FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HIN/2024/0001**
Property	**:**	**Princes Park Apartments, 52 Prince of Wales Road, London Nw5 3LN**
Applicant	**:**	**Hazelwood Properties Limited**
Representative	**:**	**Mr Aaron Walder (Counsel) instructed by Nicholas & Co**
Respondent/Council	**:**	**London Borough of Camden**
Representative	**:**	**Mr Robert Bowker (Counsel) instructed by inhouse Legal Team**
Interested Persons	**:**	**Various Leaseholders as listed in the Appendix to these Directions**
Representative	**:**	**Ms Myriam Stacey KC (Counsel) instructed by Mishcon de Reya**
Type of application	**:**	**Appeal in respect of an Improvement Notice –** Schedule 1 of the Housing Act 2004
Tribunal	**:**	**Deputy Regional Judge Nikki Carr** **Regional Surveyor Helen Bowers MRICS** **Mr Andrew Gee RIBA**
Date of hearing	**:**	**26 – 27 September 2024**
Date of Decision	**:**	**9 October 2024**

DECISION

DECISION

1. The Improvement Notice dated 19 October 2023 is confirmed.

REASONS

Background

1. On 19 October 2023 the London Borough of Camden (hereafter 'Respondent') imposed an Improvement Notice ('IN') in respect of Princes Park Apartments, 52, Prince of Wales Road, London, NW5 3LN ('the Building'), pursuant to section 11 of the Housing Act 2004 ('the Act'). By application dated 9 November 2023, the Tribunal received an appeal from Hazelwood Properties Limited ('the Appellant') against that IN, under paragraph 10(1) to Schedule 1 of the Act.

2. The Tribunal (Judge N Carr and Ms Bowers) gave directions at a case management hearing on 4 June 2024, in which the leaseholders (represented by Mishcon de Reya) were added as Interested Persons in the IN appeal, having themselves brought an application for a Remediation Order ('RO') pursuant to sections 116 – 123 of the Building Safety Act 2022 ('the BSA'). That application is due to be determined on 5 – 6 December 2024, and is to an extent reliant on the outcome of this appeal.

3. At the outset of proceedings, various points were taken regarding flaws to the IN in principle, the works specified in it not in fact needing to be done, and the timeframe in which the works were required to be done being 'impossible' rendering the IN 'irrational'.

4. It was apparent in the hearing that the statement of case prepared by Counsel to accompany the appeal was pleaded in the absence of key pieces of evidence being provided to him. The matters raised it in relied heavily on an ORSA report prepared (though not signed) by Christian Bucknell on 15 August 2022 **[1195]**, and signed off by Mr Phillip Barry BSc. EngTech M.I. Fire E, Dip FD. (the Appellant's expert at the hearing), in which it was said that the Building was rated B1 (so had a sufficiently low risk of fire spread that no remedial works were required). This report had been sent to the Respondent twice in advance of issuing the IN. This report was also relied on at the case management hearing on 4 June 2024.

5. The report from ORSA dated 6 November 2023 (prepared by P Wildi and again signed off by Mr Barry), in which significant category A issues for rectification immediately or within 6 months maximum were identified **[1616 – 1619]** appears not to have been provided to Mr Walder by 9 November 2023 when preparing the statement of case accompanying the notice of appeal, or even by 4 June 2024. It certainly was not provided to the Respondent until much later in proceedings.

6. Another example is that Mr Walder prepared both the statements of case and a skeleton argument on a lease construction point that, had he been provided with the lease more than a few days prior to the hearing, he would have known was unsustainable. The fact that the point was taken was all the more surprising, given that Nicholas and Co, who instructed Mr Walder, were the solicitors who had drafted the leases.

The dispute

7. By the time of the hearing, the Appellant had conceded that an IN would be made. Four discrete matters remained in dispute. After the parties had some time for discussions, the matters were narrowed further. We are grateful to Mr Walder and Mr Bowker for preparing the agreed terms of the IN, in respect of which we now need make only two decisions:

   (a) In respect of the following clause of Schedule 2:

   > ***"2. Zinc cladding system***
   > *Remove the PIR (Rigid foam) and timber (ply board) from the zinc external walls of the building. Replace in accordance with current Building Regulations with material complying with Euro Class A1 or Euro Class A2-s1, d0. Ensure associated cavity barriers and fire stopping to penetrations has been provided as required by current Building Regulations.*
   >
   > *If it is proposed to retain the whole or any part of the existing timber or zinc cladding wall system, the following evidence must be provided to the satisfaction of the Local Authority:*
   >
   > ***[(a) A successful BR135 classification based on the completion of an appropriate BS 8414 test for an external wall system identical to the proposed system or system to be retained; and]***
   >
   > *(b) Evidence of the type and fixture of the cavity barriers that are to be provided to the proposed system or system to be retained; and*
   >
   > *(c) Evidence that the cavity barriers are appropriate and sufficient to adequately protect against external fire spread, considering the shape of the building, any undulations in wall surfaces and the wall system itself, and comply fully with the requirements of the Building Regulations.*
   >
   > *If the evidence in the above cannot be provided, replace the wall system in accordance with current Building Regulations with material complying with Euro Class A1 or Euro Class A2-s1, d0 and ensure associated cavity barriers and fire breaks have been provided as required by Building Regulations."*

   is the inclusion of requirement (a) of paragraph 2 of the schedule, in the event that the Appellant decides to retain the whole or part of the zinc cladding system, either impossible or so difficult to fulfil as to render the requirement irrational?

   (b) In respect of the following clause of the IN:

5. Under Section 12(2) of the Housing Act 2004 the Council requires you to carry out the remedial works specified in ***SCHEDULE 2*** *to this Notice and to begin them not later than* ***90 days*** *after the date on which the notice is served and to complete them within the period of* ***360 days*** *of that date.*

is the work required impossible or so difficult to complete during the stipulated timeframes as to render the requirement irrational.

8. Paragraph 10 to schedule 1 of the Act sets out that a person served with an IN may appeal to the Tribunal, which appeal must be made within 21 days of the IN being served (para 14(1)). Paragraph 15(2) sets out that the appeal:

   (a) is to be by way of rehearing, but

   (b) may be determined having regard to matters of which the authority was unaware.

9. Establishing the irrationality the Respondent relies on is a heavy burden. For irrationality to be made out, the decision must be so far outside of the range of reasonable decisions open to the Respondent that no reasonable decision-maker would have made it; in other words, we must consider that the authority was wrong and should have decided it differently. As set out in *London Borough of Waltham Forest v Hussain* [2023] EWCA Civ 733 para 77:

   "*Where a re-hearing on appeal does not involve the appellate tribunal starting afresh, the appellate tribunal may still be required to make up its own mind on the application in place of the original decision maker. But even then, if the decision involves the exercise of a discretion, or judgment, by another person or body, the appellate tribunal will not interfere with the original decision unless, having afforded it what is variously described in the authorities as "great respect" or "considerable weight", it is satisfied that the decision is wrong. In making that evaluation the appellate tribunal must pay proper attention to the decision under challenge and the reasoning behind it. If the decision is based on the application of lawful policy it must ask itself whether the impugned decision, and any different decision it proposes to make, is in accordance with that policy. The burden lies on the party challenging the decision to satisfy the tribunal that it should take a different view from the primary decision maker.*"

10. In making our decision on that question, we "*must pay careful attention to the reasons why the authority reached the decision that it did. [*We*] must afford the decision under appeal weight*" (*4 Star Yard* LON/00AG/HIN/2022/0019 20 March 2024 para 51).

11. While we can consider matters that were not known to the Respondent at the time it made its decision, those matters are "*restricted to those matters which tend to show the local housing authority's decision was right or wrong at the time when it was made*" (para 103).

