

Proposals For Reform of the Building Safety Regulatory System: A Panel Discussion

17 July 2019

Welcome to...



Siân Mirchandani QC
Barrister, 4 New Square



Hugh Saunders
Barrister, 4 New Square



Andrew Mellor
Consultant, PRP

Agenda

- Overview – Conor Rodgers
- Gateways – Siân Mirchandani QC
- Dutyholders – Hugh Saunders
- Golden Thread – Andrew Mellor
- Post-Completion – Mark London
- Q&A

Background and Overview of the Government's Consultation

Conor Rodgers

Solicitor, Construction and Engineering

Devonshires

A Question of Quality

Existing tall buildings are riddled with issues, including:

- Use of combustible thermal insulation;
- Missing or defective cavity barriers;
- No or no effective fire stopping of penetrations;
- No evidence of testing, checking, or consideration of the safety of external wall build up; and
- No apparent understanding of the importance of compartments.

Some Examples...





The Hackitt Report

- Published in May 2018
- Found that the current regulatory system is “***not fit for purpose***”
- Proposed a new system with “***Rigorous and demanding dutyholder roles and responsibilities***”

What did DJH recommend?

- Three gateways to compliance
- Clearly defined duties and dutyholders
- Improved record keeping, including BIM
- New role / voice for residents
- JCA with enhanced enforcement powers
- New regimes for product testing and Building Control
- Changes to culture and procurement
- New Approved Documents
- And more...

Plugging the Gap – a Timeline

- 18/12/18 MHCLG publish Advice Note 14
- 21/12/18 Building (Amendment) Regulations 2018 come into force
- 24/06/19 MHCLG publish Balconies Advice Note
- 01/07/19 MHCLG send B4 Circular

The Consultation(s)

- Runs until 31 July 2019
- Proposals apply to all new blocks above 18m
- Occupation proposals also apply to existing blocks
- Runs parallel to consultation on RRFSO
- Further consultation on standards imminent
- Legislation to be at Parliament by Christmas

What's in...	What's out...
New Regulator	Joint Competent Authority
Civil & Criminal Sanctions	10 Storey Threshold
New Dutyholders	
Three Gateways	
The Golden Thread	
Mandatory Incident Reporting	
Competence Monitoring	
Occupation Roles and Duties	



Building a Safer Future
Proposals for reform of the building safety
regulatory system
MHCLG Consultation June 2019
Contribution to a panel discussion

