FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KC/HIN/2022/0006 & 39 and related cases**
Property	**:**	**Priory Heights, Church Street Dunstable, Bedfordshire LU5 4RQ**
Applicants	**:**	**Joanna Jones (Flat 33) and the other leaseholders listed in Schedules 1 to 3 below**
Respondents	**:**	**1. Central Bedfordshire Council** **2. Goldvalley Management Limited** **3. Priory Heights RTM Company Limited**
Type of application	**:**	**Appeals against improvement notices**
Tribunal	**:**	**Judge David Wyatt** **Mr Alan Tomlinson MRICS**
Date	**:**	**5 July 2023**

DECISION

Decisions of the tribunal

(1) The tribunal:

(a) quashes the improvement notice(s) addressed to Joanna Jones and/or Stanley William Jones relating to **Flat 33**;

(b) varies the improvement notice(s) addressed to Paul Anthony Martin and/or Qiaozhen Zhang relating to **Flat 7** by:

a. in "*Works Required*", substituting:

i. "**30 September 2023**" for "*9th June 2022*" (as the date by which the addressee(s) must begin the works specified in Schedule 2); and

ii. "**31 December 2023**" for "*6th April 2023*" (as the date by which the addressee(s) must complete those works); and

b. deleting from Schedule 2 to the improvement notice everything except the paragraphs which require **remedial work inside Flat 7 because it has been converted from a two-bedroom flat into a house in multiple occupation** (as set out in Schedule 4 to this decision);

(c) orders the First Respondent, Central Bedfordshire Council (the "**Council**") to by 2 August 2023 pay £300 to the Applicants' representatives (to reimburse the tribunal hearing fee and the tribunal application fee paid by the leaseholders of Flat 33);

(d) subject to paragraph (2) below, varies the improvement notice addressed to Gordon Reeves and/or Kay Gillian Reeves relating to **Flat A** by:

a. in "*Works Required*", substituting:

i. "**31 August 2023**" for "*9th June 2022*" (as the date by which the addressee(s) must begin the works specified in Schedule 2); and

ii. "**30 September 2023**" for "*6th April 2023*" (as the date by which the addressee(s) must complete those works); and

b. deleting the wording in Schedule 2 to the improvement notice and replacing it with: "**Replace the entrance door to Flat A with a 60-minute fire door, intumescent strips and cold smoke seals**";

(e) subject to paragraph (2) below, quashes all the improvement notices addressed to the other Applicants relating to the Property; and

(f) subject to paragraph (2) below, orders the Council to by 30 August 2023 pay a further £5,800 to the Applicants' representatives (to reimburse the tribunal application fees paid by all the other Applicants apart from the leaseholders of Flat A).

(2) This decision is immediately binding in respect of the two lead cases (the appeals by the leaseholders of Flats 7 and 33). Under rule 23 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**"), this decision will also be binding on the parties to the appeal applications made by the other Applicants against the improvement notices addressed to them in respect of the Property and stayed pending this decision (the "**related cases**") unless they apply to the tribunal (sending a copy of their application to the other parties) for

a direction under rule 23(6) **within 28 days after the date on which a copy of this decision is sent to them (or their representative)**. If such application is made, the tribunal will give directions providing for the disposal of, or further directions in, that related case.

Reasons

Property and parties

1. This case concerns fire safety and other risks at a tall building which was poorly converted from office to residential use by a developer who sold flats on long leases and then sold the freehold.

2. The Priory Heights building was originally constructed in the 1970s and known as Quadrant House. From 2003 to 2008, it was converted in stages from office to residential use. It is over 29 metres high, with nine main storeys and a smaller tenth storey. It is a single detached block. The main staircase is internal, on the south side and open to the ground floor reception area. The alternative staircase is external, on the northern end of the west side. The main staircase is near two lifts and has automatic opening vent(s). Public vehicular access to the adjoining car park for the Quadrant shopping centre is through a two-storey undercroft towards the rear of the building.

3. The building accommodates 64 flats on the ground and upper floors. The Applicants are the leaseholders of 61 of those flats. The flats were all converted as modest one or two bedroom flats, some with separate kitchens and some with combined kitchen and living areas. It appears the flats given only numbers were converted first and the remaining spaces were later converted into additional flats (such as Flats A and B on the ground floor), all with planning consent.

4. The first lead Applicant, Joanna Jones, is leaseholder of Flat 33. The sample lease provided (of Flat 33, a one-bedroom flat) provides for an initial annual rent of £200 and a service charge proportion of 1.50785%. It appears that a substantial proportion of the Applicants live in their flats (about a third of the original Applicants, described below, said they did) and the others let them to tenants. Flat 7 was said to have been converted by its leaseholders from a two-bedroom flat into a house in multiple occupation, as explained below.

