

How to Make a City into a Firetrap: Relations of Land and Property in the UK's Cladding Scandal

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Abstract: Despite legislation banning combustible cladding materials after the 2017 Grenfell fire, at least 10,000 buildings were still awaiting remediation in 2022. This is in large part because fragmented ownership and management structures alongside the specificities of British property law produced a situation in which individual apartment owners (leaseholders) were liable for the costs of remediation rather than those who own the buildings (freeholders) or the developers who built them. Faced with unaffordable remediation bills, leaseholders became stuck in uninsurable, unsellable, potentially fire-prone units. Through the case of a London housing block, we trace the relationship between the structure of landed property, value extraction, and the distribution of risk to understand how a significant portion of the UK's housing stock have remained fire-traps. We argue that institutionalised value grabbing not only created the conditions of social murder but also became an obstacle to remediation, resulting in a politically charged "asset class struggle" over the way in which the structure of housing property and its capitalisation mediates social harm.

Resumen: A pesar de que la actual legislación prohíbe los materiales de revestimiento combustible desde que se produjo el incendio de Grenfell en 2017, al menos 10.000 edificios esperaban ser reacondicionados en 2022. Esto se debe en gran parte a que la propiedad y estructuras de gestión responsables se encuentran fragmentadas, así como a ciertas especificidades de la ley de propiedad británica. Todo lo cual ha generado una situación en la cual los "propietarios" individuales de apartamentos (tenedores de contratos en leasing) son los responsables de afrontar los costos de la adaptación edilicia, en lugar de que dichos costos sean afrontados por quienes son los efectivos dueños de los edificios (los propietarios) o por los desarrolladores que los construyeron. Ante gastos de reacondicionamiento inasequibles, los tenedores de los contratos de leasing quedaron atrapados en unidades sin seguro, invendibles y potencialmente propensas a incendios. A través del caso de un complejo de viviendas en Londres, analizamos la relación entre la estructura de la propiedad inmobiliaria, la extracción de valor y la distribución del riesgo para entender cómo una parte significativa del stock de viviendas del Reino Unido ha permanecido como verdaderas trampas frente a posibles incendios. Sostenemos que la apropiación del valor institucionalizada no solo creó las condiciones de un asesinato social, sino que también se convirtió en un obstáculo para la readaptación de los edificios, lo que resultó en una "lucha de clases de activos" políticamente cargada en relación a la forma en que la estructura de la propiedad de viviendas y su capitalización median el daño social.

Keywords: assetisation, fire, cladding, housing, social murder, remediation

Introduction

On 14 June 2017 substandard cladding on West London's Grenfell Tower turned a minor apartment fire into an inferno that killed 72 people. The social housing block was designed to contain a fire in a single apartment, but cladding panels installed on its façade during a recent renovation were combustible so that flames spread rapidly across the building's exterior and within the wind tunnel created by the panel's cavity. Scholars have analysed the ways in which Grenfell encapsulates structural violence against Britain's marginalised populations (Burgum 2020; Danewid 2020; Hayes 2017; Shildrick 2018; Tombs 2020). Yet the atrocity also exposed systemic fire safety issues across the UK's housing stock, with many of the estimated 13,500 buildings covered in dangerously flammable cladding being private residential blocks (HCLGC 2020).

This was a regulatory and industry failure, with the Housing Secretary himself blaming the building industry for exploiting "faulty and ambiguous" government guidance (Halliday 2023). However, a lack of accountability mechanisms combined with the nature of the distribution of risk and responsibilities in the legal structure of housing as property in the UK has meant that leaseholders—owners of individual apartments—were liable for unaffordably large remediation bills (rather than freeholders, the owners of the land and apartment buildings). As a result, remediation of these issues has been slow, with an estimated 10,000 buildings in England still having unsafe cladding and other fire safety risks in 2022, five years after Grenfell (Venables 2022). During this time, the uncertainty over risks and liabilities rendered many apartments uninsurable, difficult to value, and so non-fungible as mortgage providers refused to lend against them, trapping leaseholders in fire-prone apartments (see Preece 2021). Effectively, a significant portion of the UK's property market stopped being capitalisable assets. Rather than the UK's deregulated system resulting in the market efficiently allocating risk, it resulted in a system of risk off-loading which ultimately threatened market breakdown.

In this article we explore this systemic failure as rooted not only in lax regulation, but the structure of apartments as property in the UK. A lax regulatory and enforcement regime has meant there are little accountability mechanisms to ensure those responsible for faulty work pay for remediation. The question of who is liable for an estimated total of £15bn remediation costs (HCLGC 2020) has devolved into a politicised struggle between actors across the housing system. Within this, the legal structure of landed property, specifically the division of responsibility between freeholders and leaseholders, left leaseholders liable for remediation while affording them little power over the actual process of remediation. This distribution of risks and rewards "coded" (Pistor 2019) into apartment building's structure as an asset not only created a dysfunctional system of remediation but also enabled further opportunities for rent extraction throughout the remediation process itself.

We contextualise this within the political economy literature as an example of "asset class struggle" (Swyngedouw and Ward forthcoming; see Alonso Serna 2020; Gailloux 2022). This builds on analyses of rentier-dominated capitalism, in

which both accumulation across the construction value chain (Purcell et al. 2020; Vetta and Palomera 2020) and the reproduction of residents' class positions is increasingly dependent on the ability to extract wealth via assets (Aalbers 2008, 2016; Aalbers et al. 2021; Adkins et al. 2021; Arundel and Hochstenbach 2020; Christophers 2022; Rolnik 2013, 2019; Wu et al. 2020). Within this context, socioeconomic conflicts are characterised by what Andreucci et al. (2017) term "value grabbing", insofar as they rely on forms of enclosure and accumulation-by-dispossession in the sphere of distribution. Central to such struggles are the specific modalities of the asset form (see Birch and Ward 2022; Kaika and Ruggiero 2015, 2016) and its apportioning of risks and rewards, with the leasehold–freehold property relation mediating the distribution of social harm (physical and fiscal) resulting from extractive market practices.