Siân Mirchandani QC
Hugh Saunders

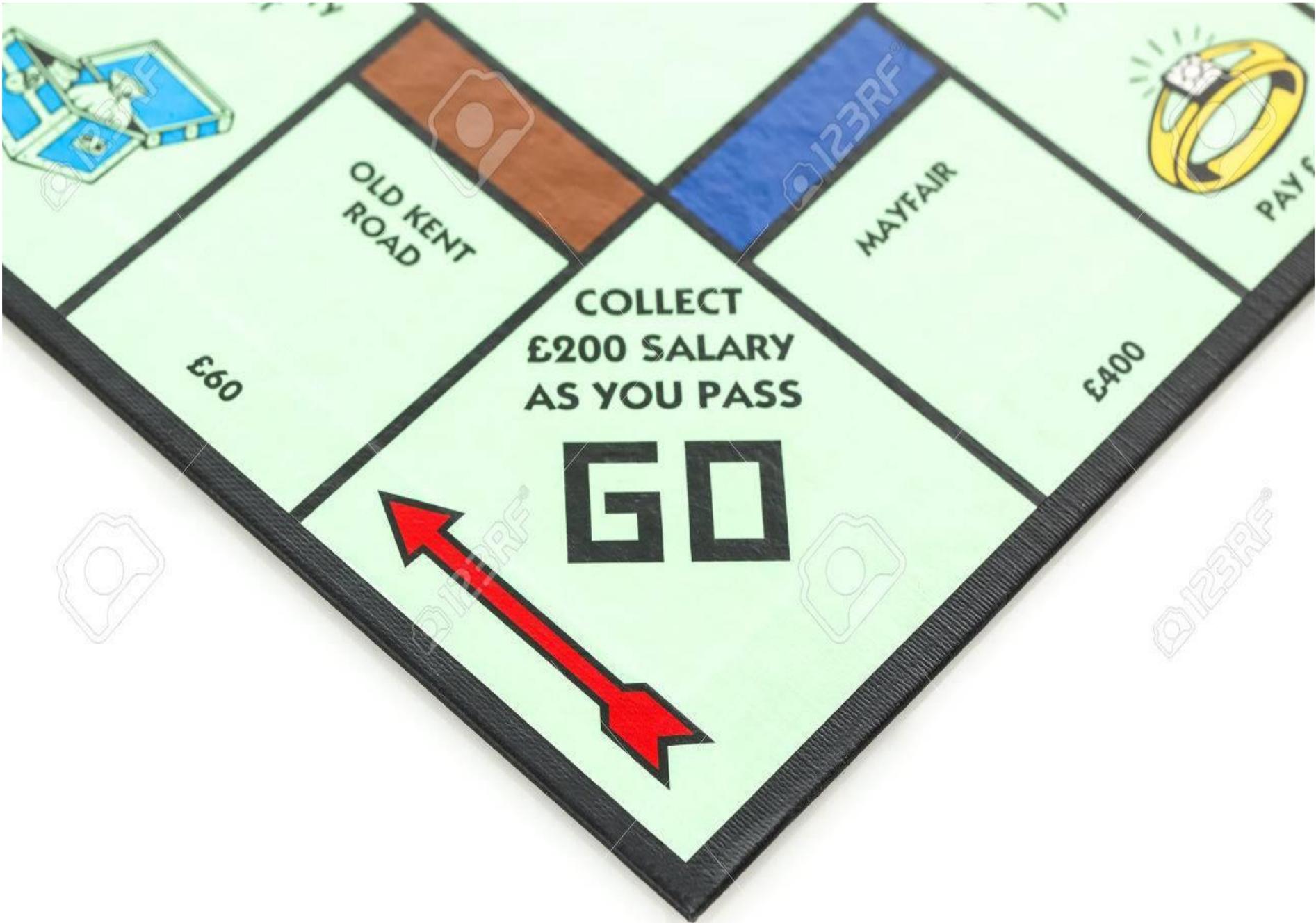
17th July 2019

The 3 Gateways

What they are.

What they are intended to achieve.

How to comply with them.



OLD KENT ROAD

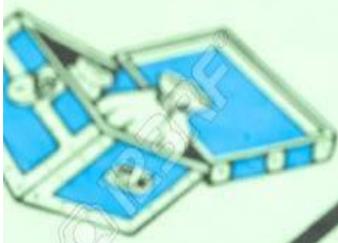
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The 3 gateways – what they are intended to achieve

Dame Judith Hackitt, Forward & Summary to Final Report:

...there is a need for a radical rethink of the whole system and how it works....

...essential that this industry now works to implement a truly robust and assured approach to building...

...regulations and guidance are not always read...and when they do [read them] the guidance is misunderstood and misinterpreted...

..ambiguity over where responsibility lies ...

...inadequate regulatory oversight..

...the system does not facilitate good practice...



Gateway One – Before Planning Permission

- Ensure early consideration of fire safety
- Building design not yet fixed
- Limited to fire rescue vehicles' access and provision of water facilities
- FRS as statutory consultee?
- Replace with new regulator?
- Over 30m - applicant to supply a Fire Statement with planning application

Gateway One – Practical Issues

- Early stage for knowing fire access requirements
- Additional expense at pre-planning phase
- Commitment to detail – is this fixed?
- How is access to be judged?
- Fire Statement experts?

