
- 6.8 Legal and Counsel's advice have been taken in relation to all key aspects on this project. Further legal advice is set out in Appendix B – Exempt Legally Privileged Advice.
- 6.9 In accordance with the Council Constitution, Part 2D, Section 1 the terms of reference of the Cabinet state that "The Executive will exercise all of the local authority functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution." It also includes responsibility for approving policies that are not part of the policy framework and key decisions.

## **7. Consultation**

- 7.1 Affected residents (freeholders, leaseholders, council tenants and private tenants) have been contacted to explain the situation and next steps.
- 7.2 Affected leaseholders (7no.) will be fully consulted by Barnet Homes to explain the necessity for the works and the calculation of their proportionate share of the remediation costs in accordance with the terms of individual leases and consultation requirements under Section 20 of the Landlord and Tenant Act 1985. Leaseholders will be able to utilise the existing repayment plans in place to support them during such high value works.
- 7.3 One to one meetings with residents are being offered, either by phone, on Teams or in person. Drop-in sessions are being arranged.
- 7.4 An Independent Resident Advisor has been commissioned to support the engagement with affected residents.

## **8. Equalities and Diversity**

- 8.1 Decision makers should have due regard to the public sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. The equalities impact will be revisited on each of the proposals as they are developed. Consideration of the duties should precede the decision. It is important that Cabinet has regard to the statutory grounds in the light of all available material such as consultation responses. The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- a) Tackle prejudice, and
- b) Promote understanding.

Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act. The relevant protected characteristics are:

- a) Age
- b) Disability
- c) Gender reassignment
- d) Pregnancy and maternity
- e) Race
- f) Religion or belief
- g) Sex
- h) Sexual orientation
- i) Marriage and civil partnership

8.2 Starting with council tenants who are known as having a disability and/or be elderly (54 in number), Barnet Homes will physically visit all tenanted households as an immediate priority, based on information already held regarding diverse needs and protected characteristics, to undertake Personal Emergency Evacuation Plans (PEEPs) for each household. This process will highlight where additional support and/or specific risk-mitigation measures are required and

also to prioritise remedial works, where this is technically feasible. Barnet Homes aim to complete PEEPs for all 153 tenanted households by the end of March.

- 8.3 As contact is made with affected homeowners the team will seek to understand whether there are any occupants with vulnerabilities or protected characteristics. Consideration will be made as to whether there is the opportunity to phase the works in response to this or to take other appropriate action in relation to those with protected characteristics, particularly disability, age, pregnancy and maternity.
- 8.4 Smoke detectors will be offered to all residents.

## **9. Background Papers**

- 9.1 Cabinet, Tuesday 6 February, item 14, Procurement to support Housing Regulatory Services to ensure the safety of residential premises, [Agenda for Cabinet on Tuesday 6th February, 2024, 7.00 pm \(moderngov.co.uk\)](#)