

# Documentation of fire safety remedial work communication with Newlon Housing Trust

## What we want to achieve by sharing this document

This is a documentation of the information received from Newlon Housing Trust regarding the fire safety issues with buildings 1 and 3 Queensland Road as we do not believe updates have been shared widely with other residents.

We hope as a result of us divulging this information we can arrange through the Residents' Association a means of petitioning Newlon Housing Trust to:

- Provide a clear dialogue with residents regarding application for the Government's £1bn Building Safety Fund
- Set a clear deadline for Kier and the building warranty provider to accept responsibility for the original sub-standard fire safety condition of the development and the remedial works required
- Share all information and updates regarding fire safety, the timescale of repairs, the potential financial burden and limitations for the sale of flats with ALL residents

## Why we have this information

For the last six months a number of residents have been in persistent contact with Newlon Housing Trust regarding the fire safety problem with the buildings as this matter has prevented the completion of flat sales.

Our buyer, who had an offer accepted on our building 1 apartment on 24 December 2019, has been unable to secure a mortgage from a lender due to the lack of clarity from Newlon regarding fire safety and an insufficient EWS1 form.

The information sent to these residents by Newlon is an admission that the fire safety of buildings 1 and 3 Queensland Road are sub-standard and that unsatisfactory measures to safeguard residents are being extended – potentially to our cost - while Newlon tries to hold Kier to account to cover the cost of remedial work that is deemed required. This, we believe, hasn't been shared widely with residents.

Below, we have broken down and detailed the responses to queries put to Newlon Housing Trust regarding buildings 1 and 3.

We have also been able to speak to one major mortgage provider to better understand the issue from a lender's view and how our building is currently being rated when mortgage applications are being processed for potential buyers of flats in the development.

## **What residents have been told about 1 and 3 Queensland Road failing to meet the current fire safety standards for residential blocks over 18 metres**

In an email dated 17 January 2020 QR fire safety update Jan 2020, Newlon Housing Trust confirmed that in accordance with Government Advice Note 14, it had commissioned independent expert review of the external cladding on 1 and 3 Queensland Road. It explained:

*'It is likely that the report will detail some deficiencies with the cladding system which will need to be addressed. Although we will endeavour to carry out any remedial works as quickly as possible this will take some time as we will need to create detailed specifications and procure a suitably qualified contractor. Therefore, we cannot give an exact timescale for any works at this stage. However, we will update you on this as soon as we can.'*

A Cover Letter NHT issued in the latest communication to all residents sent on 4 May 2020 confirmed there are fire safety issues in regards to fire-stopping material behind the cladding on the buildings. Newlon clarified in the cover letter:

*'Following investigations by independent experts in accordance with Government Advice Note 14 it has been confirmed that while the main cladding material is not a cause for concern there are some deficiencies with fire cavities and the insulation system which will require remedial works.'*

*'We have made formal enquiries with Kier, the contractor for the original construction of the building, and also with the building's warranty provider about carrying out the required remedial works. Once we receive a response to these enquiries we will have a better indication of the scale and length of works required and will update our residents accordingly.'*

*'Newlon currently has no plans to recharge residents for remedial fire safety works nor have we service charged for the ongoing cost of providing fire wardens. This is because we want to protect them from the worst financial impact. We hope to continue to keep the burden of mitigating costs from our residents. However, at this stage it is difficult to say what the long-term position will be as the scale of the works are yet to be determined and we cannot therefore guarantee that costs will not be passed back to leaseholders.'*

Newlon Housing Trust also provided in an email to residents dated 4 May 2020 a copy of the EWS1 External Wall Fire Review form and Cover Letter from QFSM (Quality Fire Safety Management), the assessor which conducted the review of buildings 1 and 3.

## **What additional fire-safety measures has Newlon Housing Trust implemented while the delay to completing remedial work is ongoing?**

In the email dated 17 January 2020 QR fire safety update Jan 2020, Newlon Housing Trust confirmed interim measures are in place to *'mitigate any fire safety risks within the buildings'*.

This includes fire wardens patrolling the buildings 24/7.

Newlon has until now covered the cost of the fire safety wardens but has refused to commit to not passing on costs for this to leaseholders at a later date (more information regarding this later).

Newlon has also confirmed the installation of thermal imaging cameras to monitor the heat output of the buildings.