12. We may by our order confirm, quash or vary the IN (paragraph 15(3) to schedule 1 of the Act).

The Building

13. We inspected the Building on 17 September 2024 in the presence of:

(a) For the Appellant:

(i) Mr Daniel Goodwin, Director and Senior Development Manager at Findon Homes (UK) Limited and "Employer's Representative" rendering "project and commercial management" to the Respondent, "since 2010". It later transpired that Mr Goodwin is also the Commercial Director for Bespoke Contrax Limited **[1682]**;

(ii) Mr Barry; and

(iii) Mr Walder.

(b) For the Respondent:

(i) Mr Iain Clarke, Principal Environmental Health Officer in the Respondent's Private Sector Housing Team;

(ii) Mr Richard Chubb, Principal Environmental Health Officer in the Respondent's Fire Safety Joint Inspection Team;

(iii) Ms Ruwani Roberts (London Borough of Camden); and

(iv) Mr Bowker.

(c) For the Interested Party:

(i) Ms Charlotte Nayler (Solicitor); and

(ii) Ms Myriam Stacey KC.

14. The Building is, at its highest point, 8 stories high, and in addition has an underground carpark. It comprises North and South Blocks, each side served by a single protected stairwell. The Building has commercial areas at lower levels, and a concierge area in the ground floor of the South Block.

15. The Building was developed by Cornwall Overseas Developments Limited ('CODL'), a company incorporated overseas in the British Virgin Islands, in or around 2013 – 2014. On 20 June 2013, CODL entered into an agreement with the Appellant, which is also a company incorporated overseas in the British Virgin Islands, to transfer to it the freehold title in the Building "*180 days after the last unit in the block has been leased or earlier by agreement*", on the payment of a £1 deposit, with a purchase price of £2,500,000.00 (apportioned £2,200,000.00 to the commercial areas, and £300,000 to the residential). Nicholas and Co solicitors acted for both parties **[1004]**.

16. It appears the development was completed in or around August 2014, receiving final Building Control certification on 21 August **[1018]**.

17. The title register shows that the transfer between CODL and the Appellant was completed on 26 November 2014 (as shown in the Proprietorship Register entry dated 4 December 2024) **[1594]**. The freehold was made subject to a section 106 agreement made between CODL and the Respondent on 30 September 2008 **[922]**.

18. The parties have agreed that the Appellant will be subject to an IN, and agreed wording in respect of most matters previously in dispute. The inspection remains relevant for the zinc standing-seam cladding and physical circumstances in which the works will take place.

19. The south, east, north and west elevations of the Building may be seen respectively in the following set of photographs (appearing in the bundle at **[1530 *et seq*]**):

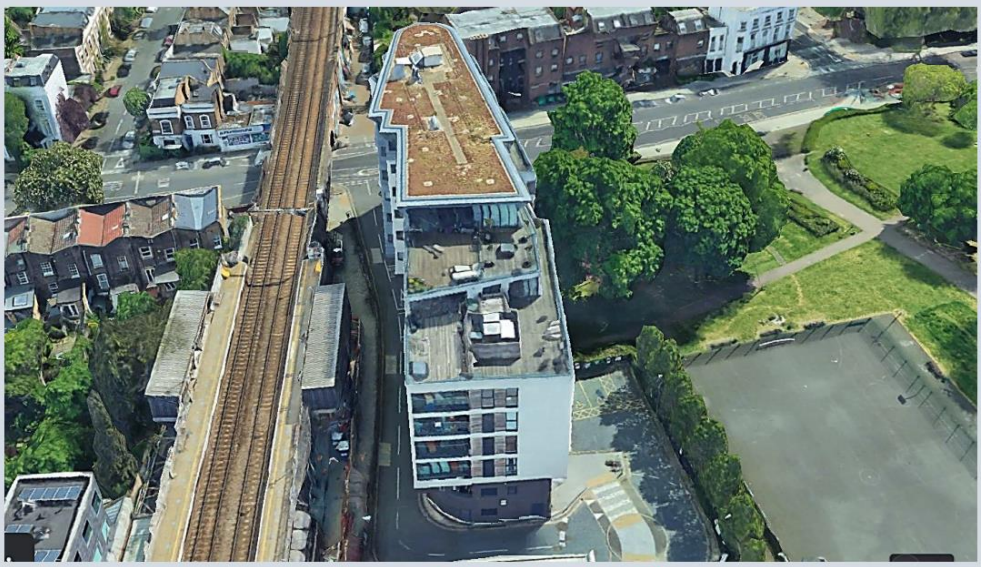
Picture 1

Picture 2

East Façade: Elevation D

Photo ref: A5-01 (photo credit: Google Earth)

Picture 3



Roofscape & Elevation C (north)

Photo ref: A5-03 (photo credit: Google Earth)

Picture 4

West Façade: Elevation B

Photo ref: A5-02 (photo credit: Google Earth)

20. To the north of the site is Talacre Leisure Centre, accessed by a two way (now) private road (Dalby Street) that can be seen in pictures 2 and 3 wrapping around the east and north faces of building. Just out of the frame at the bottom of picture 3 is a turning area/mini-roundabout, which can mostly be seen in picture 4. The remainder of the substantial width between the North Block northwest elevation and Talacre Gardens (a public park maintained by the Respondent) is set aside for disabled parking and a pedestrian area. This area narrows to the width of around 2.5 meters where the Building becomes the South Block at the south west elevation, and thereafter narrows further so that the South Block overhangs two thirds of the remaining footpath, which is itself approximately 2.5 metres wide. At the time of the inspection, there was scaffolding up in the narrowed area towards the south elevation. We were told this was unrelated. We also observed that there was scaffolding erected to the western elevation of the North Block, as seen in picture 4 (the left-hand side of the Building). This is dealt with in more detail in paragraphs 67 and 68 below.

21. Adjoining Dalby Street along the east elevation is a 7- or 8-foot wall, behind which lies a staging area and then platform access to the raised track into next-door Kentish Town West station (**picture 3**). This area is controlled by Network Rail. Ms Bernadette Barker took pictures of the area behind the wall on 4 July 2024 **[171]** which appeared to show that Camden Town Brewery had usage of the staging area at that date. That no longer appeared to be the case when we attended.

22. The 36 South Block flats are occupied under long leases (125 years).

23. The North Block is leased for 125-year term to a private residential provider of social housing, One Housing Group Limited, by lease dated 3 September 2014 **[1791]**. There are 19 flats in the North Block.

24. The zinc standing seam cladding, as can be seen in picture 2, extends over a vertical section of the east elevation of the building from second floor to Penthouse level, save at Penthouse level at which it wraps around all elevations interspersed by windows/glass doors. It is said that is approximately 10% of the surface area of the building as a whole. It is not disputed that it spreads horizontally across compartment boundaries. Nor is it disputed that it constructed as follows: 1mm zinc - 18mm ply - timber battens forming a cavity – Celotex (rigid) PIR insulation – steel frame with sheathing board and mineral wool insulation fill – double layer of plasterboard. It is not disputed that there are no or inadequate cavity barriers/closers. It is no longer disputed that this creates the risk of a spread of the spread of fire, though Mr Barry suggests that it is not the risk of "*rapid*" spread. The dispute lies in what must be done to prove that any remediation by which the current system is retained in whole or part is adequate.

Issue 1 – Paragraph 2(a) of schedule 2

25. The first issue is whether the inclusion of clause (a) of paragraph 2 of schedule 2 of the IN is wrong, because it is impossible or so hard to comply with that it renders nugatory the option to keep the whole or part of the current zinc seam cladding system. The Appellant contends that the clause 'sets it up to fail'.

Evidence

26. For the Appellant, Mr Barry gave expert evidence.

27. In summary, Mr Barry's evidence was that compliance with clauses (b) and (c) of paragraph 2 of schedule 2 should be sufficient to demonstrate the safety of the zinc cladding system, if it is retained in whole or part. Work would be done in accordance with guidance in Approved Document B or the residential fire safety standard BS9991, using approved methods and materials. That would be sufficient to demonstrate that the system was satisfactory.

