

Gareth Wilson

Councillor Lynda Thorne
Cabinet Member for Housing and Communities

14 March 2022

Dear Lynda,

Re: What can Cardiff City Council (“CCC”) do to help solve the building safety crisis in Cardiff – without further damaging delay?

Thank you for inviting me to the Zoom meeting on Thursday, 10th March with Vaughan Gething. At the meeting, you expressed your clear desire to assist in solving the building safety crisis in Cardiff, but highlighted CCC’s funding difficulties. You asked for comments and suggestions, and I write to set out a clear path forward for CCC.

Unworkable suggestions

1. **Council tax relief:** CCC does not have funding available to repair buildings itself. Welsh Government (“WG”) has the budget. Any major CCC contribution, for example, to give relief against council tax would necessarily have to be found from elsewhere i.e. other council tax payers. I agree with you that this is a non-starter.
2. **Council funded sprinklers:** Sprinklers are a good thing, but CCC funding simply introduces a layer of unnecessary bureaucracy, delay and cost. WG has the funds. These can be made available direct to CMCL and others rather than through the council.

Summary: Practical low-cost proposals

3. Delay is the key issue. There are proposals in English draft legislation, the Building Safety Bill (“BSB”) that will help leaseholders in Wales. Therefore,
 - 3.1. CCC needs to pressurise WG to ensure that those proposals are enacted into Welsh law at the soonest possible date.
 - 3.2. CCC also needs to enforce the new legislation immediately it is enacted.
 - 3.3. CCC can also pressurise developers and builders even before the measures become law by announcing and demonstrating its intention to take immediate action.

The key legislative proposals

4. Sections 125 and 126 of the Building Safety Bill (attached) contain provisions for “*Remediation Orders*” and “*Remediation Contribution Orders*” to be made against a “*relevant landlord*”, which is widely defined to cover developers and their associated companies.
5. Both Orders can be sought by a local authority. However, because this area is devolved, section 29(2) of the BSB effectively restricts the provisions to England.
6. CCC will therefore be able to apply for Orders provided only that similar legislation is enacted in Wales.

Process and timetable in Wales

7. I have now asked two key Senedd members, including Vaughan Gething at our Zoom meeting what the process and timetable is for enacting this legislation in Wales and intend to continue to ask that question of all Senedd members. As you will have heard from Vaughan, in both cases the answers have been totally unsatisfactory i.e. “*I don’t know.*” I interpret this as “*there is no meaningful plan.*”
8. We all know that the first step is for the BSB to be passed in Westminster and that is not within our control. However, we also know that the BSB is expected to be passed within the next couple of months and the time for detailed planning to take this forward in Wales has long since passed.
9. CCC should be making clear to WG its urgent need to be granted the powers under Sections 125 and 126 of the BSB and its intention to use them immediately. To that end CCC should ask WG to provide it with assurances that will happen and to publish details of : -
 - 9.1. What steps WG has taken to date to prepare Welsh legislation?
 - 9.2. What resources are being devoted to this?
 - 9.3. What the process is for passing the legislation?
 - 9.4. Most importantly (and bearing in mind the legislation has cross-party support) a **detailed timetable for the legislative process and the date** – which could be related to the passing of the BSB i.e. within 6 weeks of enactment of the BSB – on which WG expects the legislation to reach the timetable.
10. My personal view is that you should also seek to dissuade WG government from wasting any time, energy and resource on the plan announced by Julie James to bail out the very small minority of leaseholders worst affected. This will do nothing to repair a single building and will be unworkable. It would be divisive. It is distracting resource and planning. It is a waste of public money.

CCC’s preparations

11. The council itself needs to plan, train and resource so that it is in a position to enforce the legislation – including issuing Remediation Orders and Contribution Orders – from Day 1. This will require a clear legal understanding of the new legislation and an early identification of target developments.
12. As stated above, developers could be notified of the council’s intention to issue Orders even before the new legislation reached the statute books. It is still possible that the threat of the use of the powers will be enough for some developers to take action.
13. CCC will need to liaise with South Wales Fire and Rescue and also with other “interested persons” to prevent duplication of effort. Fire authorities should have power to apply for both Orders. Other interested persons e.g. leaseholders can apply for Contribution Orders.
14. It would be helpful if you could keep us advised of the steps you are taking as this will impact directly on our planning and the financial strains this will put on leaseholders. As I expect you know, I have been in contact with Dave Holland over the last two years and I

am sure he will be keen to move forward on this. I would be happy to contribute in any way I can.