Mark Newstead, Property Services Director at Newlon Housing Trust, explained in an email on 5 May 2020:

*'The interim fire safety measures have been agreed with the London Fire Brigade and so we believe them sufficient to keep residents safe. As well as a 24/7 waking watch, we also have thermal image cameras monitoring the outside of the building. These would provide early warning of any serious fires in flats and allow the fire wardens to raise the alarm and call the fire brigade. It is also important to remember that the building's safety needs to be considered holistically and 1 Queensland Rd is a modern building with many safety features including sprinklers.'*

## **What is the EWS1 form?**

We were originally told by Bill Henderson, Housing Director at Newlon Housing Trust, at the last Residents' Association meeting on 4 February 2020 that Newlon would be able to provide residents with an EWS1 External Wall Fire Review form.

EWS1 is an industry-wide form created that has been released to assist in the assessment and valuation of flats in multi-storey buildings, or where specific fire safety concerns exist. This form has been endorsed by the Royal Institution of Chartered Surveyors, UK Finance and the Building Societies Association.

This form clarifies to lenders the current fire risk of residential buildings over 18 metres, classified into one of five groups:

### *OPTION A – Where external wall materials are unlikely to support combustion*

**A1** - *There are no attachments whose construction includes significant quantities of combustible materials (i.e. materials that are not of limited combustibility);*

**A2** - *There is an appropriate risk assessment of the attachments confirming that no remedial works are required*

**A3** - *Where neither of the above two options apply, there may be potential costs of remedial works to attachments*

### *OPTION B – Where combustible materials are present in external wall*

**B1** - *A professional body member [e.g. QFSM] has concluded that in their view the fire risk is sufficiently low that no remedial works are required*

**B2** – *A professional body member has concluded that an adequate standard of safety is not achieved, and has have identified to the client organisation the remedial and interim measures required (documented separately).*

QFSM concluded that Queensland Road development buildings 1 and 3 achieved the lowest - B2 - status.

## **Incorrect information in the Cover Letter QFSM received by residents on 4 May 2020**

According to the QFSM Cover Letter dated 20 April 2020 (issued to residents on 4 May 2020):

*'The remedial works have already been specified and are underway, including the replacement of the external cladding system with a system that has proven compliance with the requirements of BR 135. This assessment has been undertaken by a qualified fire engineer meeting the requirements of the RICS.'*

In an email to resident Madeline Wright dated 22 May 2020, Ian Jones, Assistant Director of Major Projects at Newlon Housing Trust, confirmed that the statement was incorrect and remedial works are not yet specified or underway.

And more importantly it also clarified that the cost of the works and who will take responsibility (and therefore pay for the repairs) has not been resolved:

*'Currently we are still in conversation with Kier, who were the Principal Contractor, though this is via solicitors. Any efforts to protect our residents from costs means we must follow processes to claim remediation costs from other responsible Parties.'*

*'While the discussions are ongoing, there is no remediation plan yet, which must also be agreed through qualified fire engineers.'*

*'If Newlon were to push forward quickly with the works to rectify the building, the claim may be unlikely to succeed, at which point we may have to pass the costs on to our Residents.'*

## **Can Newlon apply for the £1 billion Government 'Building Safety Fund' for remediation of non-ACM buildings to cover the cost of the remedial work?**

On 11 March 2020, the government announced in the Budget that it will provide £1 billion in 2020 to 2021 to fund the removal and replacement of unsafe non-ACM cladding systems.

This funding is in addition to the £600 million which government has already made available to ensure the remediation of the highest risk Aluminium Composite Material (ACM) cladding of the type that was in place on Grenfell Tower.

In the email from Mark Newstead on 5 May 2020, he explains that Newlon intends to apply for the fund but believes it is unlikely to be successful:

*'Newlon does intend to apply for Government grant funding wherever possible. However we are yet to see the prospectus for the Government's cladding fund, so it is difficult to say if we will be able to apply for funding for Queensland Road.'*

*'What we do know is the fund is intended to aid the replacement of dangerous cladding and is not intended to deal with building defects. As you will have seen from the recent update, the primary concern with Queensland isn't the cladding material but problems with fire stopping in the walls – this is likely to be considered a building defect. Therefore, it may not be possible to bid for the Government funding.'*

The prospectus for the Building Safety Fund was published by the Ministry of Housing, Communities & Local Government on 26 May 2020 (<https://www.gov.uk/guidance/remediation-of-non-acm-buildings>).

