End Our Cladding Scandal meeting with Vistry Group – June 2024

Following our previous meeting with Vistry Group in early April, we had a follow-up meeting on 28th June to discuss progress with their building safety remediation programme in the last quarter.

We met with Alexander Cook, special projects director, and Scott Stothard, divisional managing director of manufacturing and special projects.

Update on progress with assessments and remediation

A week prior to our meeting, DLUHC had published a quarterly update on developer remediation progress at the end of April 2024. This showed that almost all of Vistry's buildings within scope of the developer remediation contract had been assessed (96%), with 11 buildings still waiting for an assessment. Of the 101 buildings already identified for self-remediation, 40% had either started or completed works – which was no better, but no worse, than the average pace for the rest of the industry.

A major caveat to judging the progress of Vistry's remediation programme based on the government's statistics, as we learned in our previous meeting, is that the Group acted as a contractor rather than a developer for around two-thirds of the buildings that it expects to remediate. Those buildings are outside the scope of the developer remediation contract which DLUHC reports on. In most cases, the buildings where Vistry acted as a contractor should be accounted for within DLUHC's separate social housing dataset – but for a user of the report, there is no visibility that the source of remediation funding and/or commitment to carry out the works on these social housing buildings rests with a developer such as Vistry.

As progress on these buildings cannot be monitored using publicly available data, we can only take Vistry's assurance that "out of scope" buildings are broadly tracking at the same pace as those "in scope." However, as they pointed out, they do not have the same level of control over the timelines for these buildings.

Delays to starting remediation works on site

In relation to buildings that are in scope of the developer contract, where quarterly progress *can* be tracked, our main concern was that start dates appeared to be slipping for a high proportion of buildings.

Four buildings that were scheduled to start works on site "prior to 2024/25" had still not started (see the "Developer_7" page of the management information tables) and 9 out of 13 buildings scheduled to start in the last quarter, from February to April 2024, had not done so (see the "Developer_8" page). This figure was even higher in the prior quarter, from November 2023 to January 2024, when 13 out of 14 scheduled starts had not occurred within that period.

Vistry mentioned that a couple of the buildings which had planned to start works before the end of 2023, but which were still delayed, had originally been registered with the government's Building Safety Fund (BSF). Unless a building is at the final "Stage D" of the BSF process and has a signed Grant Funding Agreement in place, a participant developer can request that a building be transferred to them for self-remediation. It's worth noting that the terms of the developer contract state that for buildings that had reached "Stage C" of the BSF process, the developer must commit to the same commencement and completion dates identified in the BSF application, subject only to "reasonable adjustments"; and for buildings that were at the earlier "Stage B", there is a commitment to meet the same completion date for works.

When we asked Vistry if the contracted commitment to meet original BSF timelines had been met or not, they referred to "unavoidable" delays. Unfortunately for leaseholders and residents whose lives are on hold – and who continue to incur higher costs while waiting for remediation to be complete – one of several flaws

in the DLUHC approach is that they have not defined what is a "reasonable delay" and there appears to be no route for leaseholders and residents to challenge delays.

Vistry explained that in a small number of cases where planned start dates had recently slipped, this was due to access licences not having been agreed yet with building owners. In "a couple" of cases, the buildings previously had a "B1" rated EWS1 assessment and were not anticipated to require remediation works, but Vistry had not been able to get agreement from the building owner that an up-to-date Fire Risk Appraisal of External Walls (FRAEW) should be carried out under the PAS 9980 standard, in order to discharge its obligation on these buildings. These cases had been referred to DLUHC for advice.

Impact of the new Building Safety Regulator on remediation timelines

We wanted to know if Vistry had experienced any unanticipated delays to works starting on site due to the new "Gateway regime" for building control approval under the Building Safety Regulator (BSR). However, Vistry's team informed us that they had not made any "Gateway 2" submissions yet and they are preparing to make a first submission around October 2024 – six months after the regime was first introduced. So far, they had heard varied feedback from industry colleagues and specialist consultants, but in all cases the approval process for Higher Risk Buildings (HRB) was said to have a minimum timeline of at least 20 weeks.

Earlier in June, another developer had advised us that they had queried with the BSR whether internal compartmentation works could be classified as "emergency repairs". That would have meant a notice of works would only need to be provided "as soon as reasonably practicable after work had started," but unfortunately the BSR had confirmed that Gateway 2 submissions would be required for all compartmentation works. We wanted to understand if Vistry had had a similar experience to the other developer but, although they had also considered applying for internal compartmentation works to be treated as emergency repairs, they had not yet approached the BSR on this point.