Gateway One – Consultation proposals

- **Govt. commitment for FRS resource.**
- **Response time commitment.**
- **Set of access standards.**
- **Requirements for Fire Statement**
- **Overlap Gateway One and Two requirements**
- **Others?**

Gateway Two – full plans building application

- Overall strategy: to demonstrate B Regs compliance (design) but also means of ensuring building is compliant (construction)
- Liaison by dutyholder with regulator
- Anticipated information requirements:
 - Full suite of B Regs compliant plans - Principal Designer
 - An ‘as planned’ 3D digital model of the building (incl. materials) - Principal Designer
 - Fire & Emergency File with ‘key building safety information’ - Principal Designer
 - A Construction Control Plan detailing how building safety and compliance with B Regs will be met in construction phase - Principal Contractor
- Holistic approach / overriding objective / golden thread
- Hard stop - regulator sign off before construction begins
- Mandate to pull down non-compliant, not approved

Gateway Two – Practical issues

- Commitment of expenditure – how different is this?
- Principal Designer v. specialist designers – boundaries of responsibility
- What level of commitment to detail – is this fixed?
- Does Principal Designer ‘sign off’ as compliant at submission or after regulator?
- Design changes during construction – regulator deadline to respond?
- What is a ‘major change’?

Gateway Two – Consultation proposals

- **Govt. commitment for regulator resource**
- **Response time commitment**
- **Set of prescribed guides for key building safety information; define “major”**
- **Overlap Gateway One and Two requirements**
- **Others?**

Gateway Three – before occupation

- At current building control sign off stage
- Currently BC inspectors verify / certify compliance
- Proposed: responsibility for verifying compliance transfers to dutyholder
- Principal Contractor & Principal Designer give formal declaration of compliance / handover of primary safety information to Client
- Client / Owner to produce a 'Safety Case' for managing fire risks
- Regulator approval required before occupation
- Building safety certificate issued by regulator
- Formal registration of a building
- Ongoing review of Safety Case
- Primary safety information: full original / 'as built' plans, Construction Control Plan, digital 'as built' record, Fire & Emergency File – golden thread

Gateway Three – Practical issues

- Formal sign off of compliance by Principal Designer – multi skilled entities
- Formal sign off of compliance by Principal Contractor – significant, active site supervision
- Lack of continuity of entities – Golden Thread for information is continuous
- Insolvency – to whom do the duties pass?
- Builds from information submitted at Gateway One – a living document that runs with the building; role for BIM; role for supply chain monitoring.
- Requirement to review.
- Register(s) of those competent to undertake roles such as Principal Designer, Principal Contractor, building safety manager

Gateway Three – Consultation proposals

- **Govt. commitment for regulator resource**
- **Response time commitment**
- **Set of prescribed guides for ‘primary building safety information; Safety Case**
- **Exoneration of Principal Designer/Contractor by regulator**
- **Policing changes & review obligations?**
- **Others?**

Dutyholders, duties and enforcement

Dutyholders

Five new dutyholders (excluding “accountable persons”):

- Client
- Principal Designer
- Principal Contractor
- Designers
- Contractors

Heavy (and acknowledged) reliance on the model used in CDM Regulations

Raises serious questions, including:

- What do the new duties mean in practice?
- How will the new duties affect professional appointments and building contracts?
- Can the CDM model stand up to this repurposing?

Duties for all dutyholders (Annex C)

“We propose that all dutyholders (Clients, Principal Designers, Designers, Principal Contractors, Contractors) and accountable persons should be required to do the following:

- a. Co-operate and share information with the building safety regulator
- b. **Ensure compliance with the building regulations**. While this duty already exists within legislation we would make clear that dutyholders are accountable as follows:
 - i. for Clients, **making arrangements that are suitable for ensuring** that the construction work can be carried out, **so far as is reasonably practicable, in accordance with current building regulations**;
 - ii. for Principal Designers, to ensure that, when preparing or modifying a design the designer **must take into account the current building regulations**;
 - iii. for Principal Contractors, **so far as is reasonably practicable, construction work is carried out in accordance with current building regulations**.
- c. **Comply** with specific regulatory requirements imposed upon them
- d. **Ensure** they and the people they employ are competent and only undertake work they are competent to do
- e. Promote building safety and the safety of persons in and around the building (the wording of this general duty mirrors the wording that is set out at paragraph 236 to 240).