Here it states on page 10 that eligible items covered by the fund include 'unsafe non-ACM cladding systems'. In note 5 on the same page, it dictates:

*'A cladding system includes the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding system includes the weather-exposed outer layer or screen, fillers, Insulation, membranes, brackets, **cavity barriers**, flashing, fixings, gaskets and sealants.'*

The QFSM cover letter dated 20 April 2020 and issued to residents on 4 May 2020 by Ian Jones of Newlon states:

*'With regards 1 Queensland Road Apartments, London, N7 7BY, the cladding system(s) for the subject property does not meet the requirements of the current guidance from MHCLG. This is predominantly owing to the presence of insulation that is not of limited combustibility (having not satisfied a relevant performance-based test to BR 135 requirements) and the omission of cavity barriers.'*

The government document says that an insulation system that does not achieve a BR135 certificate, is eligible for the fund:

*'Where the building has insulation of class B-s1sd0 or worse and the cladding is of class B-s1,d-0 to class B-s3,d2 this will mean a building is eligible to proceed to application stage, unless the system has achieved a BR135 certificate via a BS8414 test and is installed in line with this, or has been assessed to be in line with this by a suitably qualified professional in line with Expert Panel advice.'*

*'Other buildings with insulation, or filler, of class B-s1,d0 or worse where the system installed has not achieved a BR125 certificate via a BS8414 test will also be eligible.'*

However, having pressed Newlon to clarify if it was going to apply for the fund, Mark Newstead has provided a less than optimistic response (dated 27 May 2020):

*'We are yet to see the detailed bidding guidance but our initial view is Queensland Rd may not be eligible, as we aren't seeking to replace the cladding system. The Fund will cover capital remediation costs which are directly related to the replacement of unsafe non-ACM cladding systems.'*

*'At this time, we believe the works required to the Queensland Rd buildings are mainly restricted to installing fire stopping. Therefore, we wouldn't necessarily be replacing the cladding. Our reading of the guidance is that the reference to cavity barriers is as an integral part of the overall system, and in recognition they would likely need to be stripped and replaced if replacing cladding materials, rather than as an eligibility criteria.'*

*'You will have probably also seen it is a two stage process, where we will initial have to register a building and the MHCLG will determine if it is eligible. Newlon will be seeking to register all its taller leasehold buildings with cladding related fire safety issues, including Queensland Rd. However, it is possible the MHCLG will deem some ineligible given the funding criteria is quite prescriptive.'*

Registrations for the fund have to be completed by 31 July 2020.

## **Was the development compliant to building standards when completed in 2013?**

The building was signed off as compliant when completed in 2013. However, following investigative works as part of the fire safety checks on behalf of Newlon, defects have been identified that would have rendered the development as non-compliant seven years ago.

In an email received on 13 May 2020, Mark Newstead explained:

*'When the building was completed it received a Building Regulation Approval in the form of a Completion Certificate.*

*'The Completion Certificate is granted by an accredited Independent Building Inspector that confirms the building complies with the required standards at the time.*

*'As far as Newlon and our consultants were concerned the building was fully compliant at handover.*

*'We have since discovered latent constructional defects – these are hidden problems and deficiencies only revealed through intrusive surveys. If these defects had been known about at the time, it would have meant the building shouldn't have been deemed compliant.'*

## **When will we know if Kier have agreed to cover the cost of remedial works required for Queensland Road buildings 1 and 3 and, more importantly, residents won't have to pay for this?**

There are two related but separate remediation work streams: internal fire stopping and external fire stopping to the cladding.

Kier **has** accepted responsibility for the internal issues and had commenced works on rectifying some of the internal fire stopping issues earlier this year. Newlon has confirmed that these works have temporarily stopped '*due to COVID-19 and social distancing concerns*'. Kier is expected to return to complete this work in due course.

However, Kier **has not** accepted responsibility for the external fire stopping building deficiencies.