28. Mr Barry's initial evidence was that BR135 certification is "*impossible*" to obtain in the context of the zinc cladding system as it would be if retained (wholly or partly). Partly this would arise because in removing parts of the zinc and removing the plywood and timber battens in order to insert sufficient cavity barriers/closers, different materials (non-combustible) materials would have to be put back into the construction to achieve building control sign-off. This would be a bespoke solution with no comparable system in existence. He stated there was nothing wrong with that in principle – many buildings built before the change in regulatory regime after the avoidable tragedy at Grenfell Tower contained such materials and there was no wholesale obligation on landlords or developers to replace them. He confirmed on this approach that the make-up behind the zinc standing seam

cladding would be a 'jigsaw puzzle' of existing combustible and new non-combustible materials. In his view, provided that the installers of new cavity barriers complied with manufacturers' standards and installation requirements, and the parts were certified products, that would be sufficient to achieve the required of safety of the system as a whole.

29. Mr Barry initially stated he knew of no comparable system, sufficiently similar to what would be the bespoke system put in place by the proposed retention of the whole or part of the existing cladding system, on which the Appellant could rely to obtain BR135 certification. BR135 was therefore only achievable by conducting a large-scale reconstruction of the bespoke system and submitting it to a testing station. Mr Barry's evidence was that he is not an expert in such testing and does not know what it involves. He stated initially that the condition was "*impossible*" to fulfil.

30. Mr Barry later conceded that a sufficiently comparable system may exist, but that it was not his field of expertise. He also clarified that what he meant by "impossible" was that it would be so expensive to conduct the large-scale reconstruction for the testing that it would make it "*pointless*" to try to keep the existing system; the Appellant may as well just replace it with a new, known-compliant system. That is what the Applicant meant by being set up to fail – in effect it was being given no choice.

31. He later accepted he did not know how much it would cost to obtain BR135 certification, and that wholesale replacement with a new construction fully compliant with current building regulations guidance would also be expensive. He accepted he did not have the relevant expertise on the point, and that we had been provided with no evidence on the costs or delays of such a process. He later conceded the point further, and stated that it was not that it was not practicable for such a reconstruction to be provided and tested; rather that it was not, in his view, "*reasonably practicable*".

32. It was Mr Barry's view that, if properly constructed, such a system that retained the zinc standing seam cladding with addition of cavity barriers would pass the BR135 test, but that a test was not necessary. The risk of spread of fire would be minimised by the insertion of adequate barriers/closers, so that there was no longer a risk of the "*rapid*" spread of fire. He stated that taking a holistic approach, given the properties of the materials and the construction of the building, compliance with requirements (b) and (c) of paragraph 2 would be sufficient. When questioned by Mr Gee about his knowledge of BS8414 and what is the 'acceptable' speed of propagation of fire across a Building of this size and occupation, however, Mr Barry said he didn't know, he was not an expert. He didn't think that current standards should be imposed on built buildings. He maintained the view that no 'significant' risk would remain by adopting the course proposed.

33. Mr Barry agreed with Mr Bowker that the summary of the Consolidated Advice Note ('CAN') at paragraph 15.3 **[1112]** was accurate, and remained good advice, despite the CAN having been now replaced by the PAS9980 standard.

34. Mr Jonathan Herrick, Principal Fire Engineer gave evidence for the Respondent.

35. He explained that the BR135 test involved a constructing a model wall system 8-10 metres high which is meant to represent several floors of the building. In an opening at the bottom is inserted a wooden crib in which a fire is set. It is meant to imitate fire breaking out through the window of a flat leaving the surrounding external wall cladding system exposed to the fire. The test is run for around 60 minutes. If the wall system lasts 60 minutes (so that its structure remains for analysis), the elements of it are taken off bit-by-bit to see how they have performed individually. We have seen videos of such tests reconstructing the performance of the cladding that was on Grenfell Tower.

36. How long such a test takes to book and complete depends on the availability of the materials and the testing centre, he said. The architect's design of what is proposed is built up in the large-scale model. He did not think that there was undue delay or difficulty in obtaining such a test. The type of organisations who usually submitted such wall systems to test were those who had done the costs-benefit analysis based on their confidence in their wall system. Those who were confident that the system would pass the test would secure certification. Those who were not, could end up paying twice.

37. Mr Herrick also described the benchmarking system, in which the Appellant could identify a system either identical, or so similar, to that proposed that only a "*tiny*" thing would need to be tested and inferences drawn, in lieu of a full-scale test. He was not aware if anything the same or materially the same to what was proposed had been subject to benchmarking. His evidence was that it may have been. He was also aware that there were wall systems for which there was no benchmarking.

38. Mr Herrick agreed that the aim, as outlined in Mr Clarke's evidence, was not to make the Building 'perfect', and conceded that there was leeway to be allowed from full compliance with current building regulations. He agreed that it was not mandatory to remove the zinc standing seam cladding or the underlying plywood and timber battens. Provided that combustible elements were discrete and separated, fire spread would be inhibited.

39. He disagreed that addition of cavity barriers and closers would adequately mitigate the risk in the Building. Cavity barriers/closers would remediate the risk by inserting a barrier to the combustible PIR insulation but would not mitigate the risk from the combustible plywood. They would deal only with the cavity and insulation, not the whole wall system. Retention of the zinc standing seam cladding system, whether in whole or part, was conditional on compliance with (a) – (c) of paragraph 2 of schedule 2 of the IN for separate but related reasons. Condition (c) was a requirement for appropriate cavity barriers to prevent the bypassing of a fire from a flat window through the cavity to get to the combustible materials. That was about fire spread from inside to outside, and fire spread through the cavity itself. Cavity closers would only protect the edges of the cavity around the

windows, however. Fire spread over the external surface of the construction was not the same type of spread. The type and fixture of the cavity barriers (requirement (b)) and appropriateness/sufficiency of them (requirement (c)) were external fire spread in the context of a cavity only, not the whole system. That was how (a) was different and why it was also required. That was the only way of being satisfied of the mitigation of risk in the whole system.

40. Mr Herrick conceded that in one way the requirements were prescriptive. However, he contended that the prescription was the outcome, and not the means of meeting it; the outcome could be achieved by whatever design the Appellant considered appropriate, provided that the performance of the system as a whole (whatever its constituent parts) was satisfactory to ameliorate the risk. The greatest concern was the retention of combustible plywood, which is a negative factor on the outside of a wall system, leading to fire on the surface of rather than in the cavity of the system.

41. Mr Herrick stated he was not a construction expert. He agreed that it seemed likely it would be very difficult to install cavity barriers/closers without first removing the zinc cladding and the plywood backing.

Decision

42. We find that the inclusion of the requirement in paragraph 2(a) in schedule 2 of the IN is neither unreasonable nor wrong.

43. We found Mr Herrick's explanation of the different things to which paragraphs 2(a) – (c) were addressed particularly helpful. Contrary to the Appellant's case the requirements are not, we find, addressed to the same risk. We were not satisfied by Mr Barry's evidence that simple proof of adhering to installation guidance and use of suitable materials for cavity barriers would be sufficient.

44. We prefer Mr Herrick's evidence on the question of fire spread to that of Mr Barry. Mr Barry advocated a holistic approach to fire safety that did not, we find, in fact address all of the factors that must be considered. When he stated that simple use of appropriate products and approved methods of installation should be adequate to demonstrate the system is safe from "*rapid fire spread*", he has given insufficient attention to the whole of the system and has confined his thoughts only to the cavity barriers. He has not given sufficient thought to the resulting 'jigsaw' that will make up such a system, which will include the retained combustible plywood. We were provided with no evidence of any manufacturer's guarantee of compliance in those circumstances, and we are (as is the general public) acutely aware of the things that can and do go wrong in installation.