In addition to the general duties listed above, dutyholders should have role-specific duties that reflect their unique contributions towards ensuring that buildings are safe. The role-specific duties for Clients, Principal Designers, Designers, Principal Contractors and Contractors are listed below. The role-specific duties for accountable persons are covered in Chapter 3 and are not reproduced here.”

Clients

- Establish the **appropriate information management systems** to facilitate successful collation of information, completion of work and handover:
 - Creating and maintaining a complete golden thread of information and key dataset
- **Ensure** that the regulatory requirements of gateway points are met:
 - Gateways 1, 2 and 3 ...
- Where the Client intends to become the accountable person in occupation, they must also:
 - Apply for full building registration
 - Submit a Resident Engagement Strategy
- **Ensure** an appropriate handover takes place between the key dutyholders at design and construction phase and the accountable person in occupation including:
 - Handover of the golden thread of information and key dataset including relevant information provided as part of the gateway points
- Establish reporting processes to support an effective mandatory occurrence reporting regime.
 - Promote a 'just culture' within their project
 - Ensure reporting systems/mechanisms are in place to identify occurrences identified under mandatory occurrence reporting
 - Report any instances identified to the regulator

Principal Designer

- Plan, monitor and manage the pre-construction phase and coordinate matters relating to building safety to **ensure that the project complies with building regulations.**
- Satisfy themselves that those involved in supporting the Principal Designer have suitable skills, knowledge, behaviours, experience and where relevant, organisational capability.
- **Ensure cooperation** between Designers, the Client and the Principal Designer to ensure they can discharge their regulatory responsibilities
- Liaise with the Principal Contractor and share information relevant to the planning, management and monitoring of the construction phase and the co-ordination of building regulations and building safety during the construction phase.
- Take **reasonable steps to ensure** that Designers are discharging the duties outlined above and promoting the statutory objective.
- Assist the Client in meeting the requirements of gateway points including **co-signing at the completion of works stage that to the best of their knowledge the work meets building regulation requirements.**
 - Gateway 2
 - Developing a full plans submission in consultation with the Client
 - Developing an initial Fire and Emergency file
 - Developing an initial golden thread of information and key dataset of the building (as planned);
 - During Construction
 - Contribute to the Construction Control Plan, engaging with the Principal Contractor to ensure minor and major changes are considered appropriately and that there is a strong rationale for them
 - Gateway 3
 - Contribute to a complete Construction Control Plan
 - Develop **as designed full plans**
 - Develop a complete golden thread of information and
 - Contribute to the development of the key dataset
 - Contribute to an updated Fire and Emergency File
 - **Co-sign a declaration of compliance confirming that, to the best of their knowledge the building complies with building regulations and that an appropriate handover of information to the occupation dutyholder has taken place**

The above information will be part of the safety case for the building.

Principal Designer (continued)

- Utilise information management system put in place by the Client to:
 - Develop and maintain a complete golden thread of information
- Contribute to an appropriate handover of information to the accountable person in occupation including:
 - Handover of the golden thread of Information including relevant information provided as part of the gateway points
- Meet the requirements of the mandatory occurrence reporting regime, including reporting any instances identified and next steps to the regulator Client and where appropriate Principal Contractor.