Distributing Disaster: Value Extraction and Engineering in Britain's System of Housing Provision

A major focus of analysis after Grenfell has been how Britain's neoliberal regulatory regime produced social murder (Hodkinson 2019; Tombs 2020). Friedrich Engels' concept of "social murder" highlights the violence of forcing people to live and work in dangerous conditions (Hodkinson 2019:5). It reveals the structural nature of such violence: social murder does not result from individual malice or incompetence—although these are often proximate causes—but rather is systematically produced through the incentives and contradictions of the capitalist political economy. Disasters such as fires are "incubated" through the accumulation of errors and associated prioritisations (Hayes 2017) so that, as environmental scholars have emphasised, there is no such thing as a "natural disaster" but rather particular socioeconomic distributions of vulnerability to catastrophe (see, *inter alia*, Hartman and Squires 2006; O'Keefe et al. 1976). Exposure to fire risk is, in the first place, a distributional issue integral to the production and maintenance of the built environment mediated by regulation and property relations. While there has been significant focus on the regulatory aspect of this, there has been much less on the role of property relations, their capitalisation, and how risk is managed and distributed therein.

In the context of successive governments' commitments to property market inflation, deregulation, the reduction of state capacity, and the accommodation of powerful industry lobbying groups (Bayliss and Fine 2020; Colenutt 2020; Ferm and Raco 2020), the UK's building regulations regime has been relaxed significantly in recent decades. Following this process of flexibilisation there was an evident failure of regulation (Burgum 2020; Hodkinson 2019; Tombs 2020). As one technical academic review noted in an analysis of building safety post-Grenfell:

Almost every aspect of the industry's safeguarding regulations and procedures appear compromised or overlooked ... it is evident that the industry is either unaware of the regulations and standards that apply or is neglecting responsibility for fire safety. (Gorse and Sturges 2017:73)

The flexibilisation of building regulation was driven by a neoliberal ideology which held that the market is best placed to allocate risk and companies' profit motive was incentivisation enough not to engage in dangerous practices. However, in the UK's deregulated market-oriented system governance is increasingly "fragmented" (Taşan-Kok and Özogul 2021), with housing production reliant on hybrid contractual arrangements through which accountability mechanisms become dispersed and reduced to performance management (Raco 2013). In terms of building safety, this created what Hodkinson (2019) calls an "accountability vacuum" in which there is no mechanism for holding actors involved in producing unsafe living conditions to account, with post-hoc attempts to do so running into difficulties of identifying responsible parties or that identified responsible companies have gone out of business in the years since completing the work. Deregulation from the 1980s onward meant that building materials were frequently self-certified by companies and enforcement checks rare. Those certification checks which were carried out for insurance purposes were done so by private companies paid by the client and so under pressure to pass quickly (*ibid.*).

In this context, the legal "coding" (Pistor 2019) of landed property relations (cf. Blomley 2008) and their capitalisation was key to the distribution of risks and subsequent struggles over costs of remediation. Such conflicts over risks and costs are central within an "asset economy" characterised by financialised wealth extraction (Adkins et al. 2021; see also Aalbers 2008, 2016; Aalbers et al. 2021), and ultimately a key mediator of the distribution of social harm. Within a permissive regulatory environment, increasingly complex chains of extractive rentiers resulted in endemic "value engineering" in the production of the built environment. Value engineering, as Hodkinson (2019) terms it, involves making savings on the price paid for a contracted job and keeping the difference as profits—something he suggests is common in private finance initiatives for housing, leading to poorer design and cheaper construction techniques. Such value engineering appears to have been endemic along the chain of rentier extraction producing the non-luxury portions of London's built environment. The related term "value grabbing", meanwhile, refers to "the hidden, depoliticized processes at work by which surplus value is distributed between different classes and class fractions" through rent in the sphere of circulation (Andreucci et al. 2017:42). Both value grabbing and engineering are forms of rent extraction inasmuch as they are characterised by accumulation by dispossession through enclosure (*ibid.*), representing strategies to extract a larger share of surplus in circulation rather than exploitation in production.

Recent work has pointed to this as "asset class struggle" (Swyngedouw and Ward forthcoming; see Alonso Serna 2020; Gailloux 2022) in which key social conflicts increasingly hinge on property formation, its capitalisation (with the two taken together referred to as "assetisation"; see Birch and Ward 2022; Ouma 2020) and the associated institutionalised redistribution of value through rent and interest payments. These conflicts are on the ground through the "grabbing" and "engineering" of value (Andreucci et al. 2017; Hodkinson 2019) payments that are presented as technocratic and beyond contestation (as we will illustrate in the case study). The division between leaseholders and freeholders in

UK property law is an illustrative example of this, made visible as the latent tensions of this property relationship broke into open conflict over the question of cladding remediation post-Grenfell. The rentier chains of outsourcing and specialisation facilitating this make it difficult to attribute responsibility—or present a bill—to any individual party. This is exacerbated by legal divisions between leaseholder and freeholder which have had the effect of legally inuring landowners (the freeholders) from responsibility even as they maintain control over much of the remediation process.