45. It was telling that Mr Barry was unable to answer Mr Gee's question about BS8414 and the 'acceptable' speed of fire spread across an external wall system, stating that he is not an expert. That is of concern, and undermines his evidence when part of his own reasoning relies on the difference between "*rapid*" or (for want of a better word) 'acceptable' spread of fire in the context of the external wall.

46. We are satisfied that Mr Barry's evidence of "*impossibility*" is in fact an assertion that the requirement in paragraph 2 (a) will be expensive to achieve. He appears to have determined that makes the requirement "*not reasonably practicable*", from a position in which he admits he is not an expert able to provide evidence on how to obtain the relevant test or how much it would cost, and without the knowledge of whether there is a benchmarked system that exists.

47. We have no evidence from an expert with the expertise to say how much it would cost or how long it would take to complete such testing, nor comparator for how much more expensive it would be than a new cladding system in compliance with current regulations. We also have no expert evidence revealing that there is no benchmarking comparator.

48. We find that the Appellant's real complaint is not that the requirement is so difficult to achieve, but rather that it will cost them money. No matter which option the Appellant takes, it will cost them money. That is not a thing that can render the requirement irrational. Want of necessity of the requirement is. It is a matter for the Appellant to make its choices, one of the factors in which might be cost. We are satisfied that it is not the only factor, and it is not part of the Respondent's responsibility on HHSRS assessment to only require remediation that is as inexpensive as possible for the Appellant.

49. We are satisfied that the requirement in paragraph 2(a) is both reasonable and necessary to ensure that whatever the replacement scheme is (whether retaining some or all of the current construction or otherwise), the outcome from it is that it ameliorates the risk that currently exists due to both the construction and composition of the zinc standing-seam cladding system brings the Building up to an acceptable safety standard in accordance with HHSRS.

Issue 2 – time to carry out works

Evidence

50. We read the witness statements and exhibits of both Mr Iain Clarke, Principal Environmental Health Officer in the Respondent's Private Sector Housing Team, and Mr Richard Chubb, Principal Environmental Health Officer in the Respondent's Fire Safety Joint Inspection Team **[456 – 1735]**. The Appellant opted not to cross-examine Mr Clarke or Mr Chubb, and their evidence stands as that of the Joint Inspection Team.

51. The history leading to the IN being served is the relevant history for establishing whether (i) the 90 days to begin works and (iii) 360 days thereafter to complete them was "*impossible*" as contended by the Appellant, rendering the requirement irrational. We set out that history chronologically, with our emphasis in bold:

September 2019	The Respondent wrote to all owners of tall residential buildings in its area to provide basic information about external walls, to pass to MHCLG in accordance with its

	direction under section 3(3) Housing Act 2004 to identify buildings with potentially unsafe cladding.
5 June 2020	Mr Clarke emailed Harry Vazanias (Premier Block Management – then managing agents for the Appellant ('PBM') to ask for information about the walls at the Building **[1036]**.
8 June 2020	Reply from Harry Vazanias **[1038]** attaching EWS1 and Report from Greenwoods dated November 2019. Mr Clarke asks a number of clarifying questions **[1041]**.
10 June 2020	Mr Vazanias replies to some of those questions **[1042]**.
21 June 2021	London Fire Brigade inform Mr Clarke that it had served Notification of Fire Safety Deficiencies (Regulatory Reform (Fire Safety) Order 2005) ('LFB Notice') **[1044]**, identifying 7 areas of concern, including multiple issues with smoke vents, fire-stopping, ventilation of the protected escape route, failure to implement recommendations from the fire risk assessment (inadequate staff fire-safety training), the need for testing or suitability and possibly treatment of internal and external timber cladding.
21 June 2021	Mr Clarke has telephone and email exchanges with Mr Vazanias and raises concerns regarding the Greenwood report **[1051]**, in particular "*I note that the EWS1 form gives a rating of A1, despite the presence of combustible materials. The inspection report appears to be based on drawings rather than opening up, and seems to report that the zinc cladding is only present to the top storey, does not comment on the presence or adequacy of cavity barriers, and does not identify the insulation used in the render system.*" **Mr Vazanias informs Mr Clarke an intrusive survey has been carried out, and that the Appellant has made an application to the Building Safety Fund.**
18 August 2021	Mr Clarke chases Mr Vazanias for the intrusive inspection report and notifies that the Building is now of specific interest to MHCLG **[1124]**. That report appears to be the FRC.
24 August 2021	Mr Vazanias updates Mr Clarke: "***we are waiting to hear from the Building Safety Fund regarding this property and the technical team has been appointed to start working on the remedial project***." Fire door and fire compartmentation works

raised by the LFB Notice were to commence in late September 2021.

? The FR Consultants Ltd Combined Façade and Fire Safety Report ('FRC report') **[1058]**, from the intrusive inspection carried out on 19 May 2021, is provided to Mr Clarke. From the matters identified it rates the EWS1 as B2, due to combustible materials in the external wall. "*I have concluded that an adequate standard of safety is not achieved, and I have identified to the client organisation the remedial and interim measures required*" **[1122]**.

14 October 2021 Shushanik Sargsyan, Chief Technical Officer (PBM) emails LFB to confirm that:

- works to fire doors and riser cupboards have been completed but that confirmation from the contractor is required, and
- "***we are also working with a fire engineer and a surveyor who are preparing the specification of works for the cladding remedial project. There has been a warrantee [sic] claim made for lack of cavity barriers under the building warrantee [sic] and we are communicating with the BSF to obtain funding for remedial works***" **[1127]**.

16 December 2021 Mr Vazanias provides an update as follows:

I just wanted to give you an update on the fire deficiency works.

We have had works carried out to the fire stopping and the fire doors. Please see reports attached.

I also attached the latest report from Witt & Sons with regards to the AOV system at Princes Park. We have changed a number of actuators on the AOV doors and all doors are now closed.

Regarding the external cladding, we have started the process. An intrusive survey was carried out on the external wall system in which a report has been produced. This is now been [sic] ***issued to produce specification of works that are required. The building safety fund have been notified and we are hoping that a response from them will come in soon. We can provide further information on the progress of these works***" **[1128]**.

1 April 2022	Mr Clarke requests an update on progress, in particular regarding the cladding and BSF process, agreed funding, timescales, decision on scope of works.
7 April 2022	Ms Sargsyan updates: "***We are currently waiting to hear further form the BSF to progress the application itself. In the meantime the project team is working on the specification. The specification was slightly delayed due to the original fire engineer appointed no longer being able to provide the service due to their fire engineer leaving the company, therefore we had to appoint another company. The specification is being worked on and we are expecting to start the tender process shortly. The next step is to go to tender which we are pushing to happen asap.*** ***The works to the external wall system include the following aspects of the wall system: Zinc cladding panels due to PIR insulation and lack of cavity barriers, timber decking of cantilevered and inset balconies and timber cladding areas.*** *The render and brickwork have been deemed suitable to remain as they are by the fire engineer*" **[1144]**.
15 March 2023	Mr Clarke chases for a comprehensive update **[1240]**. Ms Sargsyan replies that "*the Freeholder* ***is managing the remediation project directly*** *and we currently are awaiting an update ourselves. I have forwarded your email to the Freeholder asking for the information to enable me to respond to you*" **[1241]**.
27 March 2023	Mr Clarke chases Ms Sargsyan for a response, including answers to the following specific questions: "*Please can you advise if you have heard back from the freeholder yet? What is the latest confirmed position you have regarding remediation and the BSF application?* *Our communication from DLUHC has never confirmed that an application has been made to the BSF; please can you confirm when this application was made, who made it (yourselves or the freeholder or some other party) and who is in communication with the BSF; what stage the application is at, is there a need for Pre Tender Support etc, what is the most recent communication you have had regarding the BSF application*?

Please can you give me the full contact details for the freeholder, including the name of the individual person you are in contact with, their phone number and email address, and postal addresses in the UK and abroad.