Disputes over building assessments or the scope of remedial works

Vistry informed us that there are currently two cases where a formal dispute resolution process is ongoing, with two different building owners or "asset managers" as they were referred to. One case relates to the way a particular type of render is remediated, so it could potentially have a broader or "industry-wide" impact, depending on the decision reached – although this was not the outcome they were anticipating.

In both instances, DLUHC had acted as a mediator during tripartite meetings, and the Department is commissioning a third-party peer review or audit. It was Vistry's understanding that DLUHC is "inundated" with requests of this kind but even so, a relatively quick turnaround of about four weeks was expected.

We were also advised that, so far, DLUHC had audited the FRAEW assessments for three Vistry developments that are in scope of the developer remediation contract. These three cases include a development with four buildings in Bethnal Green, where leaseholders have raised concerns that the scope of works may not cover all of the alleged breaches of the building regulations; no contractual agreement has been signed yet to allow works to start on site and insurance costs remain sky-high while the buildings remain unremediated.

Vistry informed us that the FRAEW for this development was judged by DLUHC's auditor to have met the required standard (PAS 9980) and to have sufficiently justified the remediation recommendations – it has passed the audit. However, they noted that a local authority Joint Inspection Team (JIT) has been involved in this case and they had not yet confirmed their agreement with the DLUHC audit process. It was Vistry's view that this agreement would be forthcoming, and the works contract was close to being agreed "with the exception of the scope to be attached." Only after this contract is finally signed will it be possible to apply for

the works licence that is needed due to the site's location beside a railway – but Vistry thought it should be possible to commence some elements of the works sooner, before having that licence in place.

It is worth noting that Clause 20.2 of the developer contract makes it clear that entering into the contract does not affect or prejudice any claim or demand that any third party or Responsible Entity may have against a Developer, and "all civil claims… remain capable of assertion to their fullest possible extent." If you are a leaseholder, at this site or any other, and believe your developer could be liable for further remediation works or mitigation measures which are not covered by the developer contract, then you may wish to consider taking legal advice on options to seek redress by other means.

Who pays when a freeholder and developer disagree whether remediation is required?

Meanwhile, a potential disagreement has recently emerged at a mid-rise building in Essex, which is part of a larger development. Leaseholders first became aware of an issue in March this year when contractors turned up on site and started "testing" the façade. This was swiftly followed by a letter from the freeholder's managing agent stating that the building's EWS1 rating had been downgraded to a "B2" and timber decking on balconies would need to be remediated.

This came almost three years after the building's EWS1 rating had previously been *upgraded* to a "B1", which confirmed that remediation would *not* be needed – a status which made it possible for leaseholders to remortgage, sell and insure their homes more easily. With multiple households currently seeking to sell up and move on with their lives, leaseholders are understandably frustrated, to put it mildly, at the lack of certainty and sheer inconsistency between multiple risk assessments. The block opposite, for example, has the same specification but has achieved a "B1" rating.

We asked Vistry whether the freeholder, Grey GR, had commissioned the recent FRAEW assessment independently or was working in consultation with them, and if they would be funding the recommended remedial works. They advised us that the freeholder led this process, without their involvement, and added that a peer review had indicated that the balconies do not require remediation; this had been communicated to the freeholder's agent and they were awaiting a response.

We are concerned that in the meantime, leaseholders have been receiving advice via the managing agent that it is yet to be determined "if and how" the identified defects will be remediated. This lack of certainty will be a barrier for anyone wanting to remortgage or sell. Leaseholders have also been advised that the building owner is "exploring all routes for third party recovery," which suggests there is a risk that the balcony works identified in the FRAEW could potentially be charged to leaseholders if funding cannot be recovered from another party.

We remember when the Government's "Developer Pays" approach was heralded by Michael Gove as "a victory for leaseholders… ensuring that those responsible pay to solve the crisis they helped to cause". But if a disagreement between a developer and freeholder over recommendations for remedial work can potentially lead to costs for building safety defects being passed onto leaseholders – *despite the existence of the developer remediation contract which was supposed to protect them* – then surely DLUHC's approach must be relooked at by the incoming government.

Insurers not accepting remediation standards under the developer contract

As we noted during our previous meeting with Vistry, leaseholders at a Hertfordshire development recently experienced a dramatic hike in building insurance charges, to more than £4,000 per flat. The increase in costs was explicitly linked to the insurer's concerns that the scope of work proposed under the developer contract may be too limited to remedy all defects. The policy renewal date is looming in October, which is causing

extreme concern for leaseholders, who may face another similarly huge bill if developers and insurers continue to fundamentally disagree on the standard of remediation required to address all fire safety defects.