We explore how the latent tensions and politics of risk in flexibilised building regulation erupted into a political conflict shaped by the legal coding of apartment housing as an asset. Separate from the social housing serving marginalised communities such as Grenfell (Burgum 2020), we focus on how costs of remediation and subsequent social harm have been distributed to middle-class leaseholders in the fall-out of the cladding scandal triggered by Grenfell. This is not a case study of elites neglectfully endangering societies' most vulnerable, as in Grenfell's intersection with "hostile environment" immigration policies (Danewid 2020), but of a flexibilised, rentier-dominated system of housing governance which has produced systemic market failure to the extent that even middle-class homeowners fell victim to social murder through the system of housing provision.

The Cladding Scandal

In response to Grenfell, the government issued guidance banning Aluminium Composite Material (ACM) cladding implicated in the fire, and remediation of other forms of combustible cladding on "high risk" buildings over 18 metres, extended to all buildings of any height in a 2020 guidance note. An influential 2020 parliamentary progress report put the government's best estimate of the scale of the problem at 457 high-rises with ACM cladding with 307 yet to be remediated at the time of the report, alongside 11,300 high-rises with non-ACM combustible cladding, 1,700 of which deemed high risk and in urgent need of remediation (HCLGC 2020). Three years after Grenfell, then, an estimated 11,300 buildings had combustible cladding—2,000 of which were high risk and in need of urgent remediation. By 2023, urgent buildings had been remediated but an estimated 10,000 buildings in England still had unsafe cladding and other fire safety risks (Venables 2022). The first question to address is why has remediation of potentially fire-prone private residential buildings been so slow?

In this section, we overview the post-Grenfell remediation policy as it has unfolded amidst contestation over who bears the liabilities of what the minister responsible for housing deemed a "systemic failure" (DLHC 2022). We first outline how remediation costs fell on leaseholders, leaving them trapped in potentially fire-prone apartments as the process dragged across years. We then overview recent changes as, in the face of potential market failure, the government's recent major policy turn towards shifting liabilities back onto the building industry in a negotiated, post-hoc re-regulation of the distribution of risk in the built environment back onto developers and freeholders. This, we highlight, is a socio-political

struggle occurring through the specific legal form of property and its capitalisation.

Despite the government stating that residents will not be made to pay when it explicitly banned combustible forms of cladding, neither the private sector nor state actors have been willing to take liability for remediation costs totalling an estimated potential £15bn (HCLGC 2020). Legally, at the time of initial banning the division of responsibilities in the freehold–leasehold relationship meant that leaseholders are liable for costs. In the UK what a purchaser of an individual apartment in a building has legally bought is the right to tenancy for a long period—typically 99–125 years (MHCLG 2020). The freeholder retains the ownership of the land and building itself, but the leaseholder is responsible for maintenance during their tenancy, including the remediation for any faults due to “sweeping up” clauses allowing freeholders to recover costs of external and common area repairs (Upton 2016). In this system, leaseholders have six years to report any construction faults before responsibility passes to them—whether they were aware of the faults or not (Hodkinson 2019). Leaving them facing unaffordable bills which one 2021 report by a cladding manufacturer estimated to stand at an average of £42,000 per property, or 180% the average leaseholder’s salary (Valcan 2021). As a result, funding challenges have meant remediation has been slow and residents were forced to rely on costly interim measures such as waking watch patrols.

Furthermore, the aftermath of Grenfell shone a light on the fact that the lax buildings regulation regimes of previous decades had led to an accumulation of fire safety problems across the built environment, the extent of which are unknowable. Lack of clarity over the extent of problems and how remediation should and could take place effectively meant apartment buildings stopped being fully commensurable assets. Unable to assess the risks, insurers became unwilling to insure flats and mortgage brokers consequently unable to value or lend against them. This uncertainty rendered apartments uninsurable, difficult to value, and so non-fungible as mortgage providers refused to lend against them, with many flat values dropping to nil (Preece 2021), trapping leaseholders in fire-prone apartments. In a socioeconomic system in which social reproduction is significantly dependent on housing wealth (Adkins et al. 2021) and leaseholders are often significantly leveraged to attain it, residents were effectively trapped in fire-prone buildings by a dysfunctional housing system. Survey research evidenced significant mental health impacts on leaseholders as a result both of fear of fire and of financial ruin, with a 2020 survey by the UK Cladding Action Group finding that 90% of leaseholders reported deteriorating mental health and 23% suicidal feelings or a desire to self-harm (UKCAG 2020; see also Brill 2022; Martin and Preece 2021; Preece 2021).

The extent of this market breakdown not only dealt social harm to leaseholders but also threatened wider property market failure. From 2019, property industry figures began warning of the crisis dampening the housing market and calling for government intervention (Simpson 2022). The flat market is often the first step into property ownership, so this had serious ramifications not just for the 21.7% of England and Wales’ population living in apartments (ONS 2023; Taylor 2022),

but for sales across the whole housing market. To address this, the Royal Institute of Chartered Surveyors (RICS) launched a new valuation tool, the External Wall Survey (ESW1), in 2019. The ESW1 allowed for a formalised assessment of a building regarding what (if any) remedial works are necessary and what, if any, interim measures are required until remedial works are complete. This created a way to move the market again by providing transparency, but also meant long, costly delays due to a shortage of fire engineers required to carry out the assessment for the form. Meanwhile, the existence of the form itself pulled otherwise unimplicated buildings into the problem as lenders began to require it for a wider range of buildings to cover their risks (HCLGC 2020).