5. The Council, the First Respondent, is the local housing authority. The Second Respondent is the current landlord, Goldvalley Management Limited, company number 4357117 (the "**Landlord**"). The Landlord purchased the freehold title in 2008 from Thornbush Holdings Limited (incorporated in Gibraltar), which appears to have granted all the relevant leases between 2004 and 2008 with terms of 125 years from grant.

6. In or after 2009, the Third Respondent, Priory Heights RTM Company Limited (the "**Company**"), acquired the right to manage the building under the Commonhold and Leasehold Reform Act 2002 (the "**2002 Act**"). For much of the time from 2011, Joanna Jones was the sole director of the Company. In April 2023, she resigned and was replaced by two new directors.

Procedural history

7. In April and May 2022, the Council served improvement notices on each of the leaseholders, as explained below. The original appeals against those improvement notices were made in May and June 2022 by Joanna Jones and the leaseholders of 36 other flats, identified in Schedule 1 to this decision. On 13 July 2022, the Judge extended the time for those appeals which had been received slightly late and directed the parties to provide initial information to prepare for a case management hearing ("**CMH**"). On 28 July 2022, the Council produced an initial response to the appeal. This included a note confirming that all the improvement notices were in the same terms apart from the notice served on the leaseholders of Flat 7, setting out the differences in that notice.

8. At the telephone CMH on 18 August 2022, the Applicants were represented by Mr Robert Bowker of counsel, with Claire Lyon (instructing solicitor) attending. The Council was represented by Mr Fuller of counsel, with Mr Singh (instructing solicitor) and Bethany Goodlad (environmental health officer in the Council's private sector housing team) attending. Following discussion at the hearing, the parties agreed to use the stay proposed by the Applicants to mediate and the tribunal gave directions to prepare for a hearing after that stay if they had been unable to settle. The directions provided for the appeals relating to Flats 7 and 33 to be lead cases under Rule 23 and for the other appeals to be stayed, with the decision on the lead cases to be binding in relation to all common or related issues unless the relevant parties apply to the tribunal under Rule 23(6) within 28 days of this decision being sent to them or their representatives.

9. Following a period for representations, the Landlord (under protest) and the Company (without opposition) were joined to these proceedings, but have not taken an active part in them. Unfortunately, the active parties were unable to agree arrangements for mediation, so (with various extensions of time and further directions) each prepared their cases for hearing.

10. On 23 January 2023, Setfords (the firm now representing the original Applicants) applied on behalf of the leaseholders of 22 additional flats, identified in Schedule 2 to this decision, to appeal against the improvement notices addressed to them in respect of the Property. The Council did not object and the Judge extended time for those appeals, staying them behind the lead cases on the same terms as the other related cases.

11. Pursuant to the directions, the Applicants produced the hearing bundles for this matter and an agreed bundle of authorities. Shortly before the hearing, they produced brief updating correspondence for the bundle and copy Land Registry entries for the leasehold titles.

12. On 7 June 2023, we inspected the Property. The hearing began later that morning and continued the following day. The Applicants were represented by Mr Bowker and Ms Lyon attended. Joanna Jones gave evidence, as did James Penfold, the property manager at S.R. Wood and Son, the managing agent appointed by the Company. Garry Collins (described below) gave expert evidence. The Council was represented by Miss Kellina Gannon of counsel and Miss Goodlad gave evidence, with Rachel Shalan in attendance. The other Respondents were not represented at the hearing. We are grateful to counsel and all attendees for their assistance.

13. At the hearing, we considered the third witness statement of Claire Lyon. This included an application on behalf of the leaseholders of two additional flats, identified in Schedule 3 to this decision, to appeal against the improvement notices served on them in respect of the Property. The Council helpfully did not object and the Judge extended time for those appeals, dispensing with application forms, on the undertaking from Ms Lyon to pay the application fees of £200. We understand that following a reminder these fees were paid.

General law

14. The Council contended (in essence) that, because management functions of the landlord had under the 2002 Act become functions of the Company, it could only serve improvement notices on the leaseholders. It relied on Hastings Borough Council v Braemar Developments Limited [2015] UKUT 0145 (LC).

15. The statutory framework under the Housing Act 2004 (the "**2004 Act**") and the Housing Health and Safety Rating System (the "**HHSRS**") are well known and described in Braemar at [14-18], [27] and [30]. In particular, where a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the "*most appropriate*" course of enforcement action available to them (section 5 of the 2004 Act). Where they consider that a lesser (category 2) hazard exists they have powers to take the specified types of enforcement action (section 7). In each case, such enforcement action could include an improvement notice, a prohibition order or a hazard awareness notice.