During our last meeting, Vistry had clearly stated that the managing agent and insurers in this case "had not understood" their communications. They insisted to us that they had not advised that combustible materials would remain on this specific building, but had stated that the building would be remediated to the PAS 9980 standard – and, as a general principle, it may be possible for combustible materials to remain in place if they are compliant with the PAS 9980 standard. Vistry's team said they had liaised with a contact at the Association of British Insurers (ABI) to highlight the issue raised by this case.

Leaseholders wanted to understand if Vistry was alleging that the insurer is incorrect about combustible materials remaining on their specific building. In response, Vistry clarified that there will, in fact, still be combustible materials on this building – which makes the commentary given at our previous meeting seem rather redundant. They noted that a peer review is progressing which could potentially amend the scope of works – for example, in relation to cavity barriers – but in their view, it was "highly unlikely" that any peer review would propose removing the combustible materials which they labelled as "low/tolerable risk."

When we asked whether Vistry's conversation was ongoing with either the insurer or the ABI about this case, the answer was simply "no."

Vistry also noted another case, in Manchester, where renewal of the insurance policy was imminent and the premium had doubled; the implication seemed to be that insurers are hiking prices with no clear rationale, because remediation works at this building are slated to start "within the next 12 months" and investigations are underway to determine the scope of works. Vistry had not considered, or asked, whether the absence of a confirmed start date and confirmed scope of works were factors behind the insurer's pricing decision.

It is critical that the divergence between developers and insurers on the question of remediation standards is addressed – because it is innocent leaseholders who continue to pay the price while the issue remains unresolved. As a starting point, we will be calling on the incoming Building Safety Minister to finally publish the government's position on property protection, following the research undertaken as part of the Technical Review of Approved Document B; this workstream completed its research at least a year ago. It is incumbent on the new government to ensure that there are clear and consistent risk assessment standards for cladding and non-cladding defects that can be applied to all heights – we remain concerned that leaving this up to industry will not break this deadlock or improve the uncertainty for ordinary people across the country who continue to suffer.

A robust and independent dispute resolution process

When the developer "pledge" was first announced by Michael Gove in April 2022, it included the promise of a robust and independent dispute resolution process, which was meant to be established by the government. We were led to believe there would be a more formal route for escalating concerns, where disputes would be settled with an authoritative outcome, and that this would be open to all stakeholders – including leaseholders and residents. In our discussions with DLUHC officials and ministers in the summer of 2022, we were explicitly advised that leaseholder representation would be built into the process.

In our view, this has been watered down to a more informal process so far, more akin to DLUHC facilitating a conversation – although it might sometimes engage an independent auditor's opinion – and it relies on the goodwill of the parties involved to reach an agreement or accept the recommendations made by DLUHC's auditor. What happens if they do not? The process also appears to only be available to developers and Responsible Entities who are party to the developer's Works Contract, with no route for leaseholders or residents to raise a formal dispute.

Alex Cook said he believed Vistry Group would have been happy to accept a more formal dispute resolution process in the wake of the 2022 pledge, but they have "accepted the middle ground offered by DLUHC" and based on their initial experience, they are willing to accept the outcome of the current mediation process.

Protecting leaseholders and residents in buildings under 11 metres

Buildings under 11 metres are not in scope of the developer contract, but in some cases low-rise buildings can be high-risk and "some will be life-critical," as explicitly recognised by the (former) Secretary of State in a Building Safety update to Parliament last year. In the small number of cases to date where DLUHC-commissioned audits have found that remediation is required in buildings of this height, the Department has engaged with building owners and developers to ensure funding solutions that protect leaseholders.

At an Essex site developed by Countryside, now part of the Vistry Group, there are four buildings under 11 metres with cladding around the balconies that have been confirmed to require remediation. In 2019, residents watched as a fire spread rapidly between the balconies of all four storeys in a neighbouring low-rise block, which has naturally left them concerned about their own safety. The four buildings in question first learned that they needed remediation in Q4 2020 – almost four years ago – and this was confirmed by a FRAEW undertaken in accordance with the PAS 9980 standard two years later. After DLUHC intervened to commission an independent audit, Vistry agreed with DLUHC shortly before Christmas 2023 that it would fund remediation works – subject to carrying out its own (further) investigations.