The government's initial proposed solution to the problem of remediation was a system of long-term state-backed loans for leaseholders to pay back remediation costs, subsidised by a £1bn government fund which qualifying leaseholders could apply for. However, leaving leaseholders to pay was legally valid but politically unpopular, so leaseholder campaign groups were able to mobilise significant cross-party support. Moreover, it is dubious that a system of individual loans is an expedient solution in the face of a problem that requires significant coordination amongst leaseholders and freeholders (see Brill 2022) and posed a major risk for the property market as a whole. This latter issue appeared to come to a head when, in 2021, flat sales plummeted by one third (Lees 2021) and the Bank of England indicated concern that mortgage lenders' exposure to cladding issues could be serious enough to trigger a financial crisis (Hammond 2021). Launching a campaign for government intervention on the cladding scandal in response, the *Times of London* estimated that 1.3m households were impacted by what it characterised as a "hidden housing crisis" (Lees 2021; Melser 2023).

Amidst this political pressure and threat of market breakdown, prominent politician Michael Gove was appointed Housing Secretary in September 2021. By November he had announced a change of policy direction from the government's previously market-led response to an interventionist one centred on a reaffirmation of the principle that the leaseholder should not pay. Scrapping plans to fund remediation through a system of long-term loans to leaseholders, Gove announced a levy on developers to raise a £4bn fund for medium-rise buildings, launched an investigation into the insurance industry who he accused of failing residents, and promised to pursue developers for costs. These changes were announced in the 2022 Building Safety Act wherein a "waterfall" system was implemented to make leaseholders the last resort: costs will first be attempted to be recovered from developers and cladding manufacturers where they can be identified and are still in operation. Where these cannot be recuperated then freeholders will be expected to cover costs, subject to affordability tests. Finally, where monies recovered from the first two are unavailable or only partially cover costs, leaseholders will have to pay with costs capped at £10,000 (£15,000 in London) (see also Spender 2022).

Exerting significant political pressure, the government have negotiated a pledge from developers that they will pay for repairs on buildings they developed or refurbished in the past 30 years. This was then drawn up into a legally binding contract in June 2022 (DLHC 2023). However, developers were reluctant to

commit to these contracts which they argued leave them open to extensive potential liabilities going far beyond life-critical repairs. Under aggressive government pressure which included threatening the withdrawal of planning permission for future developments, over half signed by the government deadline in March 2023. Yet in many cases it is often difficult to trace who is at fault for work and many companies responsible are no longer operational. While campaign groups welcomed the cap on costs, it remains unclear where the funding will come from if developers or freeholders cannot be made to pay, and the process of tracing and enforcing accountability is adding further delays in remediation (Simpson 2022).

In 2022, five years after the government legislated for the removal of unsafe material, at least 10,000 buildings were still covered in flammable cladding in the UK. The burden of remediation fell on leaseholders of individual apartments, rather than the developers who fit the cladding, companies who (self-)certified them, or freeholders who own the building. Only when the impracticality of leaving individual flat owners to pay for remediation created unsustainable levels of market uncertainty did the government attempt to shift the burden of costs onto the private sector through what amounts to a post-hoc negotiated re-regulation of the distribution of the risk across the built environment. The partial, fragmented, and contested nature of the struggle over who bears the liabilities of market failure has meant remediation itself has progressed only slowly. In the next section we explore how the legal division at the base of England's landed property relations enabled this lack of accountability, focusing on how the leaseholder–freeholder division has structured ongoing chains of value grabbing in the maintenance and remediation of buildings by apportioning responsibility to leaseholders but power to the freeholders.

Rent Extraction in the Leasehold–Freehold Relationship

The only aspect of British law in which feudal law largely survives is in the law of real property. The law distinguishes between movable and immovable property, but a leasehold is somewhat of a hybrid, being a contract to use land that grew out of exceptions to the feudal basis of the landed property relation. A leasehold is the ownership of property for a defined period of time, while freehold is ownership of the building and land in perpetuity, with the freeholder retaining operational control over the land and any building placed on it. The leaseholder–freeholder relationship defines much of the UK's property market, particularly in urban centres. Many homeowners across cities such as London nominally “own” their flat in terms of having the capacity to make changes internally and occupy it in the way they see fit, but the underlying land and building is owned by a freeholder. Typically, leases are issued for 125 years at the point of development with the possibility for extension at a later point, albeit it at a relatively high cost. The financial implications of this system of housing provision (see Ball 2013; Bayliss and Fine 2020; Robertson 2017) are substantial, separating landownership from its use and providing several means by which the landowning class (freeholders) and their intermediaries extract rent from the property owner (leaseholder).

Historically the division of freehold–leasehold was justified because it enabled landowners to maintain control of the overall sense of character of the property. However, the freeholder model has been used by firms to extract rent from leaseholders, either through initial developers maintaining the freehold as a longer-term income generating asset or through the separating out of freeholds to sell at the point of project completion to increase the capital gains from a particular project's development. In the case of the cladding scandal, it is relevant because it renders the leaseholder responsible for maintenance costs yet leaves the power to manage this process largely in the hands of the freeholder. As a result, leaseholders find themselves in a contradictory position of property owners who are nevertheless locked into a tenant–landlord relationship.

We unpack value grabbing within the leasehold–freehold relationship through an in-depth examination of the remediation process in one particular building in East London, anonymised here as “Amy Towers”. We show how the latent tensions in the relationship erupted into controversy in the cladding scandal. This case was chosen because one of the authors, Frances, was deeply embedded in networks of leaseholders in that building before the cladding scandal erupted, and subsequently actively participated in the leaseholder groups' campaigning and remediation processes from 2019 to 2022, attending circa 15 leaseholder meetings and assisting leaseholders in dealing with the freeholder/management companies throughout the process. Amy Towers contains both cladding and further issues in need of remediation, it qualifies for government funding, and the management company were quick to begin the remediation process. In unpacking the rentier relations underpinning the cladding scandal through the case of value grabbing in Amy Towers, we argue that the legal distinction between freehold and leasehold serves to entrench the prioritisation of rentier interests.