Given the long delays to the remediation process so far, we are considering taking formal enforcement action in relation to this property and it is important we understand exactly where things stand" **[1295]**.

31 March 2023 — Mr Clarke speaks with Yarden Sharon (PBM) over the telephone. Ms Sargsyan emails the details of the Appellant as the Principal Accountable Person for the property. In this email she states that PBM "***is not instructed in the EWS remediation works***" **[1296]. Contact details are provided for a Morgan Mullenger of Citidwell.**

Mr Clarke asked for a copy of the most recent Fire Risk Assessment.

3 April 2023 — Ms Sargsyan provides copy of Cardinus Report dated 23 March 2023 **[1146]**. It appears that report was made without access to any of the multiple materials previously documenting the building. **A high priority FRAEW was recommended** given the external wall construction **[1156]**.

Mr Clarke emails Mr Mullenger:

"*I have been given your contact details by PBM Property Management as the person who is dealing with fire safety risks arising from the external walls of the property Princes Park Apartments on behalf of the freeholder Hazlewood Properties Limited****. Please could you confirm that you are dealing with this issue, or give me the contact details for anyone who is better able to help. Please can you confirm the names and contact details of any company including the company number who are acting on behalf of the freeholder for fire safety matters; the information given on Citidwell's website is confusing****. Please also provide the full contact details for the freeholder (UK postal address, email and phone number)*

Please can you confirm where things stand in regard to remediating the external walls. ***Previously, a schedule of works was being drawn up prior to tender, can please you confirm where this is at? Are any works or investigations currently planned? What are the next steps likely to be?***

We were informed an application had been made to the Building Safety Fund, but this has not been confirmed; please can you tell me when this application was made, the reference number you have been given, and the stage the process is at. Are any other funding options being pursued eg warranty claims, remediation orders etc?

Although some good progress has been made eg compartmentation and fire door works, there are still significant deficiencies where progress appears slow. ***The Council is therefore considering whether we need to take formal action using enforcement powers under the Housing Act 2004, and having an accurate picture of where things are at will help us decide our next steps***" **[1300]**.

5 April 2023 — Mr Clarke has a telephone conversation with someone named Ruslan at Citidwell, and forwards the above email to him.

No response is made.

17 April 2023 — Mr Clarke informs Ruslan that the Council and Local Government Association Joint Inspection Team will inspect the Building on 10 May 2023, with a view to identifying the most appropriate course of action **[1309]**.

18 April 2023 — Mr Mullenger responds to state that the freeholder's agent has yet to respond to him.

Mr Clarke asks for clarification, as he was informed Citidwell was the freeholder's agent, and asks for details **[1311]**.

Mr Mullenger responds that Citidwell do not manage main contracts but that Mr Clarke can use him as the main contact [1313].

19 April 2023 — Mr Clarke sends formal section 235 to Citidwell and PBM to provide named documents by 4 May 2023, as follows:

"*1. Document showing the full contact details for the Freeholder of the property Hazlewood Properties Limited including all correspondence addresses in the United Kingdom, email addresses and phone numbers.*

2. Document showing the full contact details for all agents acting for the Freeholder of the property Hazlewood Properties Limited in relation to this building, including all correspondence addresses in the United Kingdom, email addresses and phone numbers.

3. A copy of the Fire Strategy for the building

4. A copy of the Floor Plans for the building for all storeys including basement and commercial parts

5. Copy of any application (including supporting evidence) made to the Building Safety Fund.

6. Copy of correspondence with the Building Safety Fund or agents instructed by the Building Safety Fund in relation to this building.

7. Copy of any tender documents for remediation of external walls or the specification of works drawn up in anticipation of going out to tender.

8. Copy of the 'cause and effect' diagram for the AFD system throughout, including how detection between the commercial (surgery) and residential parts of the property is related.

9. Copies of any certificates or documentation showing the materials in use on the external walls of the property, including documents showing the combustibility rating or classification of cladding materials or insulation.

10. Copies of documents including correspondence or instructions relating to the fire safety and remediation of external walls with the Freeholder Hazlewood Properties Limited, their agent Premier Block management or any other agent of the freeholder, or any contractor instructed by the freeholder or their agents; in particular documents relating to the scope of works, applications to the Building Safety Fund, the tendering process, and the responsibilities of various parties for ensuring remediation of the external walls of the building

11. Copy of the management contract or terms of business between Citidwell Limited and the Freeholder." **[1318]**.

27 April 2023 — Mr Clarke gives the Appellant notice under section 239 of the Act that the JIT will be exercising its power of entry to inspect on 10 May 2023 **[1379]**.

28 April 2023 — Nicholas and Co Solicitors write to Mr Clarke **[1383]** to state:

- Citidwell is not a relevant person within the meaning of section 235(7) of the Act and there is therefore no obligation to provide the requested documents;

- Nevertheless, the **ORSA report dated 15 August 2022 and a Form EWS1 (no date is given) are attached**.

- Therefore, no inspection is necessary on 10 May 2023, and it is asserted that on the basis of the documents provided the Respondent has no right to inspect.

- And that Mr Gareth Grimes, the author of the 2022 ORSA report is in any event unavailable at that date.

28 April 2023 — Mr Clarke gives the Appellant section 235 notice, in substantially similar terms to those given to both Citidwell and PBM, but with the following additional requirement:

"12. Document setting out the relationship between the Freeholder and Cornwall Overseas Developments Limited or any other Head Leaseholder or agent involved in the Management of Princes Park Apartments North (One Housing Group Limited)" **[1389]**.

28 April 2023 — Mr Clarke receives email from One Housing's Head of Building Safety Survey Programme, Mr Carl Graham, in which he states:

"*It seems that last direct contact OHG's property department have had with PBM the property manager was May 2021 with respect to another matter. However, we instructed our external legal advisors (Devonshires) to contact the freeholder with regards to this block and ensure that the freeholder was aware of their responsibility to assess the external wall systems.* ***We have been made aware in September 2022 that the block has had a EWS1 form B2 rating and that remedial works are required. In Nov 22, we sent a letter seeking an update from the freeholder on the status of the work. In Jan 23, the managing agent PBM informed us that the freeholder was commissioning a PAS9980 report and that they were planning to progress an application to Building Safety Fund. It seems that in February PBM has taken a step back and the freeholder is now managing the remediation works, hence our legal team wrote to the freeholder directly. Our legal advisors have since been chasing a response to our letter****.

To confirm, One Housing is not the responsible entity for the building's fabric and external walls so we would not carry out intrusive surveys and instead we are engaging with the freeholder, as the RE, to do this. ***Our fire team***

have carried out a FRA to our block, see attached dated 27/02/2023. Both blocks are physically connected and hence we would expect remediation to happen on both blocks at the same time.

We have received an email from someone at DWF Adjusting the 14/3/23 who we are aware acts on behalf of Premier Guarantee the building insurers. This would normally indicate a claim has been lodged by a leaseholder or the contractor" **[1390]**.

By email exchange the same day Mr Graham confirmed that no copy of the FRC report of 19 May 2021 had been provided to One Housing.

28 April 2023 — Mr Clarke notifies Nicholas and Co that he requires clarification of Citidwell's role in relation to the property. The inspection will be proceeding, and the Appellant is welcome to send a representative, but the date will not be changed since the Appellant has had since 3 April 2023 to provide a response and has failed to do so.

4 May 2023 — PBM (Ms Sargsyan) email to state that they will be ceasing management of the Building on 1 June 2023, and stopping involvement with remediation works, but will be present on site to offer full support at the inspection on 10 May 2023 **[1409].**

4 May 2023 — Nicholas and Co letter discloses the following **[1414]**:

- PBM had throughout been the Appellant's managing agents but have not been instructed to deal with the BSF.
- Citidwell provides "*administrative services to our client which is based abroad*". They had not been dealing with fire safety or any other aspects of property management.
- Mr Gareth Grimes had been appointed as the Appellant's specialist consultant.
- A link to what were said to be relevant documents was provided.
- Based on the Mr Grimes' ORSA report dated 15 August 2022 no application was made to the BSF (on the basis that no remediation is required).