Principal Contractor

- **Plan, monitor and manage the construction phase** and coordinate matters relating to building safety **to ensure that, so far as is reasonably practicable, the project complies with building regulations.**
- Satisfy themselves that those involved in supporting the Principal Contractor have suitable skills, knowledge, behaviours, experience and where suitable, organisational capability.
- **Ensure cooperation** between contractors, the Client and the Principal Designer to ensure they can discharge their regulatory responsibilities.
- Liaise with the Principal Designer and share information relevant to the planning, management and monitoring of the pre-construction phase and the co-ordination of building regulations and building safety **during the pre-construction phase.**
- Take **reasonable steps** to ensure that contractors are meeting the core duties set out above and are promoting the statutory objective.
- Assist the Client in meeting the requirements of gateway points including **co-signing at the completion of works stage that to the best of their knowledge the work meets building regulation requirements.**
 - Gateway 2
 - Contribute to the development of a Construction Control Plan that sets out how compliance with building regulations will be maintained and how changes will be recorded during the construction phase
 - During Construction
 - Operate a Construction Control Plan, engaging with the Principal Designer and Client (where appropriate) to ensure minor and major changes are considered appropriately and that there is a strong rationale for minor and major changes
 - Gateway 3
 - Develop a complete Construction Control Plan
 - Contribute to the development of a complete golden thread of information on the 'As Built' building
 - Contribute to the development of the key dataset
 - Contribute to an updated Fire and Emergency File
 - **Sign a declaration of compliance confirming that, to the best of their knowledge the building complies with building regulations** and that an appropriate handover of information back to the Client has taken place

Principal Contractor (continued)

- Utilise information management system put in place by the Client to:
 - Contribute to the development and maintenance of a complete golden thread of information
- Contribute to an appropriate handover of information to the accountable person in occupation including:
 - Handover of the golden thread of Information including relevant information provided as part of the gateway points
- Meet the requirements of the mandatory occurrence reporting regime, including reporting any instances identified and next steps to the regulator Client and Principal Designer.

Issues

- **Clients:**
 - Key decisions have to be made earlier – and at a greater level of detail
 - Real questions about how current procurement models will stand up (e.g. design and build)
 - New contractual requirements in appointments, building contracts and sub-contracts
 - Who is taking the risk of delay by the new regulator?
 - Will we see the birth of a new construction profession?
- **Principal Designers:**
 - Legitimate concerns about how they can meet their obligations
 - Will require explicit provisions in appointments and building contracts to allow them to carry out their duties
 - Insurance issues: absolute obligations under the new regime
- **Principal Contractors:**
 - Will be subject to more scrutiny from clients and designers
 - Significant checks down the design and supply chain
 - Some obligations not necessarily new, but being put in a different way

Limits of the CDM model

- **CDM looms large**
 - Overriding obligations to comply with statute (HSAW / Building Regulations)
 - Regulator in the background to enforce (HSE / New Regulator)
 - Dutyholders
- **Limits of the comparison:**
 - CDM tends to be reactive; new regulatory model requires more active involvement from the New Regulator
 - CDM relies on “self-policing” and guidance from the ACoP; new model has the gateways and not clear if there will be an ACoP equivalent (contra the Approved Documents)
 - HSE will advise, within limits, but do not provide assurance; New Regulator has to approve/reject
- **Enforcement**
 - Criminal and civil penalties – and note suggestion for personal liability
 - Clear preference for civil penalties
 - Clear room for overlap between Health & Safety law and new regulatory model