Freeholders' Rental Extraction Practices in Amy Towers

In this section we unpack key mechanisms through which rent extraction is enabled by the freeholder–leaseholder division in Amy Towers. Amy Towers is a six-storey block of flats in London, which contains 23 residential units and six commercial units. The block was converted to residential between 2002 and 2013, with the converter of the property (who installed the cladding) still owning the leasehold for six of the units and part of the freehold. The freehold title for the building and the land is owned by an asset management company who exclusively own property freehold titles. This freeholder hires a property management company to manage the ownership, Company A. In turn, this ownership management company hires a further management company to handle the day-to-day operational management of the property. In an ordinary year, a two-bedroom flat owner in the building pays on average £2,400 in service charges to the second management company and £300 in ground rent to the freeholder via Company A. However, the total rent extracted from the property is more extensive, as we detail here.

There are five key ways in which value is extracted by freeholders in blocks of flats such as Amy Towers. The first is that leaseholders pay an annual ground rent

to the freeholder, as stipulated in their contract. This ground rent varies hugely across the UK: it can be as much as £400 annually, and the contract defines how frequently it increases, with some buildings' ground rent doubling every 15 years. In Amy Towers, one leaseholder paid £300, doubling every 20 years. This was broadly similar across the building. This generates a guaranteed income stream for the company against which debt can be raised, and firms such as the asset management company holding Amy Towers have been created exclusively to acquire ground rent portfolios from leaseholders at scale to do so.

Secondly, freeholders select insurance with little leaseholder oversight. In practice, this means leaseholders are notified of an annual premium but are given little access to claim from the insurance, and leaseholders we interviewed in Amy Towers rarely received documentation to demonstrate the building insurance beyond a single page summary created by the freeholder. One leaseholder was charged £1,009 for a year of insurance for a two-bed flat in a low-risk building (as defined by amenities, size, and location). Amy Towers' freeholder acquired insurance on a "portfolio basis": they selected the same insurer for all 30,000 of their buildings, and the "economies of scale" acquired enabled them to charge a commission that matched the difference (Scoffin 2018). This portfolio management technique is a further mechanism or process of value engineering through which financialised extraction is integral to the system of housing provision. In it, freeholders extract value by earning a commission equal to the difference between market valuations for a single building and their purchase across a portfolio. It is only through the acquisition of extensive housing assets that the company is able to negotiate such terms and, in achieving a discount across the entirety of their portfolio, justify their commission. This practice is institutionalised through case law, where over the last three years judges have upheld freeholders' capacity to charge commission.

Indeed, in a 2018 landmark legal case, insurance costs across a portfolio were challenged at a First-Tier Tribunal (the courts in which property decisions are made in England) which deemed that the portfolio approach was only acceptable if it presented value for money. However, when leaseholders at Amy Towers contacted their freeholder, they were informed that no further information about the policy was available. They thus had limited capacity to challenge the value or perceived "value for money" because any alternatives sourced from insurance brokers, by leaseholders to use as a point of comparison and therefore as a means of challenging the premium, could not be considered exactly like-for-like. In this way property management practices are used to aid value grabbing, obscuring the information required to legally challenge decisions. A 2022 Financial Conduct Authority investigation into why insurance rates had ballooned so much for leaseholders especially highlighted its concern over freeholders and property agents' receipt of brokerage commissions when selecting insurance policies on behalf of leaseholders (FCA 2022). Such practices combined with rocketing insurance costs amidst significant industry concentration led to suggestions of price gouging in the insurance sector, with Gove threatening to refer the issue to the Competition and Markets Authority as part of the raft of pro-leaseholder measures in the 2021 policy turn.

The third means by which freeholders extract rent from leaseholders is through commission on service charges. Freeholders select a management company and therefore the level of management charges. In our research, mirroring research by the Law Commission (2020) and the GLA (2018), we found service charges requests allowed little room for leaseholders to exercise oversight on prices or any capacity to shape the management practices. Service charges in the average London flat are between £1,000 and £2,000 a year (GLA 2018) but these charges are typically higher in new builds (Competition and Markets Authority 2014). In Amy Towers it was significantly higher than this and had increased significantly since leaseholders had purchased their flat. In both the case of insurance and management charges, freeholders are permitted to charge a percentage of overall costs to leaseholders to cover their expenses as a freeholder. It is recommended that this is around 10%, but in some cases, freeholders have been found to charge 400% commission (Scoffin 2021). In Amy Towers, the service charge had grown but was also erratic, roughly equating to £2,400 a year for the last three years for a two-bedroom flat.

Fourthly, the maintenance of the building is covered through one-off charges applied to the leaseholders by freeholders, with freeholders charging commission. For example, freeholders are charged with ensuring the property is maintained to a basic standard, but these maintenance costs are paid for by leaseholders. The expectation is that freeholders will renovate when required; however, the decision to do renovations (replacing carpets, windows, repainting) is made without prior warning for leaseholders. Under the Commonhold and Leasehold Reform Act (2002), freeholders issue bills for renovations or building improvements via Section 20 charges, as part of the service charge. Section 20 charges are those which exceed £250 per flat for what a management company would typically refer to as “major works”, this might include a periodic re-painting of the walls or the replacement of an elevator. The Landlord and Tenant Act (1985) dictates that the freeholder must notify the leaseholder at their last known address (they do not have to acknowledge receipt (*Akorita v 36 Gensing Road Limited* [2009] LRX/16/2008) and grant them the opportunity to nominate firms to come forward to tender on the major works. Partly this inability to engage reflects the ways in which such requests are made: the description of what works will be carried out is often vague and legally the level of specificity depends on the case at hand (*Southern Land Securities v Hodge* [2013] UKUT 0480 [LC]). However, even when tenders were nominated the results of the tendering are not made available to the leaseholder in the vast majority of cases.