In the Cover Letter NHT emailed to residents on 4 May 2020 from Mark Newstead, he briefly outlined the current position regarding the cost of remedial work and who will take responsibility:

*'We have made formal enquiries with Kier, the contractor for the original construction of the building, and also with the building's warranty provider about carrying out the required remedial works. Once we receive a response to these enquiries we will have a better indication of the scale and length of works required and will update our residents accordingly.*

*'Newlon currently has no plans to recharge residents for remedial fire safety works nor have we service charged for the ongoing cost of providing fire wardens. This is because we want to protect them from the worst financial impact. We hope to continue to keep the burden of mitigating costs from our residents. However, at this stage it is difficult to say what the long-*

*term position will be as the scale of the works are yet to be determined and we cannot therefore guarantee that costs will not be passed back to leaseholders.'*

We've received a more detailed update on this from Mark Newstead on 5 May 2020:

*'We have formally put it to Kier and the building warranty provider that we believe the problem to be a defect under the contract. At this stage, we await a formal response from both parties. As you might expect, we are reserving our legal position but it is too early to talk about action to recover costs. As you know, Kier are carrying out work internally to rectify fire stopping defects at their own cost and we are hopeful they will take a similar approach to the cladding issues.'*

*'Newlon will continue to use our best endeavours to recover costs and we don't want to pass on costs to residents. However, it is impossible for us to know exactly what costs we will have to bear in the future.'*

*'If we don't recover the costs or we only achieve a partial recovery, we may have to pass on some costs to residents. While we would wish to avoid this, it is important we are open and honest with residents about this possibility.'*

## **Has Kier and the warranty provider (BLP) been set a deadline to respond to Newlon Housing Trust's claim that defects are under contract?**

We have queried if Kier had been given a deadline to respond to Newlon's formal approach that deficiencies with the building are failures on Kier's part.

*'There is no set deadline for Kier to formally respond at this stage. Normal practice is to make the original contractor aware of the defect and share any reports etc and invite them to inspect or comment. Our legal advice is that it wouldn't be appropriate to set deadlines for a formal response at this time. We have to be seen to be giving Kier every opportunity to rectify the issue before we move to any formal action.'*

*'However, clearly we cannot and won't let the situation run on longer than necessary. At this stage we are ourselves still investigating the full extent of the problem and working to produce a remedial works specification. Kier are still engaging with us and have by no means rejected the defect claim.'*

*'We will try to keep a constructive dialogue with them with a view to agreeing remedial works but if the matter drags without resolution we may have to toughen our line and potentially serve court papers. However this could only happen after we have presented Kier with all the evidence, answered any queries or comments from them and exhausted all options for an amicable solution.'*

*'Newlon has put the building warranty provider BLP on notice of a claim. At this stage BLP have not accepted the claim. We expect them to seek to defend it on the grounds the defects don't represent "present and imminent danger". This is a very standard defence they are using on all such claims, of which there are many across the industry. Newlon's solicitors will dispute this and we will continue to pursue a warranty claim, as we believe we have a strong case.'*

## **If Kier refused to accept responsibility for the remedial works, what will be the estimated cost of repairs?**

In an email sent to resident Imogen Harvey on 3 June 2020, Mark Newstead claimed the estimated cost of remedial work for buildings 1 and 3 to be around £1million to £2million:

*'Newlon has commissioned consultants to carry out further surveys and to produce detailed specification for the cladding works.'*

*'From what we know from the initial report we commissioned in complaint with government advice note 14, we understand the problems to be mainly related to fire stopping behind the cladding.'*

*'However, this needs further investigation and the exact remedial works are yet to be determined.'*

*'When we do have a specification we will of course share a summary of that and a cost estimate with residents – at this stage a very loose estimate for the cladding work is £1million to £2million.'*

*'As I've indicated in previous emails the timescale remains uncertain while Kier consider their position.'*

## **If Kier refused to accept responsibility, how long could it take for the remedial work to buildings 1 and 3 to be completed?**

Mark Newstead confirms in an email on 5 May 2020 that due to a lack of response from Kier, Newlon Housing Trust currently has *'no timetable for this work'*. He adds that if - in the worst case scenario - Kier refused responsibility, repairs would likely take two years:

*'If Kier don't accept liability, Newlon will have to procure a suitable contractor for this work. This would mean Newlon having to write a specification and tender the works.'*

*'If this were the case, it might take 12 months for works to commence. Once works do commence we anticipate them taking at least 12 months to be fully complete.'*

*'Therefore, we could well be looking at 2 years to complete the works.'*

Residents should be aware that the temporary measures, such as the fire wardens, will need to be relied upon to guarantee the safety of those in the building but also need to be paid for either by Newlon or leaseholders for the extended period until the external work is completed.

## **What has Newlon said about passing on remedial work costs to leaseholders?**

Mark Newstead's email to another resident in the building dated 3 June 2020 cites a case where a housing company won a ruling over leaseholders regarding the replacement of Grenfell-style cladding.