Having already been on such a long journey to get life-critical cladding off their buildings – made all the more challenging by the lack of formal protection in the Building Safety Act – leaseholders and residents understandably remain frustrated that there is still no confirmed start date or scope of works.

Prior to our meeting – in response to direct requests from a leaseholder to the developer's building safety inbox – Vistry outlined that they expect the design proposals to be completed in August 2024, and the intention is to start work on site before the end of Q3 2024, for a duration of up to six months. Vistry's team explained that the freeholder has a draft programme of works but has requested the remediation design prior to signing off the access licence; this is a slightly different approach compared to buildings that come under the terms of, and the "protections" provided by, the developer remediation contract.

Leaseholders in these under 11 metre buildings had understood, from communication received via their MP, that they would receive a "Letter of Comfort" confirming that remediation would be undertaken and fully funded by the developer. However, a broker had advised that the outlook for mortgage lending would remain "hopeless" even if they received such a letter, because the start date, duration and scope of works are still too vague to give lenders confidence – particularly as the remediation funding solution sits outside the "standard" developer contract and is not backed up by any legislative protection for buildings of this height.

Vistry commented that they had drafted the communications which the MP's office had distributed and that it was an incorrect interpretation that a comfort letter would be provided proactively to every leaseholder – despite such a letter being issued as standard to every leaseholder in every relevant building over 11 metres. For any under 11 metre building awaiting remediation, a letter is only being made available on a request basis – for example, if a lender or broker makes a written request for more information.

All leaseholders need communication about building safety, regardless of building height

When we raised the fact that leaseholders and residents of these buildings felt they needed to reach out to Vistry's building safety inbox directly in order to receive information, Vistry's response was that they "only want one contact per building" rather than directly receiving requests for information from individual leaseholders.

Under the developer remediation contract, it is a developer's responsibility to "establish effective communication processes" and Vistry's team confirmed that for buildings over 11 metres, leaseholders and residents would receive regular communications from a named contact in the project team, but they said they had not put this process in place for "special cases" outside the scope of the developer contract. However, their team had recently agreed to a request to provide monthly communications to leaseholders and residents of the under 11 metre buildings on the Essex development, and they confirmed they would meet that commitment.

It seems obvious to us that the best way to ensure leaseholders and residents do not feel the need to chase up information individually and repeatedly about their building is to have a process in place to ensure that regular, proactive and timely communication reaches all leaseholders and residents. Regardless of building height, everyone deserves to know about the safety of their home and how their life will be directly impacted by remedial works in the months ahead.

In the aftermath of the General Election, we will be engaging with the new Government to reemphasise the need for every leaseholder to be treated equally and according to risk – regardless of building height.

Buildings under 11 metres where remediation is not yet confirmed

Case 1: Southampton – mixed height development

Several other buildings under 11 metres in height had come to our attention in recent months, where leaseholders are potentially facing remediation costs due to the lack of protection in the Building Safety Act.

At a low-rise building in Southampton, leaseholders recently received a Section 20 notice and had been informed that they will be expected to pay around £16-22k each for cladding remediation costs, depending on apartment size – or double this, if works cannot be co-ordinated with those already underway on a taller neighbouring building, which Vistry is self-remediating. It was particularly disappointing to see that Vistry's email address was included on the letter from the managing agent which had detailed the apportionment of costs to each leaseholder – as this suggested the developer must be aware that leaseholders in this under 11 metre building were being asked to pay the price for fire safety defects identified in the building's FRAEW assessment.

Following our advice to leaseholders in this building, they engaged DLUHC to undertake an independent audit of the FRAEW report, to provide assurance about whether the recommendations for remediation were robust. We should note that in every audit of an under 11 metre building that we have seen so far, the first round of the audit has – without exception – asked for more information to be provided or for the author to provide more evidence or substantiation to justify the FRAEW's recommendations. None have been immediately accepted by the auditor. This has been the case even for those buildings that have subsequently been confirmed to require remediation after a second audit. From our perspective, the initial audit response for the Southampton building has very much been the norm, and it does not lead us to any conclusions yet about the eventual outcome.

Vistry insisted that despite their email address being included on the letter to leaseholders, the company had been unaware of the FRAEW report and its recommendations for remediation until leaseholders had brought it to their attention. Their initial opinion, in light of the auditor's comments, was that "the FRAEW needs to be redone," and they did not anticipate at this stage that the building would require remediation. However, they reiterated that from their perspective, buildings under 11 metres are simply "not part of our commitment [under the developer remediation contract]."