PRP



The Golden Thread

From Construction to Occupation

Andrew Mellor

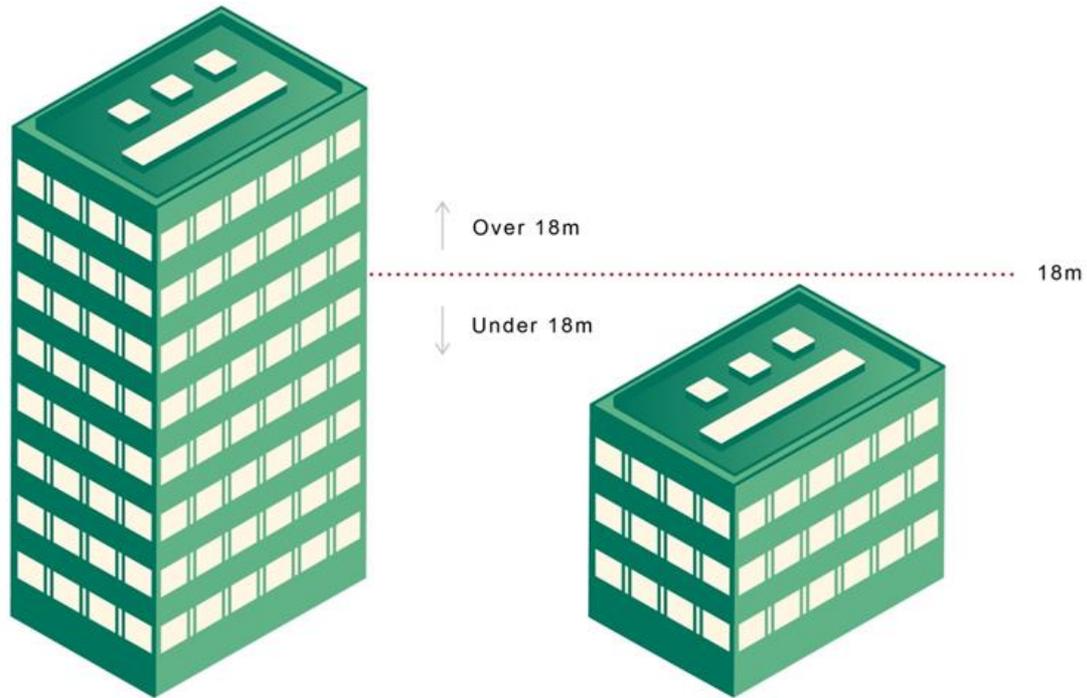
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Principal Designer HHRB



- Should be a single suitable qualified *‘guiding hand empowered to ensure design intent is understood, maintained and delivered to the point of handover’*
- Should be part of the role of the lead designer
- A role through design and construction stage (appointed by client?)
- A named accountable person at Board level who is responsible for building safety
- PD and PC sign Final Declaration

Scope



Residential buildings

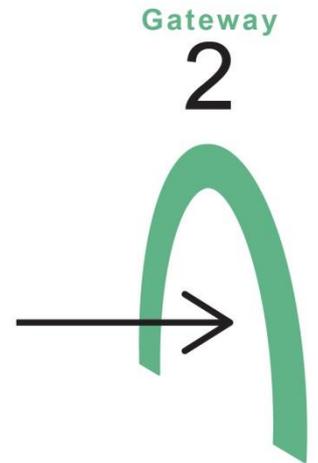
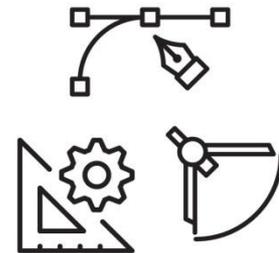
Golden Thread

- Support building safety through its lifecycle
- 3D Model (BIM standards BS1192, PAS1192 and BS EN ISO 19650)
- New and existing buildings?
- Façade and structure information
- Information on safety related features (minimum quantity and location)



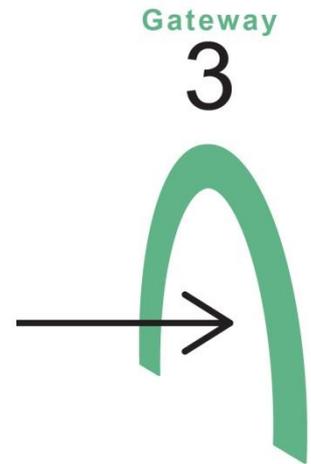
Gateway 2

- Detailed plans/specs on fire safety and structural aspects
- General approach to all other Building Regs
- Fire and Emergency File (Full Fire Safety and Evacuation Strategy)
- Construction Control Plan
- Major Changes