In the email he states:

*'Although Newlon would wish to avoid passing on charges to residents under the terms of the lease Newlon does have the right to pass on major repair works costs to residents.*

*'There has been legal precedence set by a 2018 tribunal decision that upheld to rights of a management company to pass on fire safety charges (both fire wardens and cladding) to leaseholders.'*

We understand the case in reference is the Citiscape building made up of 95 apartments in Croydon.

Leaseholders were ordered to pay £500,000 to make their building safe after a tribunal ruled that they, rather than the management company, were obliged to cover the costs.

The result of the tribunal can be found here: <https://431bj62hscf91kqmgj258yg6-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/Determination-Civ6511.pdf>

Leaseholder in the Skyline Central tower block in Manchester – also found to have dangerous cladding – were have also been ordered to pay fees of between £15,000 and £25,000 per apartment by the end of January to cover the costs of removing the material.

Mark Newstead added:

*'We are also aware that is the case for residents in several of the private developments in the vicinity of Queensland Road.'*

We believe this to be untrue as previous owners in the Barratt Homes/First Port building have confirmed to us that their buildings have been signed off as safe – and clarified as so in an EWS1 form. As a result, owners have been able to sell their apartments this year (see section on this below).

Mr Newstead continues by explaining that the *'not insubstantial costs'* of having fire wardens on patrol have not yet been passed on to leaseholders (after the decision to put them in place was not discussed with residents) and suggests Newlon Housing Trust might legally not be able to prevent costs being passed to leaseholders due to its *'charitable status'*:

*'Newlon would wish to avoid this if at all possible and we have chosen not to pass on the not insubstantial fire costs at this point. As previously outlined we will try and pursue every route and redress open to us to recover the costs.*

*'However, although we remain optimistic about the recovery we cannot guarantee that we can recover all or any of the costs at this stage. Therefore we cannot give residents the blanket assurance that you are seeking that we will pay and won't pass on any costs to leaseholders.*

*'We are also prevented from making such promises in part by our charitable status – housing associations expenditure must meet our charitable objectives and paying for costs which leaseholders are otherwise legally liable might not meet that definition.*

*'I appreciate this leaves leaseholders in an uncertain position on costs. Unfortunately this may remain the case for some time if the matter has to be resolved through the courts.'*

## **How lenders view the existing EWS1 form for Queensland Road buildings 1 and 3 in regards to providing mortgages for buyers**

We have been in discussion with a major mortgage provider to understand their position regarding the current EWS1 form for buildings 1 and 3.

*'The property in question is at B2 (rated by Quality Fire Safety Management), which states that the cladding has been determined as combustible, plus there are no cavity barriers. That said, we or another lender, could consider lending if remedial action is agreed. Currently it appears nobody has agreed to front the costs, nor set a date to complete the works. This makes it incredibly difficult to approve as there are unknown elements which need to be resolved.*

*'Therefore it would advantageous if Kier agreed to do the works (external as well as internal) and a timeframe was put in place – the sooner the better for obvious reasons. Again, not a guarantee it will be approved but it does provide assurances that the issue will be resolved by a specific point in time.'*

He later adds in the same email both the cost and timescales are *'both very rough estimates based on what we know and could change as work progresses'*.

## **Do residents in the Barratt Homes/First Port buildings on Queensland Road face the same issues?**

Owners of flats in the Barratt Homes/First Port development on Queensland Road have endured a similar issue in recent months having been informed the buildings might not adhere to the latest standards.

This included a brief dispute between Barratt and First Port regarding where responsibility lied to rectify the issue.

However - following persistent pressure from property owners - reviews of the cladding and the overall internal and external fire safety were carried out and by Oakleaf Consulting on behalf of First Port earlier this year and signed off as safe.

This was clarified in an EWS1 form, which declares the buildings adhere to the highest A1 rating, meaning no remedial work is necessary.

Some owners have completed sales this year after the EWS1 form was received.

In March, we asked Newlon Housing Trust if any discussions had taken place with Barratt Homes/First Port, having understood that owners had already been provided an EWS1 form deemed adequate for lenders to provide mortgages.

Mark Newstead responded on 3 March 2020 stating:

*'We have not discussed the neighbouring building with Barrett or the managing agent, who I believe is First Port.*

*'While they may have obtained a completed form, we don't know how that has been received by lenders. The neighbouring building is also of different construction to ours and they may have a different remediation plan or indeed it might be deemed compliant.'*

**Email addresses if you want to get in touch with Newlon Housing Trust:**

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