

# Summary: responsibility for fire safety during the development application process in England

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Since Grenfell there has been lots of attention on how fire risk is controlled when developers and others apply for permission for building or refurbishment. RTPI has put together this short briefing to clarify who is responsible for what in England.<sup>123</sup>

## The application process

Each development goes through several stages and consent regimes before it can be completed. This diagram highlights the main ones relevant to this discussion in a simplified form:



Decisions based on fire safety are mostly made at the building control stage.

## Building control

The Building Act 1984 tasks building control with “securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings”. This includes fire safety. The person carrying out the work can choose to commission either local authority building control, or ‘approved inspectors’. These bodies will first advise on whether plans meet fire safety legislation and guidance and signify approval of the plans if appropriate. They then make statutory and routine inspections to check that development is completed in line with the requirements of the Building Regulations.

## The Fire Service

The fire service can be consulted by both planning and building control to ensure that plans support their fire safety efforts. As far as planning is concerned, this especially relates to access for firefighters, and water supply. They do not however have powers to sign off applications as fire safe.

## Planning

Local planning authorities (LPAs) are involved from pre-application consultations to the planning conditions stage. This spans initial discussions between the LPA and applicant to negotiating the final requirements of the planning permission. This involvement largely precedes consideration of fire safety and LPAs have no powers or responsibilities around the fire safety of buildings or materials. However in some circumstances, LPAs may be able consult with building control and the fire service where considerations around fire safety have planning implications. This might, for example, include access for fire engines or the aesthetic implications of changing materials for example cladding.

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<sup>1</sup> This briefing was first published in October 2017. It was updated in December 2017.

<sup>2</sup> This is advisory only and should not be taken to constitute legal advice. There is some variation around the country in how particular areas manage processes around fire safety and the application process.

<sup>3</sup> RTPI is currently developing an equivalent briefing for Scotland.

# Briefing: responsibility for fire safety during the development application process in England

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## Introduction:

This briefing explains the role planning plays in fire safety in England. It also explores the roles of other key actors in fire safety during development management, and their interactions with planning. In general the planning system is not tasked with assessing, inspecting or approving fire safety, which is primarily the responsibility of building control. However local authority planning departments do interact with fire safety management in several ways.

This briefing was put together in response to concerns and questions, including from some planning committee councillors<sup>4</sup>, about the role of planning in certifying fire safety. Even before Grenfell, issues around clarifying the respective roles of planning and other parts of development management had been raised, with planning and building control singled out.<sup>5</sup> Whilst confusion on these roles is not common amongst most of those who engage with planning on a regular basis, it is important that planners can provide clear and evidenced responses to questions about their roles. It is also important that the public understands how the system works.

The content of this briefing was informed by consultation with expert RTPI members, as well as with a selection of other experts in development management and fire safety. It also draws on key policy and guidance and RTPIs long engagement with communities engaged in or affected by planning through Planning Aid England (PAE).

## Roles in fire safety during development management

The person carrying out the work should agree fire safety requirements with the building control body prior to commencement of a project. As part of this process the building control body will consult with the Fire and Rescue Service, who may comment on aspects that may be of concern under the Regulatory Reform (Fire Safety) Order 2005<sup>6</sup> for the completed and occupied building. Fire safety is a part of building regulations, so building control plays the main role in approving fire safety in developments. This can be local authority building control, or 'approved inspectors' working outside local authorities. Local planning authorities (LPAs) and fire and rescue authorities also have some limited roles, however they do not have legal powers to challenge applications based on fire risk. The rest of this briefing provides more detail on each of their respective roles and responsibilities.

## The development management process

There are five main types of development permissions: planning permissions, heritage consents, building regulations permission, environmental consents, and licensing.<sup>7</sup> As the title makes obvious, planners are responsible for planning permissions. They are also largely responsible for heritage consents. However, they are not primarily responsible for the other three. This is important because fire safety falls under building regulations.

When developers apply for planning permission for buildings or refurbishments they have two options. They can seek a full planning permission from the local planning authority. Or they can first seek outline planning permission concerning the principle of development, then deal with the details by submitting a reserved matters application as a second stage. After this, most non-minor development will need full plans permission from building control. After work starts the development will also be inspected by various consenting regimes in order to check work is being carried out in accordance with the approved plans. Following completion of the

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<sup>4</sup> Planning Officers Society (20/06/17), 'POS issues statement regarding fire safety in tall buildings,' <http://bit.ly/POS-Grenfell>

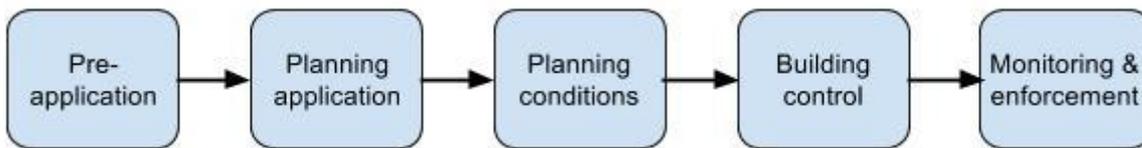
<sup>5</sup> National Planning Forum (2010), 'Improving the connection'. <http://bit.ly/NPF-ITC>

<sup>6</sup> Regulatory Reform (Fire Safety) Order 2005, <http://bit.ly/fire-safety-order-2005>

<sup>7</sup> Planning Aid England have produced a handy guide on the planning system: <http://bit.ly/PAE-HG>

development, planning carry out monitoring and enforcement activities in response to reports of breaches of the permission.