The reality of leaseholders' position and potential impact on CCC

15. CMCL is currently trying to raise a small part (20% this year) of our total estimated repair bill from leaseholders. The first half of this £1.2 million (10% of total) should have been paid on 1 January this year. As of now, only 147 of 457 leaseholders have paid in full. 196 leaseholders have paid nothing. A further 33 are falling behind instalment plans that CMCL have agreed with them.
16. A further £1.2 million will be due on 1 July – less than 3 months away. We will have to ask for further substantial payments at the end of the year as the money we are currently attempting to collect will not be sufficient even for Phase 1 of our planned remediation. The prospects for many leaseholders look very bleak.
17. It is CMCL's duty to pursue leaseholders who do not pay and letters before action are going out this month. If we pursue debt action, this will affect credit ratings, further costs will be incurred and ultimately, we will be forced to foreclose. It is a downward spiral and CCC will ultimately be picking up the pieces of potentially hundreds of people rendered homeless. This is happening **now**.
18. Delay will effectively negate any possible benefit of a WG scheme to remediate. A perfect scheme that does not appear in time is not perfect, it is useless. The one thing that could ameliorate a delay is the interim and immediate availability of WG backed or sponsored loan finance, which will enable CMCL to undertake repairs without bankrupting and otherwise destroying the lives of leaseholders in the process.

As there is no process for leaseholders and management companies like ours to contribute to the WG's thinking, it would be helpful if you could do this for us. Better still, persuade WG to set up a process that enables leaseholders to contribute.

I am sure this has wide cross-party support within CCC and am copying this to other councillors listed below. I hope this is helpful and look forward to hearing from you.

Kind regards



Gareth Wilson

CC: Huw Thomas, Adrian Robson, Rhys Taylor, Saeed Ebrahim, Neil McEvoy,

125 Remediation orders

- (1) The Secretary of State may by regulations make provision for and in connection with remediation orders.
- (2) A “remediation order” is an order, made by the First-tier Tribunal, requiring a relevant landlord to remedy specified relevant defects in a specified relevant building by a specified time. 5
- (3) In this section “relevant landlord”, in relation to a relevant defect in a relevant building, means a landlord under a lease of the building or any part of it who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect. 10
- (4) The following persons may apply for a remediation order –
 - (a) the regulator (as defined by section 2);
 - (b) a local authority (as defined by section 29) for the area in which the relevant building is situated;
 - (c) a fire and rescue authority (as defined by section 29) for the area in which the relevant building is situated; 15
 - (d) any other person prescribed by the regulations.
- (5) In this section “specified” means specified in the order.

126 Remediation contribution orders

- (1) The First-tier Tribunal may, on the application of an interested person, make a remediation contribution order in relation to a relevant building if it considers it just and equitable to do so. 20
- (2) “Remediation contribution order”, in relation to a relevant building, means an order requiring a specified body corporate to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying relevant defects (or specified relevant defects) relating to the relevant building. 25
- (3) A body corporate may be specified only if it is associated with a landlord under a lease of the relevant building or any part of it. 30
- (4) An order may –
 - (a) require the making of payments of a specified amount, or payments of a reasonable amount in respect of the remediation of specified relevant defects (or in respect of specified things done or to be done for the purpose of remedying relevant defects);
 - (b) require a payment to be made at a specified time, or to be made on demand following the occurrence of a specified event. 35
- (5) In this section –
 - “associated”: see section 123;
 - “interested person”, in relation to a relevant building, means –
 - (a) the regulator (as defined by section 2), 40

- (b) a local authority (as defined by section 29) for the area in which the relevant building is situated,
 - (c) a fire and rescue authority (as defined by section 29) for the area in which the relevant building is situated, or
 - (d) a person with a legal or equitable interest in the relevant building or any part of it; 5
- “relevant building”: see section 120;
 “relevant defect”: see section 122;
 “specified” means specified in the order.

127 Meeting remediation costs of insolvent landlord 10

- (1) This section applies if, in the course of the winding up of a company which is a landlord under a lease of a relevant building or any part of it, it appears—
 - (a) that there are relevant defects relating to the building, and
 - (b) that the company is under an obligation (howsoever imposed) to remedy any of the relevant defects or is liable to make a payment relating to any costs incurred or to be incurred in remedying any of the relevant defects. 15
- (2) The court may, on the application of the liquidator, by order require a body corporate associated with the company to make such contributions to the company’s assets as the court considers to be just and equitable. 20
- (3) An order may be made where proceedings for the winding up of the company were commenced before (as well as after) the coming into force of this section.
- (4) In this section—
 - “associated”: see section 123;
 - “the court” means a court having jurisdiction to wind up the company; 25
 - “relevant building”: see section 120;
 - “relevant defect” : see section 122.

Building industry schemes

128 Building industry schemes

- (1) The Secretary of State may by regulations— 30
 - (a) establish a scheme, and
 - (b) make provision about the scheme.
- (2) Regulations that establish a scheme must prescribe the descriptions of persons in the building industry who may be members of the scheme (“eligible persons”). 35
- (3) Where a scheme is established, the Secretary of State must set and publish the criteria that an eligible person must meet in order to become, and remain, a member of the scheme (“membership criteria”).
- (4) Membership criteria may be set for any purpose connected with—