- On the basis of Mr Grimes' report, documents relating to tender or specification for remedial works are **"*not applicable*".**

- In answer to question 9, Nicholas and Co only answered that "***no correspondence exists… between our client, Citidwell or PBM***" **in respect of any BSF application.**

52. On 31 May 2023 JIT produced its report **[1493 – 1523]** based on all of the evidence acquired in the course of the past several years as set out in the appendices **[1524 – 1526]** as well as its inspection and HHSRS assessment **[1418 – 1492]**. Thereafter there seems to have been no communication from the Appellant until notified that the Respondent was considering enforcement action on 15 August 2023.

53. Mr Goodwin gave evidence and adopted his witness statement.

54. His witness statement merely recounted what was shown to him (according to his witness statement from the Appellant's "*server*", but in oral evidence he said that documents had been provided to him by Nicholas and Co). He revealed no personal knowledge of what had happened before the IN was served.

55. In his witness statement, Mr Goodwin described Findon Homes (UK) Limited as providing "*Employers Representative services of project and commercial management*" to the Appellant since 2010 **[443]**. In oral evidence, Mr Goodwin initially described himself as the "*Senior Development Manager*" for Findon. He gave evidence that he was "*involved*" by the Appellant in early 2023, though he provided no evidence or information about the scope of his or Findon's appointment or instructions. It was unclear at what date he became involved; he variously identified April and January 2023.

56. His witness statement says that he first became aware of the Respondent's investigations in or around April 2023. He proffered no explanation why neither Citidwell or Nicholas and Co had made any reference to his involvement for the Appellant at all. He gave an unsatisfactory explanation of how and in what capacity he *is* involved, providing a written explanation that he had been involved with the Building since 2010 **[443]**, but in oral evidence made it clear that he had been working either for or with CODL when redevelopment of the site was being explored. He then contradicted that evidence and, in stating he did not know how long the Building took to initially develop, he stated he had only been involved in the last 6 – 12 months of the development (i.e. in 2014). He was unable to identify what an "*Employer's Representative*" is, or the precise ambit of his authority in that capacity, nor did he give a credible explanation of Findon Homes (UK) Limited's involvement with both CODL and Hazlewood.

57. He could not speak to what had happened before his involvement, nor did he provide any evidence of what the Appellant was doing during the

period of early 2023 until the date the IN was served. He gave no evidence of what, if anything, *he* was doing on the Appellant's behalf during that period. We come to the evidence of what has happened since the IN was given in our decision below.

58. Finally we heard from Ms Bernadette Barker BA Hons Dip Arch RIBA MSc (Construction Law and Arbitration) FCIArb C.Arb DipICArb MIFireE MAE.

59. Her starting point was that it was impossible for the Appellant to even commence works before 12 – 18 month of pre-construction activities, for which 90 days was wholly inadequate.

60. Ms Barker then stated it would take between 48 – 52 months for the works to be completed, although we understand her evidence to be that the pre-construction and works phases would be encompassed in this total timeframe, so that in fact the works phase would be 32 – 40 months.

61. Ms Barker produced an 85-page report setting out the steps and timescales she said would apply to the pre-construction activities. At paragraph 01.04.02 she sets out all the steps that the Appellant would need to take in that phase **[149]**. The scope of her instructions is set out at 2.00 **[153]**, and the documents with which she was provided at **[229].** She set out in her report how long resolution of some matters, that in her view need to be considered before construction can start, would take if taken one-by one-consecutively (04.06 **[168]**).

62. We will deal with the substance of that report in our decision below.

Decision

63. We find that the requirements in paragraph 5 of the IN, to commence works within 90 days and complete works within 360 days thereafter, was neither irrational nor wrong. Those timeframes were made against a background in which the Respondent had been told that steps had already been taken, as follows:

(a) FRC Façade and Fire Safety Report **[1058]**, from the intrusive inspection 19 May 2021 (disclosed around June 2021).

(b) 21 June 2021 – told there has been an application to the BSF.

(c) 24 August 2021 – "*the technical team has been appointed to start working on the remedial project*".

(d) 14 October 2021 – "*we are also working with a fire engineer and a surveyor who are preparing the specification of works for the cladding remedial project. There has been a warrantee [*sic*] claim made for lack of cavity barriers under the building warrantee [*sic*] and we are communicating with the BSF to obtain funding for remedial works*."

(e) 16 December 2021 – "*Regarding the external cladding, we have started the process. An intrusive survey was carried out on the external wall system in which a report has been produced. This is now been* [sic] *issued to produce specification of works that are required. The building safety fund have been notified…".*

(f) 7 April 2022 – "*waiting to hear further form the BSF to progress the application itself. In the meantime the project team is working on the specification. The specification was slightly delayed due to the original fire engineer appointed no longer being able to provide the service due to their fire engineer leaving the company, therefore we had to appoint another company. The specification is being worked on and we are expecting to start the tender process shortly. The next step is to go to tender which we are pushing to happen asap".*

(g) 28 April 2023 – Solicitors for Appellant now saying no works needed and refuse to disclose documents relating to tender or specification for remedial works as they are "*not applicable*" and asserts "*no correspondence exists… between our client, Citidwell or PBM*" in respect of any BSF application.

64. Our starting point is that we have no evidence to gainsay any of the contemporaneous emails between PBM and Mr Clarke that demonstrate that those steps were actively being taken. Mr Goodwin was simply not able to deal with those matters. Nicholas and Co's letter merely asserts that any such documents are no longer "*relevant*" in light of the (now resiled-from) 2002 ORSA report.

65. In respect of the evidence we received, Mr Goodwin was a singularly unimpressive witness. He was unable to answer how he had been involved <u>at all</u> during the period before the IN was given, so that there was a vacuum where an explanation was required of the clear contradiction between everything that the Respondent was being told up until June 2023 and the Appellant's case now that it was not in a position at the date of the notice, and remains in no position, to commence works until 12-18 months' time. It is unclear how it was decided that Mr Goodwin was the appropriate witness to tender on the questions, given that it seemed he derived most of the contents of his witness statement from documents that were given to him, and not from his personal knowledge. It remains a mystery what his role actually is on the Appellant's behalf.

66. We highlight but one passage of Mr Goodwin's evidence that solidified our impression that the Appellant was at the date of the IN, and has remained, *unwilling* to cooperate or carry out works, rather than (as asserted) *unable* to do so (whether because of agreements with others that need to be made or because it 'did not know what to do', or otherwise).

67. There are areas in which there is continuous cedar cladding on the east, north and west elevations, some of which can be seen in pictures 2, 3 and 4 above. It was in issue in the proceedings until at least 13 September 2024. The cladding is PIR (rigid foam insulation) backed, and it is unclear whether

there are appropriate cavity barriers/closers in place. We observed at the inspection that scaffolding had been erected to the north-west elevation (North Block), and that work had been started by (we were told) Bespoke Contrax Limited.

68. On the day of the inspection Mr Goodwin told us that the cladding system to that the north-west elevation had been stripped. He told us that the new construction would comprise wall – cavity – rockwool – STS board – timber when finished, and non-combustible timber would be the permanent replacement. He drew a picture of what the completed wall would comprise when the works were completed in Mr Gee's notebook. We observed that the STS board was exposed to the elements and unsealed when we attended. He informed us works were ongoing.

69. He directly contradicted that statement in his evidence to us just over a week later. He told us that since 10 June 2024, "*we*" (and it was not clear who the 'we' was in that context – Findon Homes, the Appellant, or Bespoke Contrax) had done no further works. He went so far as to deny that he knew anything about the works that were being currently undertaken by Bespoke Contrax.

