http://www.info4fire.com/comment-content/full/residential-landlords-profiteering-or-genuine-fire-safety-upgrades.

Residential landlords - profiteering or genuine fire safety upgrades?

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Landlords of residential blocks may be profiteering from so-called remedial fire safety work, which is often no more than an accumulation of maintenance issues rather than a genuine fire safety upgrade, says David Sugden.

"It is unreasonable for building owners to now charge the cost of their previous failings to tenants as 'improvements' to fire safety"

In a recent article in the Investors Chronicle, property owners were accused of profiteering when fire safety work was being done and charged back to flat owners or tenants. This raises the question about who should pay for such work?

When constructed, a building would have had to have been built in accordance with the then current building regulations. Once occupied, is it not reasonable that it is maintained in a safe and proper manner?

Any building has to be subject to maintenance over the life of the structure and, from time to time, services will be changed, materials will deteriorate and require replacement, and styles will require modernisation. Assuming that such work is not subject to the building control process it should, nevertheless, be undertaken in such a way as to not materially affect the fire safety of the structure.

Changes to the building regulations have occurred on a regular basis and for many years we have worked to the guidance set out in Approved Document B. In general, when that document is updated, the changes are not retrospective but it does remain the benchmark for fire safety in buildings. The first question that occurs to me therefore is that if there were changes in that guidance, would owners of blocks of flats pay any attention to these changes unless they were specifically required to do so?

The present system

Under the Regulatory Reform (Fire Safety) Order in 2005 (FSO), the problem that now arises is to what extent should a fire risk assessment review the measures installed to mitigate against the risks to occupants? It is quite possible, indeed likely, that the originally installed fire safety provisions will have deteriorated, influenced by maintenance (or lack of it), new services, refurbishment or simply wear and tear. The FSO requires the responsible person to do something that was perhaps lacking under previous legislation, that is, inspect the fire precautions.

The Lakanal House fire brought the situation into sharp relief and the inspections done after that fire on a very large number of housing blocks would appear to have highlighted lots of things previously

overlooked that needed attention. This is not upgrading the fire safety elements of the structure; this is maintenance of those elements, and refurbishment which should have taken fire safety into account. Where it did not do so was a failure in the duty of care by building management, or a failure in the specification worked to by contractors, or a failure by contractors to ensure that their work at least maintained the fire protection that was in place. In such cases, it is unreasonable for building owners to now charge the cost of their previous failings to tenants as 'improvements' to fire safety.

The fire risk assessment should be a dynamic document. If, for example, fire separating elements are penetrated by new services, then the work must not compromise the compartmentation and the assessment must show that to be the case. In effect, the FSO turns what should have been common sense into a legal requirement.

Regulation 38

This provision under the 2010 edition of the building regulations (previously regulation 16b) requires the developer to provide the 'responsible person' with a full set of information on the fire safety elements 'as built' into the structure (the detail is set out in Appendix G of Approved Document B). This is required so that the occupier can complete the initial risk assessment, required by the FSO to be in place from the day of occupation - there is no period of grace. (See Procedural Guidance, para 2.41 and 2.41.1). It should not be assumed that just because the building is brand new it is perfect. The 'as built' provisions should be in line with the provisions set out in the plans when approved. If the responsible person, when conducting this initial risk assessment, is not satisfied that the provisions are adequate, his or her recourse is to the contractor and/or developer. This initial risk assessment is then the basis of the continuing process, as discussed earlier.

Audit trail

The owners/occupiers of buildings are therefore faced with taking responsibility for the safety of their building from start to finish, and so should seek an audit trail for all work that influences the fire safety of the structure. All DCLG guidance documents recommend the use of third party accredited materials and contractors where fire safety matters are concerned, and the industry has in place schemes that cover all aspects of work, from fire alarms to fire doors to fire stopping or ductwork. Suitably certificated contractors should have supplied a "certificate of conformity", backed by the scheme of which they are a member. This certificate helps build the audit trail; if it is not available then the work should be inspected by an expert so as to avoid later problems.

The same principle should be adopted when maintenance is done during occupation. Certificated contractors should be used and their records kept to help show that the risk assessment is up to date and valid.

A building when constructed is required to be fire safe under regulations in force at the time, and keeping it so is maintenance. Only if new safety measures are installed can it be said to be upgrading fire safety.

David Sugden is chairman of the Passive Fire Protection Federation.