The final means we found freeholders were extracting value from leaseholders was in cases where leaseholders were challenging the freeholders over costs. When leaseholders challenge freeholders at a First Tier Tribunal hearing, both parties must present evidence. In some of the cases we saw this included hiring of external experts who charged for their time surveying the building, as well as their appearance at any tribunal. In addition to these costs, the leaseholders are liable for “reasonable costs” incurred by the freeholders for their efforts at the tribunal, irrespective of whether they are successful or not. One solicitor we spoke with advised this would not be more than a few thousand pounds but that

freeholders were highly likely to challenge leaseholders and go through to tribunals because the recuperation of these costs, if they have an in-house legal team, represent pure profit (since their legal team are salaried independent of particular case work) (Law Commission 2020).

Freeholders extract value through traditional mechanisms such as ground rent, but also through commission on works organised, management charges, and the insurance required to make the property a commensurable, capitalisable asset. These mechanisms are institutionalised in property professionals' norms and standards and upheld in legal challenges. The sustained use of the freeholder system in England's property provision is demonstrative of the value engineering and grabbing of value in circulation that has become integral to the provision of housing (including its maintenance) in the UK. The following section addresses tensions of the extent and distribution of these rents, and the ways in which they have contributed to making swathes of England's housing into firetraps.

The Implications of the Freeholder–Leaseholder Model in the Cladding Scandal

The government's banning of certain types of cladding requires buildings to undergo significant remedial works. At the time of writing this is being part paid by the government (who have issued £5bn of funding to replace external walls that are flammable) and leaseholders (who are liable for internal faults, balconies, and decking). The division of property, and subsequent asset formation, along freeholder–leasehold lines shaped the cladding scandal and enabled further forms of value extraction throughout the process of remediation, which we overview here in the case of Amy Towers.

The use of Section 20 charges is at the centre of the debate on the cladding scandal and financial liability. The division between the freeholder and leaseholder has become a "legal quagmire" (Wilson and Potton 2018:9) and the government-run leaseholder advice service, LEASE, advises leaseholders that they are liable for the cost of replacing cladding (a feature of the building rather than their flat) if the leasehold agreement includes what is referred to as a "sweeping up" clause. A sweeping up clause is the part of a leasehold agreement which allows freeholders to recover costs from the leaseholder. Whilst in *Lloyds Bank v Bowker Orford* ([1992] 2 EGLR 44 [Ch D]) it was held that "any other beneficial services" did not entitle the freeholder to recover costs relating to external repairs, internal decoration, and repair of the common parts, more recent rulings have found that sweeping clauses allow freeholders to recover costs (Upton 2016), such as cladding replacement (addressed further below).

In Amy Towers, leaseholders were issued indicative costs for remedial works in February 2021. These costs were drawn up by a government-endorsed consultant, who charged and were later granted the tender for project management. The estimated costs for remedial works were: £250,000 per floor of cladding replacement (inclusive of scaffolding costs), £250,000 to replace each wall of balconies, and £80,000 to replace a roof terrace. These costs were divided, with all leaseholders liable for part of the roof terrace, initially estimated to be around

£4,900 per two-bedroom flat, and those with balconies (which were demised and therefore considered private property) subject to bills of roughly £30,000 per flat, on top of their portion of the communal works. Leaseholders must thus bear the costs of fixing poor construction in the first instance (lack of fire stops in walls, issues with steel construction), changes to government regulation (changes around external cladding post-2018 without supportive financial mechanisms to make the changes happen), requirements to make the building habitable in the short-term (interim efforts such as waking watch), and increased insurance premiums whilst the buildings are deemed a fire hazard.

In addition to these large costs falling on leaseholders, the process is made more expensive by further costs and value grabbing throughout the process of remediation. Freeholders are able to increase their commission made on insurance premiums if a building is considered a fire risk and therefore becomes more expensive to insure; they are issuing Section 20 bills for remedial works from which they are systematically able to engineer value in their control over the tendering process; and they are increasing their service charges due to more day-to-day management. Figure 1 demonstrates the division of responsibility, and value grabbing in the remediation process.

With leaseholders initially needing to cover the costs of remedial works, some freeholders offered loans to leaseholders (a further new income stream). In the case of Amy Towers, leaseholders were immediately given monthly payment option plans as an alternative to a one-off payment of their remediation bills.

It is important to note in the context of the threat of fire and associated emotional stress, that the building safety scandal goes beyond unsafe cladding.