70. He initially stated that was because the Appellant had no designs, no information on what to do, and the contractors were not appointed for further works. He claimed "*we don't know what else we need to do*". He repeated, no arrangements or exploration of necessary consents had been made, because "*we don't know what we need to do*". He distanced himself from the progress report at **[1713 - 1715]**, which itself sets out the next steps to be taken at both paragraphs 1.1 and 1.3 and makes clear reference to the existence of a draft programme, need for Basic Asset Protection Agreements with Network Rail and approvals from Camden under the section 106 agreement and with Park Authorities, obtaining access and permissions for erecting scaffolding on Dalby Street, and to ongoing design and Design workshops and an architects proposal.

71. Despite this document, Mr Goodwin initially claimed that there was no draft programme. He then had to concede that reference was made to a draft programme, but he claimed it was '*very draft*'. He did not answer the question why it was not in the bundle, despite Mr Bowker's invitation to do so, save maintaining that Bespoke Contrax had not been awarded a contract.

72. Mr Goodwin stated the update was given by Mr Adam Humphries, who was the Project Manager employed by Bespoke Contrax, but denied that the progress report had been drawn it up on his (Mr Goodwin's) instigation. He gave no indication of who on behalf of the Appellant, if not him as the "*Employer's Representative*" providing "*project and commercial management*" services, was giving instructions in the undertaking of works.

73. Mr Bowker asked Mr Goodwin to confirm what his association was with Bespoke Contrax. Mr Goodwin gave evidence that he just did some commercial work for them in respect of sub-contracts where they were involved in disputes. Mr Bowker then took Mr Goodwin to a document

[1682] in which Eight Asset Management appear to have provided an estimate for the cost of the items in the IN relating to internal works including treatment of timber in the reception area, a vent in the gas riser shaft, and removal of flammable wallpaper. At the top of that page Mr Goodwin is named as the commercial director of Bespoke Contrax. It was only at this stage that Mr Goodwin admitted the association. He nevertheless denied being Mr Humphries' boss, or having any knowledge of who that person might be, giving no more information than that "*Adam works under construction operations*". Mr Goodwin claimed then that he was "*just*" the commercial director. He refused to answer the question whether Bespoke Contrax had therefore not been awarded a contract as he had not awarded it to his own company.

74. We were left with the unsatisfactory impression that Mr Goodwin wanted us to believe that the Appellant was unable to continue the works because the contract had not been awarded by himself (as "Employers Representative" of the Appellant) to himself (as "Bespoke Contrax").

75. He stated that no preparatory works had been taken for any other parts of the IN, as they would not know what to do "*until the Tribunal tells us*". That too is contracted by the progress report. Further, when it was pointed out that Stroma had been appointed by Findon acting on behalf of the Appellant for building control services in connection with a package of works on 20 September 2023 **[1579]**, before the IN was given, his evidence was that that was merely to ensure that the works required could proceed under the former, less stringent building control regime (1 October 2023 being the date on which the Building Safety Regulator would take on all building control applications for higher-risk buildings). He remained adamant that they did not know what they needed to do regarding the section 106 agreement, arrangements with network rail, or arrangements with Camden council and had taken no preliminary steps to progress these matters with the parties involved. He denied that the Appellant had known the steps it would need to take by early 2023.

76. Again, his evidence was entirely implausible, for the additional obvious reason that one would not retain (and pay for) building control services if one genuinely believed that nothing needed to be done (the position of the Appellant until very late in these proceedings) or genuinely did not know what needed to be done (Mr Goodwin's position at the hearing).

77. The scaffolding remains in place (and has been in place for nearly seven months). Mr Goodwin's evidence is that the Appellant does not know what it needs to do because it does not know what works are needed until the Tribunal tells it. Mr Goodwin's secondary position was that there is in any event "*no benefit*" in continuing those works as there was no fire risk in that area now. Mr Goodwin's position in that regard fails to acknowledge the reality that the walls and materials are exposed and unsealed (and it seems likely have been so for some time), with the twin likely results that the exposed materials will deteriorate so that they will become ineffective and will need to be re-replaced, and the thermic living conditions of One Housing's tenants will deteriorate due to the unfinished structure. We can

only observe that this attitude also wholly fails to recognise the Appellant's basic repairing obligations under the lease.

78. The claim that the Appellant does not know what it needs to do is undermined by the mass of clear evidence in the bundle dating back as far as 2021, and is entirely implausible. We find that the Applicant knew exactly what it needed to do, not least because it had a set of works from ORSA by the end of November 2023 **[1635]**, and that the progress report demonstrates that active steps were, at least at that date, being taken to do it.

79. Mr Goodwin's evidence is most useful in its demonstration that the Appellant is unwilling to engage in works that it considers of "*no benefit*" to itself. We find, contrary to the evidence of Mr Goodwin in paragraphs 13 and 18 of his witness statement, that the Appellant did not take proactive steps to establish that the Building was safe for residents; rather in connection with the mass of reports as it received (including the Consultant's Report dated 23 July 2021 **[1058 *et seq*]**) it either abandoned such steps as had been taken on its behalf in wholesale reliance on the demonstrably unreliable (and no longer relied upon) first ORSA report dated 18 August 2022 **[1191 *et seq*]**, or had misled the Respondent when it had been asserting, by its authorised agents to whom the email evidence makes clear it was giving instructions, that it had taken such steps.

80. We consider the former the most likely explanation, and therefore find that on the balance of probabilities that the Appellant abandoned all of the steps it was actively reassuring the Respondent it was taking in favour of narrow reliance on Mr Grimes' demonstrably unreliable ORSA report. It would be impossible otherwise to reconcile the very clear contradiction between what the Respondent was being told throughout 2021 – 2023 by the people described as the Appellant's managing agents, regarding the active steps the Appellant was and continued to take until at least March 2023, and Mr Goodwin's "*we do not know what we need to do*".

81. The Appellant has not given evidence that PBM or Citidwell were lying or acting outside of their authority, and we cannot envisage to what benefit it would have been to any of the people in those organisations to do so. The only way that those individuals could have come to the conclusions that, for example, specifications were being prepared, BSF funding applications made, tender documents prepared and so forth is if whoever giving them instructions within the Appellant's organisation was telling them so. The Appellant has in fact proffered no explanation whatsoever for the inconsistencies, and we find has tendered no-one with the relevant knowledge to do so.

82. Three days before the appeal against the IN was made, the Appellant had received the new type 4 Fire Risk Assessment ORSA report from Mr Wildi dated 6 November 2023, referred to above, in which it was made clear that Mr Grimes' report was wholly unreliable, and that the Building is indeed in need of remedial works because of the risk of fire spread. On 23 November 2023 the Appellant was provided with a Scope of Works **[1635]** that had detailed contents of what is required to ameliorate the fire risk at the

Building, which is very close to what was recommended by the FRC report. If Mr Goodwin is to be believed, the Appellant has made the deliberate choice to do nothing in connection with that report save for such things as are "*of benefit*" to it, ignoring the safety of the building and its residents in favour of pursuing what was known to it (though not to its counsel) to be substantially inarguable grounds in this appeal until the eleventh hour.

83. Turning to Ms Barker's evidence were not satisfied that she was offering an independent expert opinion adhering to her duty to the Tribunal, or that her evidence was reliable, for a number of reasons.

84. Ms Barker set out in her report at 04.04.01 the works she said "*Hazlewood considers is required*", which had been identified in the ORSA scope of works of November 2023 **[158]**. In oral evidence, she said that "*we don't know what needs to be done. We can't start a programme until we know what needs to be done*". That was directly contradicted by firstly, the substantial concessions made by the Appellant in its Reply, and secondly, her own evidence that she had asked for and had been given a draft programme of works that was "*very comprehensive*" (though in her view not comprehensive enough), which was not in the bundle and had not been exhibited to her report.