Gateway 3

- Original Full Plans and Major Change record
- Digital Record As Built
- Construction Control Plan
- Fire and Emergency File
- Resident engagement strategy
- Final Declaration
- Building License



Products

- Inventory List (where no EU harmonised standard)
- Product Identification (smart labelling)
- Declaration of Performance

- National Construction Product Regulator

- **Independent Assurance**
(third party certification of minimum standards for Regulation 7 material performance and workmanship)

ROCKWOOL B.V. / ROCKPANEL Group
Konstruktieweg 2
NL-6045 JD Roermond
www.ROCKPANEL.com



DECLARATION OF PERFORMANCE
No. 0764-CPR-0238 - UK - vs01

1. Unique identification code of the product-type:
ROCKPANEL Durable 8 mm finish Colours/Rockclad and ROCKPANEL Durable 8 mm finish ProtectPlus

2. Intended use / es
Internal and external wall and ceiling finishes

3. Manufacturer
ROCKWOOL B.V. / ROCKPANEL Group
Konstruktieweg 2
NL-6045 JD Roermond
Tel. +31 475 353 000
Fax +31 475 353 550

4. System or systems of AVCP (assessment and verification of constancy of performance of the construction product) as set out in Annex V (amended by: C9 L 152, 27.5.2014, p. 76-79)
System 1

5. European Assessment Document:
EAD 090001-00-0404 for Prefabricated compressed mineral wool boards with organic or inorganic finish and with specified fastening system, edition May 2014.
European Technical Assessment: ETA-07/0141 of 15/12/2014

Technical Assessment Body: ETA-Danmark A/S
Gøteborg Plads 1, DK-2150 Nordhavn
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Notified Body: Materialprüfanstalt für das Bauwesen
Nienburger Strasse 3, D-30167 Hannover
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Internet www.mpa-bau.de/

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ROCKWOOL BV / ROCKPANEL Group DECLARATION OF PERFORMANCE 0764-CPR-0238-UK-vs01

Competence

- Industry led HRRB competence framework
- Register of qualified persons with disciplines
- Industry led Building Safety Committee to raise competence
- PD and PC to have increased competency over disciplines
- Register of qualified PD's and PC's



Golden Thread - What are the Impacts?

- 3D model storage
- Skilled resources to use information
- Establishing industry & client standards – model and data format
- Building Safety Regulator will need to consider the same
- Improved document handover to all parties at completion
- 11,000 existing buildings need Digital Record?

Golden Thread - What are the Benefits?

- Accurate as-built records
- Record of key changes
- Less time spent on searching for information
- Information that can be relied on
- Searchable data base of asset information
- Model that can be used:
 - resident engagement
 - quantities
 - maintenance and replacement works

Safety Case

- Regulator review every 5 years
- Live document
- Includes all Golden Thread Information
- Building Management structure
- Emergency Plan
- Mandatory Reporting Schedule
- Maintenance and Checks plans/records



Duties in Occupation

Mark London
Partner, Construction & Engineering
Devonshires

Safety in Occupied Tall Buildings – The Current Legal Framework

A building owner/Responsible Person must:-

1. Comply with the RRFSO (currently under consultation);
2. Comply with both general health and safety requirements in respect of maintenance and planned works (asbestos, gas, water, electrical, CDM2015);
3. As a landlord/building owner do everything to ensure, so far as is reasonably practicable, that residents and lawful visitors are not exposed to a risk to their health and safety (section 3(1) HSWA); and
4. Take due note of anything published by the MHCLG.