**Figure 1: Simplified development management process:**



For fire safety assessment, the most important stage is building control. The person carrying out the work is responsible for making sure the fire risk of the development is in line with building regulations, which provide guidance on relevant legal standards. This means ensuring key parts of the design such as building materials, means of escape, and fire-stopping comply with fire safety guidance outlined in Approved Document B of the Building Regulations.<sup>8</sup> The person should consult building control on this and ask for them to approve plans where necessary.

However, whilst it is the role of building control bodies to assess fire safety during development, other systems, including planning, have roles to play.<sup>9</sup> The rest of this section sets out the respective roles and limitations in scope of each key player in this process, starting with planning.

## Planning

Most built development including new buildings, refurbishments, engineering operations and changes of use will require planning permission unless defined as ‘permitted development’ in legislation. Most decisions will be made by local planning authorities (LPAs), who are part of local authorities (county councils, district councils, unitary authorities, metropolitan districts, or borough councils).

The planning system is tasked with promoting sustainable development. This is development that delivers social, economic and environmental value. In practice this means considering things like jobs, environmental impacts, community needs and heritage. Planning takes a ‘spatial’ view deciding what should go where, an aesthetic view regarding how things should look, and a community view concerning the relevant planning needs and desires of the local community and stakeholders.

Planning does not have powers to assess the fire safety of building materials nor most elements of building design. Fire precautions covered by building regulations are not part of material planning considerations on which planning decisions must be based.<sup>10</sup> For the Grenfell Tower refurbishment, the LPA gave permission for the cladding, but this decision was correctly made only on information about the aesthetics.

Moreover building control professionals have expertise and information that makes them better placed to assess fire safety than planners. At planning permission stage there would rarely be enough information in the application and submitted plans to make informed decisions on planning conditions regarding fire safety. Over many years, Government has repeatedly emphasised that consenting regimes (such as planning and building control), should avoid overlap wherever possible:

- English planning policy is collected in the National Planning Policy Framework (NPPF), which states LPAs should assume other regimes will operate effectively.<sup>11</sup>
- Paragraph 206 of NPPF says: “Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects”.

<sup>8</sup> Department for Communities and Local Government (DCLG) (2010), ‘Fire: Safety: Approved Document B,’ <http://bit.ly/CLG-ADB>

<sup>9</sup> The Royal Institute of British Architects (RIBA) the Association for Specialist Fire Protection (ASFP) are producing a detailed ‘Plan of Work’ on fire safety, available early 2018.

<sup>10</sup> Paragraph 2 of the NPPF sets out the basis for planning decisions: <http://bit.ly/NPPF-p07>.

See also RTPI’s list of material considerations: <http://bit.ly/RTPI-MCs>

<sup>11</sup> DCLG, NPPF. <http://bit.ly/NPPF-p29>.



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- National Planning Practice Guidance says: "conditions requiring compliance with other regulatory requirements will not meet the test of necessity and may not be relevant to planning".<sup>12</sup>
- The Pretty Review recommended that "there needs to be a clearer recognition of the limits of the planning system" and that government should "remove duplication with other regulatory regimes".<sup>13</sup>

However, there is some overlap between planning's spatial and consultative approach and fire safety. This means planning has a limited set of responsibilities around fire safety, and a larger set of considerations that might be considered best practice:

- LPAs must assess provisions for emergency fire service access, and water supply. These are material planning considerations. This assessment may require or benefit from consultation with the fire service.
- It is good practice for planning to work with building control, for example where decisions made regarding the fire safety of certain materials will have planning implications, such as changing the look of the development. This might involve early or even pre-application consultation where useful, and where the information is available. This may be less practical where compliance with Building Regulations is to be provided by an approved inspector (*more below*).
- Due to the public consultation built into planning it is often perceived as the public face of the whole process of development management. Thus, although it has no legal powers around fire safety, some LPAs and especially councillors might still feel the need to address local concerns. One example would be encouraging developers to set out their plans for fire safety from an early stage or putting a note on the application reiterating the need for full plans building control approval. Planners ideally need to be able to access expertise from other stakeholders and help coordinate responses to concerns raised by the public. However this will not extend to basing permissions or refusals on fire safety.