Case 2: Bristol – timber frame and timber clad

Meanwhile, at an under 11 metre building in Bristol which has a significant amount of timber cladding and a partial timber frame, leaseholders have received zero valuations on their mortgage applications and watched multiple sales fall through. The building's Fire Risk Assessment (FRA) is not sufficient to satisfy lenders because it states that further investigation of the external wall is needed – which is a red flag that leaseholders could potentially face remediation costs.

For all buildings with more than two dwellings, regardless of height, there is an obligation under the Fire Safety Act 2021 to consider the external wall as part of the Fire Risk Assessment. A more detailed FRAEW under PAS 9980 may be required "if there is a known or suspected risk from the form of construction used for the external wall, such as the presence of combustible materials used for cladding or external wall insulation." DLUHC had advised leaseholders in this building that they should contact their local authority or local fire service and seek their assistance with enforcement, and as a result the freeholder is now instructing a FRAEW. This case is still at an early stage until the FRAEW has been conducted.

It remains manifestly unfair that the costs of undertaking a FRAEW will be passed to the leaseholders of this under 11 metre building through the service charge – as this professional survey is essential, both to identify whether there are life-critical risks and in order to break the impasse on mortgage lending. If this were a taller building, the developer would be responsible for the cost of the assessment.

Vistry said they had been made aware of this case via the freeholder, but their initial impression was that it was "unlikely" this building would be found to require remediation. We were advised that the company is not proactively assessing or seeking information about any buildings under 11 metres that they developed, to determine whether they have life-critical fire safety defects or not – whereas it is worth noting that industry peers such as Barratt, Berkeley and Persimmon have remediated some buildings under 11 metres and have been more proactive in this regard.

Case 3: Bristol – mixed height development

The seller of a leasehold flat in Bristol recently had cause to request an updated "Letter of Comfort" from Vistry, to provide more assurance to their buyer's mortgage lender; their previous letter was dated in 2022 and had referred to the developer pledge, not the more recent developer contract. The feedback was that "Overall Vistry have been helpful, providing the correct information and responding in a timely manner [with an updated letter of comfort]." So far, so positive.

However, the comfort letter was subsequently distributed more widely to leaseholders at the development and caused some surprise. The wording appeared to confirm that Vistry was taking responsibility for remediation, and funding the works, for the entire development. Leaseholders had previously understood that there was a disagreement between the developer and freeholder regarding an under 11 metre block on the site, whether it would be remediated at all and who would fund remediation.

When we raised this issue with Vistry, they thought that the under 11 metre block could have a different postcode which was not specifically referred to in the letter – and they had not intended to imply that the entire development named in the letter would be covered by their commitment to remediation works. They agreed to follow up with their project team and issue a clarification if necessary.

This case gives rise, again, to our concern that leaseholders who happen to be homeowners in a low-rise block are potentially being left to pay for the remediation of fire safety defects and/or to permanently struggle with remortgaging or selling their home in the absence of any comfort letter – while a neighbouring block with the same defects is "lucky" enough to be fixed by the responsible developer. We will be urging the next government to ensure that all leaseholders and residents are treated fairly and consistently.

Resident communications not being reported

Finally, we wanted to understand why Vistry scored 0% for engagement activity with "leaseholders, freeholders, residents, occupiers and other users", according to DLUHC's latest report (see the "Developer_11" page of the management information tables). The reason for the lack of data was unknown but Vistry commented that they had been putting a lot of work into improving regular communications. For example, they noted an improved relationship with agents such as Rendall & Rittner and efforts to ensure the agent is circulating regular communications on the developer's behalf. Vistry noted that they had not recently received any direct feedback from leaseholders and residents that suggested communications were not reaching them – however, if this is not your experience, please do use the contact details below to reach out to Vistry.

Thank you to Vistry Group for meeting with us and engaging with the concerns that leaseholders and residents had raised in the last three months – and for reaffirming the intention to continue our dialogue on a regular basis throughout the year.

Call to action!

Are you a leaseholder or resident in a Vistry Group building, having issues in relation to assessment or remediation – and unable to get a satisfactory response via your managing agent? Please email the developer directly at buildingsafety@vistrygroup.co.uk and copy us at endourcladdingscandal@gmail.com if you would like us to be aware of the issues being raised and to follow up if needed.

If you need to escalate your concerns to DLUHC, please email building.safety@levellingup.gov.uk, providing the name and address of your building, together with a short summary of your concerns, and detailing the attempts you have made to contact the developer. Please copy our team at endourcladdingscandal@gmail.com so that we can follow up where necessary.