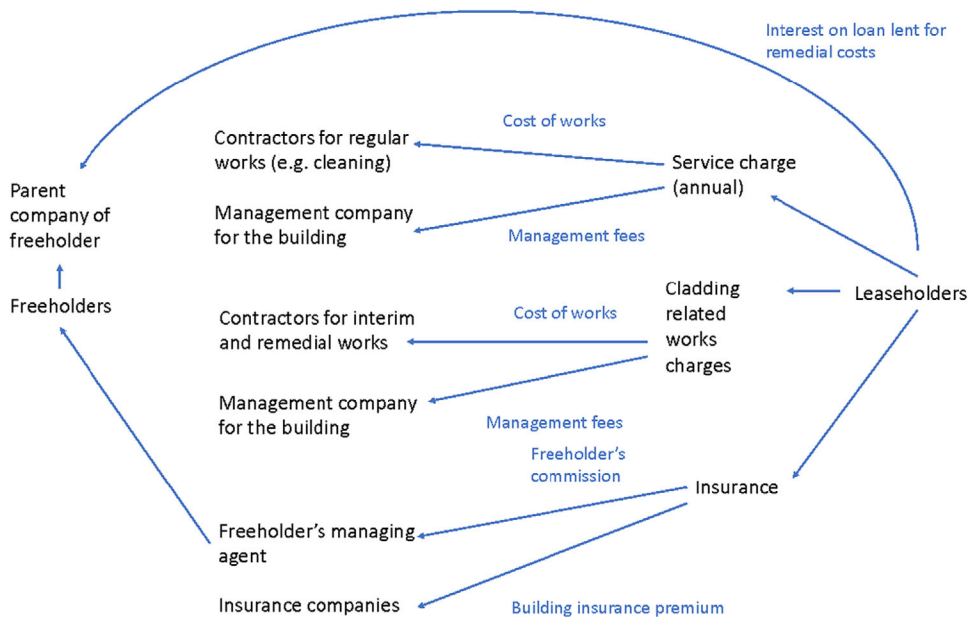


Figure 1: Representative diagram of rent extraction in the cladding remediation processes

External examinations of numerous buildings have revealed that cladding combustibility is exacerbated by the failure to install fire locks on the doors, as was the case in Amy Towers. Moreover, external examinations triggered internal analysis which revealed structural issues, ranging from combustible insulation to the failure to properly coat the steel beams of a tower blocks with flame retardant material. These necessitate on-going, interim measures whilst remedial works are organised, amounting to hundreds per flat per month while leaseholders have little say over which firms are chosen and the costings. Measures include “waking watchmen”—a patrol officer with a claxon charged with alerting occupants in the event of a fire—and connected fire alarms throughout the building to warn across levels in the event of a fire. Such changes render the buildings “fit for human habitation” according to regulators. However, they do not comply with the norms of mortgage and insurance standards, with the result that building insurance became technically accessible but not affordable.

These extraction processes are all further compounded by the underlying rationale many freeholders have for owning property: to trade and extract rents without day-to-day property management. Freehold titles are frequently traded and attempting to trace them led leaseholders to webs of corporate relationships spun to secretive offshore financial centres (see McKenzie and Atkinson 2020). In the case of Amy Towers, when attempting to engage with expected remedial costs leaseholders undertook analysis of the corporate structures behind their leasehold–freehold contract. They found a web of intimate relations where individuals had moved between management and asset management components of the business. The people behind these firms were challenging to reach: under the Landlord and Tenant Act (1947) freeholders must declare themselves and their location during payment requests, even if this is administered by an intermediary, but this declaration can be made merely by listing a company name with a PO Box. To add a level of further complexity, whilst headquartered and running from central London offices, the bulk of the operational part of freehold management is conducted from more peripheral locations via a secondary management company who acts on behalf of the freeholder to collect rent and insurance premiums from the leaseholders and to select and collect charges from the company managing the building. This additional layer adds further expenses to the leaseholder charges, and in some cases, including Amy Towers, we found this operational firm was ultimately owned by the same firm as the freeholder.

This cost was compounded by fees from further real estate professionals in the process of remediation. The remedial works required vary hugely by building but Amy Towers required relatively minor work. As part of applying for the government funding, the leaseholders must have the project overseen by an assortment of experts: architects, planning consultants, cost and project managers, while the day-to-day block management company takes on additional roles. Each of these actors and organisations charges the leaseholders for their work, mostly as a percentage of the cost of the project. As such, for most of the remedial work leaseholders are paying “professional fees” that are 80% of the value of the labour plus materials for the remedial work itself.

Amy Towers residents considered themselves relatively fortunate as they were able to access pre-tender documentation and therefore could see a full breakdown of costs. However, the management company did not engage with leaseholders further and did not allow costs—indicative or eventual—to be challenged. On top of these indicative costs, leaseholders were told they would be liable for VAT and “professional fees”. When pressed, the management company stated that these fees include a management charge from the hired project managers, a management charge from the normal day-to-day management company, and any fees incurred for planning permission, architectural work, or legal advice. As such, the management company doubled their revenue made on this building in the year of remedial works without increasing staff numbers (and visits to the building were charged in addition to property management). In this way, it would appear that further value is being grabbed across the process of cladding remediation.

The case of Amy Towers illustrates how the freehold–leasehold relationship has not only meant leaseholders face large bills for remediation, but acted as an obstacle in the process of remediation itself as a system in which freeholders controlled the process but leaseholders pay the costs led to further extractivist practices. In the next section, we seek to relate this to wider issues of financialised housing provision in a rentier-dominated society (Aalbers et al. 2021; Christophers 2022). We point to the central role of the leasehold–freehold form in distributing risk here, and discuss recent changes in government policy to shift the bill away from leaseholders as part of a contested, post-hoc re-regulation of that asset form.

How to Make a City into a Fire Trap

The building safety crisis demonstrates that self-regulation has not led to companies efficiently managing risky behaviour through the market, as advocates would argue. Rather, it has enabled companies to engage in risky practices while pushing those risks onto leaseholders. The fragmented chains of value grabbing that constitute Britain’s system of housing provision has produced a catastrophic market failure, undermining the property market itself while leaving many leaseholders between fire and bankruptcy. The combination of decades of lax building regulations (Hodkinson 2019; Tombs 2020) and a socioeconomic system in which many are dependent on housing wealth (Aalbers et al. 2021; Adkins et al. 2021; Arundel and Hochstenbach 2020; Rolnik 2013), trapped many leaseholders in potentially fire-prone accommodation.