85. The frequent use of the word "*we*" in her evidence, often then corrected to the word "*they*", and references to "*Daniel*", was cast in a very particular light by her disclosure in evidence that she had met or corresponded with Mr Goodwin 4 or 5 times, including by phone or email. In connection with responses from the LFB at 04.06.05 **[175]** she stated that she did not have knowledge of how long it would take to complete any consultation process with the LFB but that "*Daniel*" had told her "*it would be 8 weeks or longer*". When asked why she asked for his input, she said that he is "*more familiar on jobs than me*". When taken to the Guidance Note GN83 'Fire Safety Guidance Note: Consultation Process with London Fire Brigade' exhibited to her own report **[408]** para 2.8 – 'Timescale for Response' her evidence was "*that could just mean a letter saying thank you for your application*".

86. That paragraph is clearly not capable of that interpretation. We set it out here:

"*As per 'Building Regulations and Fire Safety Procedural Guidance' we aim to complete a written response within 15 working days. Where that is not possible (which is normally due to the complexity of the consultation) a letter will be sent confirming the likely delay to the consultation.*

Response format

2.9 Our response will include comments made in respect of the following areas:

- *Matters considered under the Building Regulations*

- *Matters relating to fire precautions that will be necessary to meet their duties under the Regulatory Reform (Fire Safety) Order 2005 one the building is in use*
- *Matters which have to be complied with to meet other Legislation other than Building Regulations*
- *Matters which are advisory and not enforceable under Legislation*."

87. When we asked Ms Barker whether she was aware that LFB were already involved and had been since 2021, and whether she had been provided the documents regarding that involvement, her response was equivocal. When we asked whether she considered it was prudent to contact LFB given that involvement to enquire after timescales. She said she had no authority to do so. For a second time she said to "*ask Daniel; everything is a possibility*".

88. Her willingness to ignore the contents of the clear terms of GN83 in favour of "*Daniel's*" opinion confirmed to us that Ms Barker's neutrality had been compromised. Her evidence leads us inevitably to the conclusion that Ms Barker was not using only her own expertise in her report, and that her answers were not neutral so that we could not rely on her expert opinion. The matters in her report are all tainted by that finding.

89. Even had that not been our finding, we would have found her expert evidence unpersuasive. The following are but some examples.

90. She denied it was possible to devise a construction programme even on the basis of the two assumed alternative works programmes – replace the zinc standing-seam cladding fully or retain parts – because there were "*too many variables*" and anyway she was "*not instructed to*", despite agreeing that was required and that was the task of a programming expert. She was not prepared to answer the question on what was the "best case" time estimate for removal of the zinc standing-seam cladding in sections.

91. She appeared to consider it necessary to scaffold the building in its entirety for the works, regardless of the works required to be done being in discrete areas. It was her initial opinion that at best that could be done in 6 weeks. In cross-examination, she later conceded it could be done in 3.

92. She was referred to paragraph 06.12 **[218]** of her report and asked to justify the 48-52 month timeframe. Her response was, in total "*I don't know how people will behave if approvals are applied for*". She was also referred to the end sentence of that paragraph in which she states she has come to that time estimate "*taking into account actions Hazlewood has advised that they have already undertaken, which include, as far as I am aware*. [sic]" She could not explain the hanging sentence. She was asked where the list of those actions was in her report. She said they were not in her report. She did not give us a list of the actions said already to have been taken orally.

93. In oral evidence, she claimed that the Appellant wouldn't even be in a position to start if the IN was confirmed, as it was not in a position to start

until it had a design. She suggested that the timeframe would need to be extended even further to accommodate, for example, Christmas breaks.

94. She claimed in oral evidence there would need to be 76 party wall agreements. There are only 55 flats. It is unclear why party wall agreements will be needed for all flats when works are not being undertaken that will affect them all.

95. We consider that her opinion strays beyond her self-stated caution into deliberate exaggeration. An example is the basic mathematical analysis of her paragraphs at 04.06 of her report. Adding together the timeframes where she identifies any (and for the most part she does not), she gives her most optimistic and most cautious estimate for the pre-construction phase as between 30 weeks and 71 weeks. By the time she gets to her conclusion **[204]** at 06.02, this has become 12 – 18 months. She could not explain why in evidence, save that there was so much that was unknown. She also could not explain why the elements of the work could not be carried out concurrently. She says at 06.04 **[205]** that "*some of these pre-construction activities will overlap with construction activities*" but does not say what or how much difference that might make to the timetable. It is wholly unclear where she has obtained an estimated 48 – 52 months for the full project, as there is no construction phase in her report. Despite the fact that appears to have been her primary instruction at 02.02(i) **[153]**, she instead appears to have focussed all of her energies on the second question Nicholas and Co asked her on 11 July 2024 (02.03 **[154]**), after her two meetings with Mr Goodwin, which was the focus on whether the 90 days to commence 'works' was reasonable.

96. We asked the parties to confirm, in the event that we found Ms Barker to be unreliable, whether they agreed we were able to exercise our own expertise over the question of the period of time to undertake the identified works. The parties agreed. We had already suggested to Ms Barker that our experience, in particular in difficult high-risk buildings in a Building Safety context, was that the timeframes she suggested were substantially overstated. We suggested that we had experience in various cases, and Mr Gee had working experience, that would lead to a timetable significantly shorter. She made various concessions, including for example that where four weeks had been given for contacting Network Rail once it had its designs from 4 weeks to one or two days (04.06.03(xiv) **[170]**), and the formal application reduced similarly (04.06.03(xv)), key to which was that it the project was adequately resourced. Adequately resourced, she conceded, the timescales could be very substantially shorter. We asked her whether, if the agreements etc were pursued simultaneously, the timetable would also be reduced substantially. She also agreed, though she said "*I don't know what their resources are like*". She agreed that where safety was in issue she would consider proper resources a priority.

97. We reject the contention that the project at this Building is either so difficult to execute or so unique that 4 ½ years are needed for its completion. Given the scope of what the works will be, it would be entirely unreasonable (to use Ms Barker's words) to scaffold the entire Building. The site is no more

difficult than that of many high-rise buildings developed in London on infill plots. There was no acknowledgement on Ms Barker's part that some of the works have been or are being undertaken (save to make "*no comment*" on the fact that the current scaffolding has been up for far in excess of the 5 days she says is permitted by the section 106 agreement). Her report was prepared in the theoretical on the basis of everything that could go wrong going wrong, but looked for no practical solutions presented at the site for those theoretical difficulties.

98. We come back to the knowledge of the Respondent at the date the IN was given. They had been led to believe, over a period of two and a half years, that project planning had been sufficiently progressed that a works programme had been drafted and that the Appellant was tendering to market. That is in excess of even Ms Barker's most cautious estimate. In those circumstances, 90 days to commence works was neither irrational or wrong.

99. Subsequent matters that might indicate that the that 90 days remains neither irrational or wrong are that the parties are agreed that the works commenced within the stipulated period.

100. The evidence is that some physical works were started and that it has been the Appellant's deliberate choice not to progress them, not that they could not have been progressed.

101. We have very significant concerns about the want of disclosure of important documents by the Appellant.

102. Ms Barker's concern about the section 106 agreement is substantially undermined by the fact that scaffolding has been up at the Building since March 2024, and remains in place to-date.

103. We are satisfied that the timeframes given in the Respondent's IN are neither irrational nor wrong. As suggested to Ms Barker, and in light of the steps that the Appellant has not in fact denied having already taken by the date the IN was given, a total of 15 months (represented by the 90 days plus 360 days) is within the ambit of what we would have considered reasonable given the state of the Respondent's intelligence on the Building.

Conclusion

104. In the circumstances, we confirm the IN, in the terms in which the parties agreed it and specifically preserving paragraph 5 (timeframes) and Schedule 2 paragraph (2)(a). The remaining terms are those as agreed between the parties on 27 September 2024.

Name: Judge Nikki Carr **Date:** 9 October 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).