Safety in Occupied Tall Buildings – Is the Current Legal Framework Inadequate

It is fair to say:-

1. The current framework is a tad patchy with no one dutyholder having oversight for fire safety as a whole when the building is in use;
2. Conflicts often arise over who is a Responsible Person for the purposes of the RRFSO, and the extent of their responsibilities;
3. The RRFSO is limited in scope and does not treat the building as a coherent whole;

Safety in Occupied Tall Buildings – Is the Current Legal Framework Inadequate

4. There is often a disconnect between those responsible for works and maintenance and those responsible for discharging other duties (such as maintaining an asbestos register);
5. Essential information about the building – method of construction, materials used, M&E detail, O&Ms and health and safety file – are rarely in one easily accessible place; and
6. Essential information about the building is transient, easily lost and often not recorded.

This all makes identifying and dealing with risk more difficult.

Safety in Occupied Tall Buildings – The Purpose of Reform

The objectives are:-

1. To have a single point of responsibility;
2. To have a comprehensive and easily transferrable body of information about the building – accessible to anyone who needs to see it.
3. To create obligations under which fire and structural safety of a tall building are actively managed by competent persons.

The aim is to create a ‘holistic’ approach to building safety.

Safety in Occupied Tall Buildings – The Proposals (1)

There will be two new dutyholders:-

1. The Accountable Person; and
2. The Building Safety Manager.

Safety in Occupied Tall Buildings – The Proposals (2)

The Accountable Person:-

1. Will be the person who has control of the building (most likely the owner or head leasee);
2. Will be “...*legally responsible for **ensuring** that building safety risks to residents are reduced so far as is reasonable practicable.*” (para 156);
3. Has to be registered with the building safety regulator (“BSR”) before occupation of a new building is permitted;
4. Once registered, can only be removed if the BSR approves a change to a new Accountable Person;
5. Must register the building with the BSR and ensure that requirements contained in the building safety certificate are discharged;
6. Must appoint a competent building safety manager (“BSM”) and ensure they have access to all the information necessary to enable them to do their job; and
7. Shall produce a safety case for the building.

Phew!

Safety in Occupied Tall Buildings – The Proposals (3)

The BSM will:-

1. Carry out the “...day to day functions of ensuring that the building is safely managed and maintained.” (para 165);
2. Do all that is required to be done by reference to the building safety certificate, safety case and fire risk assessment;
3. **Ensure** that anyone retained to do any work in or on the building is competent;
4. Maintain and keep updated all relevant information about the building;
5. Report any mandatory occurrences to the Building Safety Regulator; and
6. Engage with residents through a Resident Engagement Strategy.

Double Phew!!

Safety in Occupied Tall Buildings – The Proposals (4)

- Both the Accountable Person and the BSM will have significant and far reaching responsibility.
- What about when things go wrong?

Safety in Occupied Tall Buildings – The Proposals (5)

The building safety case (“BSC”) is the cornerstone of the post occupation regime. It will:-

1. Require the Accountable Person to set out how it needs to manage fire and structural risks in the building on an ongoing basis;
2. Identify where risks in relation to fire and structure have been identified;
3. Set out the works or measures required to mitigate those risks, provided it is reasonably practicable to do so; and
4. Demonstrate that the Golden Thread of information has been assembled and is complete.

The BSR may determine that the BSC is inadequate and require the Accountable Person to carry out further investigations.

Safety in Occupied Tall Buildings – The Proposals (6)

- Completing a BSC will require good knowledge of the passive and active fire safety protection measures in place.
- How can this knowledge be obtained – particularly in existing buildings?
- What about the structure?

Safety in Occupied Tall Buildings – The Proposals (7)

The Building Safety Certificate issued by the BSR will:-

1. Apply to existing and new buildings;
2. Be a pre-condition to occupation in new buildings;
3. Identify the Accountable Person and the BSM;
4. Require the presentation of a safety case; and
5. Contain a series of **mandatory** conditions as well as **special** and **voluntary** conditions (if required).

Over to you...

Questions for the Panel