Crucially, leaseholders have little control over the process of remediation: the distribution of risks does not mirror the distribution of rewards in the construction value chain. The legal construction of landownership creates and sustains a power relationship that grants unequal access to information. Leaseholders we spoke with complained that freeholders were not responding to new regulatory demands to conduct fire safety reports, and when they were leaseholders were not then made aware of timetables for remedial works. One leaseholder was told by their management company that they would not be notifying flat owners of

what was happening until decisions were made. This was rationalised as a way of preventing time-wasting because it might lead to deliberation. Here, the post-political nature of property management obscured value grabbing behind a veneer of technocratic efficiency.

Institutionalised value grabbing not only created the conditions of social murder but remain a barrier to remediation. The result has been a system in which risk is carefully managed primarily in the sense of market actors avoiding it and passing it on, ultimately to leaseholders, while maximising the extraction of value. Content to rely on market-led solutions for five years, only when the cladding scandal threatened the stability of the property market and wider financial system itself did the government take significant action. And when they did, the “accountability vacuum” (Hodkinson 2019) left by lax regulation and value grabbing enabled by the freeholder–leaseholder property structure meant that intervention created a politically-charged struggle over who is responsible for the remediation bill.

The interventions have amounted to a process of retrospectively re-regulating the building safety system through negotiated contracts. The new “waterfall” system of payment—first developers/cladding manufacturers, then freeholders, then leaseholders as a last resort—is designed to address many of the power imbalances we have highlighted in the leasehold–freehold division by shifting costs back onto the freeholders. This is backed by an attempt to push the liability of building faults back onto developers through a negotiated contract in which developers agree liability for faults on buildings they have constructed in the last 30 years.

However, this was hotly contested by developers who felt they are being exposed to broad, uncertain risks. Despite the government threatening to effectively obstruct those who do not sign from being able to develop, only half of the UK’s major developers had signed up by the government’s deadline of March 2023. Furthermore, how such rules will be enforced remains an open question, especially regarding historic costs where those responsible for the work may not be traceable. Notably, only “life critical” repairs are covered in the government agreement, and the extractive legal power imbalances associated with the tenure form that produced this murderous situation remains in place.

Whether this process of pursuing responsible parties for costs can be maintained within the fragmented market-oriented governance (Ferm and Raco 2020; Taşan-Kok and Özogul 2021) of the UK’s residential sector remains to be seen. Active government intervention to stop the building safety crisis destabilising the housing market by spreading costs of remediation away from leaseholders has shifted the terrain in leaseholders’ favour after five years of being disempowered but this remains a politically parlous process. It is a conflict whose stakes are the asset form of housing in the sense of a legal property relationship and its capitalisation, with the resulting distribution of risks and rewards fundamentally shaping sociospatial outcomes.

Conclusion

In this article, we explored systematic failures in Britain’s system of housing provision that have led to a significant portion of its housing stock becoming potential

firetraps. We focused not on the actual process of construction and lax regulation that created these problems, extensively covered elsewhere (Apps 2022; Hayes 2017; Hodkinson 2019), but on the question of why remediation of private residential buildings has been so slow. Specifically, we sought to unpack the “cladding scandal” in which there are still 10,000 flammable buildings five years after Grenfell, with many residents effectively stuck there. Britain’s cladding scandal encapsulates key features of how, in a rentier economy, major socioeconomic struggles pivot around not only people’s role within the relations of production but also their position in relation to the circulation of value and how this is mediated through the specific distributions of risks and rewards encoded in the formation of property and its capitalisation.

We used the case of a London apartment block to demonstrate how the leasehold–freehold relationship presented an obstacle to remediation efforts and provided further mechanisms of value grabbing. Recently the threat that this systemic dysfunction posed to the housing market as a whole has provoked aggressive government intervention to redress the balance of power in favour of leaseholders, but this messy process of retroactive re-regulation of different actors’ exposure to risk has entailed politically charged contestation over the nature of housing as an asset in Britain’s system of housing provision. Addressing the accountability vacuum produced by lax regulation (Hodkinson 2019), then, has entailed a form of “asset class struggle” (Swyngedouw and Ward [forthcoming](#)), that is, of contestation over the nature of property relations (in this case, the distribution of liabilities structured by the freehold–leasehold relationship) and their mode of capitalisation (the valuation and insurance practices that led to impacted blocks no longer being capitalisable assets), mediated and contested by the state. Here the cladding scandal illustrates how such struggles over property forms and their capitalisation are integral to the production of the built environment and a system of social relations dependent on housing wealth (see Adkins et al. 2021).

If Grenfell encapsulated the dystopic treatment of neoliberal Britain’s racialised poor, the cladding scandal demonstrates the failings of a rentier-dominated system of provision where even propertied homeowners are subordinate to a chain of financialised rentiers, producing another form of social murder in Britain’s property market today (Hodkinson 2019; Preece 2021). Theoretically, the building safety crisis points to a necessity to bring together systems of provisions approaches (see Ball 2013; Bayliss and Fine 2020; Robertson 2017), with political ecology understandings of property’s mediation of the distribution of catastrophes (Hartman and Squires 2006; Kroll-Smith et al. 2015; O’Keefe et al. 1976) determined by the particular modalities of assetisation (Alonso Serna 2022; Birch and Ward 2022; Gailoux 2022; Ouma 2020; Wu et al. 2020). The cladding scandal is an exemplar pointing to the need for a broader agenda exploring the ways in which assetisation mediates the distribution of social harm within a rentier economy.

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