

Mercury Gardens Axis buildings enforcement action FAQs

Why are the Council taking this action?

Following concerns received by the Council in December 2019 by residents regarding the cladding, the Freeholders and their Agents provided documentation to the Council, which included a fire safety review of the cladding dated November 2019. The assessor recommended corrective works be carried out in line with new Building (Amendment) Regulations 2018.

The Council carried out an inspection of the cladding, and following that assessment are now carrying out enforcement action under the Housing Health and Safety Rating System.

What is the Housing Health and Safety Rating System?

The Housing Health and Safety Rating System (HHSRS) is a risk based evaluation tool used by authorities to help local authorities identify and protect against potential risk and hazards from any deficiencies identified in people's homes. This includes risks to fire safety in residential buildings arising from deficiencies in the structure of buildings.

Is this the same cladding used in Grenfell?

No, the Grenfell cladding was made of Aluminium Composite Material (ACM), this cladding is non-ACM and is considered to be less flammable.

How extensive is the Defect?

We cannot say for certain at this stage, the cladding system would include the external wall covering and insulation behind it. In the best case scenario it might mean that only a small section has to be replaced, but the most likely scenario is that it will all have to come off and be replaced to comply with the Building (Amendment) Regulations 2018 as recommended in the Freeholders fire safety review of external cladding.

Why the building was granted Building Regulations in the first place?

The type of cladding used in the construction was compliant at the time regulations were granted. In the wake of the Grenfell tragedy, Building Regulations were altered to ensure cladding used in high-rise properties are non-combustible, which unfortunately meant that the Axis building no-longer complies.

What is a cavity barrier?

A cavity barrier is a fire resistant strip provided at the junction of floors and walls to separate the flats. They are used to prevent the penetration of smoke or flame to restrict the movement of fire within a building for a limited period of time. In this case, used to separate any combustible material such as the insulation that has been provided in the

make-up of the external walls of the building. Combustible cladding or insulation is no longer permitted to the external walls of residential buildings over 18m high.

Is there a problem with the cavity barriers?

In a follow-up Insulation Report dated December 2019 and commissioned by the Axis Management Co Ltd, a photo taken through an inspection hole showed a section of a cavity barrier with a thin layer of Polystyrene and render over cladding the cavity barrier. This report stated the insulation had bridged the cavity barrier, however this detail complied with the design supplied by the cladding company. Tests are required to confirm the fire resistance of the cladding and insulation installed.

Am I expected to make the arrangements for this work to be carried out?

No, the expectation is that the freeholder and their appointed agents contact the local authority to discuss the nature of the works, they are also expected to keep their residents and leaseholders informed.

Will the Local Authority keep me Informed?

Yes, the Local Authority will be sending a regular newsletter to residents with updates as appropriate.

How long is this work expected to take?

It is anticipated that the work will take up to a year to complete. But this is subject to investigation of the state of the cladding. More samples will have to be removed for testing and then the work will have to be planned, consulted on and carried out carefully. Any works carried out will need to comply with the Building Regulations.

Will I have to move out?

It will depend on whether it is feasible to carry out the work in stages, and whether or not it is safe for residents to remain in situ whilst construction works are carrying on. It is likely that some or possibly all residents may have to temporarily vacate whilst works are carried out, but we cannot be precise until further investigations have been undertaken, and these will have to be arranged by the Freeholder. The freeholder will have to make arrangements for temporary accommodation in that eventuality.

Will I be charged for this work?

The issue of raising charges for any of these works is between the leaseholder and freeholder, under the terms of the lease. The Council has no control over this process.

All leaseholders have an agreement to pay a service charge to the freeholder. Freeholders raise money for maintenance and repairs through service charge demands from leaseholders and will depend upon the freeholder's assets and any existing reserves they

have for maintenance costs. The costs may be able to be charged to the leaseholders depending on the terms of the lease. If you are a tenant (i.e. renting from a Landlord – who is probably the leaseholder,) you will not be affected by charges. If you are a Swan Housing Tenant you will not be affected. If you have a shared ownership lease you could be affected.

Is there any Government Funding Available?

Yes, we have encouraged the freeholders to register and apply to the Governments Building Safety Fund which was recently set up to meet the cost for the removal of all unsafe non-ACM cladding on residential buildings that are 18m and over and do not comply with building regulations.

We have a Waking Watch in place, so why do we need to change the cladding?

The Government guidance is that a waking watch is considered to be an interim measure only. It is costing the leaseholders £20,000 per month and is not sustainable indefinitely. The Waking Watch is only intended to be an interim measure until permanent arrangements are made to remedy the defects so that cladding is compliant and safe. The only acceptable long-term remedy is to remove all non-compliant cladding and replace to meet building regulations.

The Council are charging £510 to serve the notice, who pays that cost?

The charge for the notice is a one off cost to cover the expenses incurred by the Council in the inspection, consideration of action to be taken and the service of the notice. This charge will be invoiced to the freeholder only. We will not be sending out separate charges for this notice to any leaseholders.

What happens if the Freeholder refuses to cooperate and carry out works?

Failure to comply with the Improvement Notice may result in prosecution and, if found guilty, the offenders would be liable for an unlimited fine. Additionally the council may carry out the works without agreement from the freeholder or long leaseholders and recover the costs of the works plus administration expenses.

Furthermore, the Council has the power to issue a financial penalty notice (FPN) of up to £30,000 for non-compliance of an Improvement Notice, as an alternative to prosecution proceedings. A successful prosecution or the issue of two or more FPNs in a 12 month period will also result in an offender being entered onto a nationwide Rogue Landlords Database available to Government and Local Authorities.