### **Building control: local authorities and approved inspectors<sup>14</sup>**

The applicant can choose to seek building regulations approval either through local authority building control officers or by 'approved inspectors' who have been certified by CICAIR (the government appointed certifier). 'Building control' is used to refer to both in this briefing. The Building Act (1984) tasks building control with "securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings".<sup>15</sup> This includes responsibilities specific to fire including:

- structural measures to resist the outbreak and spread of fire and to mitigate its effects,
- services, fittings and equipment designed to mitigate the effects of fire or to facilitate fire-fighting,
- means of escape in case of fire and means for securing that such means of escape can be safely and effectively used at all material times.

The main part of the process of making sure plans are in line with building regulations and guidance generally takes place after planning permission. The legislation is not totally prescriptive, normally specifying 'reasonable provisions'. The Government also produces 'approved documents' (14 in total) to say what is reasonable. Approved Document B<sup>16</sup> covers fire safety.

<sup>12</sup> DCLG, National Planning Guidance: Use of Planning Conditions, <https://www.gov.uk/guidance/use-of-planning-conditions>

<sup>13</sup> Killian, J., & Pretty, D. (2008). Planning Applications: A Faster and More Responsive System—A Call for Solutions, DCLG, <http://bit.ly/KP-review>

<sup>14</sup> LABC produced 'Guidance on External Fire Spread Standards' for their members, which talks about building control processes in more detail, including a useful flow chart.

<sup>15</sup> Building Act 1984, <http://bit.ly/buildingact-1984>

<sup>16</sup> DCLG (2010), 'Fire: Safety: Approved Document B,' <http://bit.ly/CLG-ADB>

Local authority building control either approve, specify amendments for, give conditional approval to, or reject 'full plans' applications.<sup>17</sup> Approved inspectors will advise on how to bring plans in line with regulations and can then provide a 'plans certificate' to demonstrate their approval where requested.<sup>18</sup> Local authority building control must respond within two months. This limit does not apply to approved inspectors.

Building control also work with other groups, either as statutory consultees or informally:

- Consulting with the Fire and Rescue Authority on how the plans will affect the fire service's ability to fight fires at the property
- As discussed above, consulting with planning where changes may have planning implications. This includes requiring alterations to planning permissions already granted, which can potentially require an amended permission or a whole new permission if the required changes are significant enough. This can lead to delays and wasted effort.

## Fire and Rescue Authorities

When there is a new development both planning and building control can consult with the fire service. The Fire and Rescue Services Act 2004<sup>19</sup> says that Fire and Rescue Authorities must provide "advice, on request, about— (i) how to prevent fires and restrict their spread in buildings and other property; (ii) the means of escape from buildings and other property in case of fire." The Fire and Rescue Authority is made up of a committee of local councillors, and their geographic scope is sometimes but not always equivalent to local authority areas.<sup>20</sup> In practice it consultation requests go to the local fire service. In London the authority is the 'London Fire and Emergency Planning Authority', which is closely related to the London Fire Brigade (LFB).

Fire services do not have powers to refuse applications based on fire safety of building design or materials. After Grenfell, LFB made it clear they do "not have any legal powers to inspect cladding or structural changes to buildings", and said "We do not 'sign off' refurbishment and we only have legal powers to act where we see internal fire safety problems such as compromised fire doors and combustible materials on staircases."<sup>21</sup>

The main ways the Fire Service engages with development applications are:

- Considering access and facilities for the fire service, and water supply, in planning applications.<sup>22</sup>
- Being consulted by building control on the details of how to deal with fires while they are burning, for example means of escape.

Fire Services are sent each application and guidance suggests allowing them 15 days to respond.<sup>23</sup> However they are not compelled to comment. Shropshire Fire and Rescue Service (SFRC) advise that the main goal of providing advice to building control is to help the applicant ensure building work complies with the Regulatory Reform and Fire Safety Order (2005).<sup>24</sup>

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***The Grenfell Tower fire made it clear to everyone involved in the built environment that improving fire safety must be a priority. You can read more about our views on this at [www.bit.ly/RTPI-improving-fire-safety](http://www.bit.ly/RTPI-improving-fire-safety)***

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<sup>17</sup> Building Regulations (2010), <http://bit.ly/buildingregs-2010>

<sup>18</sup> Building (Approved Inspectors etc.) Regulations 2010, <http://bit.ly/buildingregs-ai-2010>

<sup>19</sup> Fire and Rescue Services Act 2004, <http://bit.ly/fire-rescue-2004>

<sup>20</sup> See full list of Fire and Rescue Authorities: <http://bit.ly/FRA-list>

<sup>21</sup> London Fire Brigade (2017), 'Response to BBC story on Grenfell,' <http://bit.ly/LFB-Grenfell>

<sup>22</sup> See Shropshire Fire & Rescue Service (SFRC), 'Commercial and Domestic Planning Applications,' <https://www.shropshirefire.gov.uk/safety-at-work/planning-applications>

<sup>23</sup> DCLG (2007), Building Regulations and Fire Safety Procedural Guidance, <http://bit.ly/br-fs-guidance>

<sup>24</sup> SFRC, 'Protection – Business Fire Safety: Building Regulations 2010', <https://www.shropshirefire.gov.uk/safety-at-work/buildings-regulations-2010>