16. In exercising their duties and powers under the relevant Part (1) of the 2004 Act, the Council was required to have regard to the HHSRS Enforcement Guidance for local housing authorities dated February 2006. The elements noted below are not a summary, but have particular relevance to matters described later in this decision. The guidance refers to the need for judgement as to the necessity of

intervention (paragraph 2.2). It notes that where there is agreement to take the requisite action it might be appropriate to wait before serving a notice unless the owner fails to start the work within a reasonable time (2.18 and 2.19). It refers to the need to consider whether to offer financial assistance or advice on grant funding (2.5 and 5.11). It notes that: "*…a factor which may weigh with authorities is the control that occupiers have over their living conditions and their ability to finance and carry out remedial action*." (4.13). It suggests consideration of whether it would be appropriate to act under other legislation (4.5). In the context of variation or revocation of enforcement notices, it notes that an authority may need to make a judgement that although a notice "*…may not have been fully complied with, the hazard has ceased to be a category 1 hazard and they do not intend to take further action*." (5.10).

17. In accordance with paragraph 15(2) of Schedule 1 to the Act, the appeals against the improvement notices are to be by way of a re-hearing but may be determined having regard to matters of which the Council were unaware.

Background

18. In July 2020 the Property had been registered with the Building Safety Fund ("**BSF**"), following the recommendations in the first set of government guidance published earlier that year after the investigations into the Grenfell tragedy. The managing agents also sought specialist advice on the external staircase. Probably as part of the residential conversion works, a metal framework had been installed around the original external escape staircase and clad with dubious-looking panels. On inspection, these are a stark contrast to the largely concrete, ceramic and glazed surfaces across the exterior of the building.

19. In November 2020, while that specialist advice was being procured, a normal fire risk assessment was arranged by the managing agents and carried out by Adena. The Council criticised the lack of remedial work following this report, but their criticism was not justified. The report assessed the risk to life from fire as "*tolerable*". It noted only relatively minor housekeeping matters and indicated that the general level of compartmentation "*appeared to be reasonable*".

20. In March 2021, Fire Safe Façade Consulting produced their report on the external staircase. They warned it was clad with Trespa Meteon weather resistant high pressure laminate ("**HPL**") panels, which they considered high risk. They recommended the local Fire Service be informed and described potential options, suggesting an extended fire alarm system to support a simultaneous evacuation policy. At that time, the fire alarm system served only the communal areas; there were no linked detectors or sounders in the flats. The consultants also advised further investigations and a plan of action for remedial works.

21. It seems likely the Fire Service were duly notified, because on 24 March 2021 they wrote to the managing agents to require action in relation to such matters.

22. In April 2021, following that advice, the managing agents arranged for Adena to produce an enhanced fire risk assessment. This increased the previous risk assessment from tolerable to "*moderate*". Their short-term recommendations included work in relation to closing devices for doors, fire stopping/compartmentation on ground floor areas, changing to simultaneous evacuation and other measures, including linking the fire alarm system to a receiving centre (to call the Fire Service automatically if there is an alert).

23. The Council said remedial work had not been carried out following these reports, but again that criticism does not seem to be justified. On 23 June 2021, the Fire Service wrote to say that satisfactory progress was being made, with a further review of progress arranged for September 2021. From July 2021, the managing agents consulted and collected funds from leaseholders to extend the fire alarm system and change to simultaneous evacuation. Between September and November 2021 the system was extended into the flats, with a combined heat detector and sounder unit in each flat. It appears that in 2021 the leaseholders spent over £13,000 on fees of fire safety consultants and £35,000 or more on extending the alarm system, linking the alarm to a receiving centre and providing additional device(s) remotely linked to the system to help warn vulnerable occupiers of an alarm, as advised. It appears the BSF did not confirm eligibility for potential funding for the cladding around the external staircase or any other remedial works until October 2021 and the position then remained unclear. The new PAS9980 risk assessment standard was published in early 2022.

24. Miss Goodlad explained that since July 2021 she had been tasked by her manager with investigating Priory Heights for the Council, having been informed that the cladding on a fire escape route was unsuitable. She began by gathering information remotely. Her first inspection was on 25 November 2021, with a representative from the Fire Service. She told us that the inspection started with Flat A, which was of particular concern because it is a ground floor flat opening onto the entrance lobby/front escape route. There is no internal partition (of the type in place outside Flat B, at the rear of the building near the lifts) to separate it from the main communal area. Miss Goodlad noted that at the time some of the flats still did not have detectors and sounders installed, but it appears likely these were installed later when access was provided by the occupiers.

25. Miss Goodlad said that, following further inspections in December 2021 and January 2022, she and her colleagues concluded that fire safety problems extended beyond a small number of the flats and the cladding around the external staircase. She explained that the government funds the Joint Inspection Team ("**JIT**") of the Local Government Association to advise local authorities on fire safety in tall

buildings. She contacted the JIT, who had availability at short notice, so she booked them while they were available to inspect and advise the Council. The JIT officers inspected on 16 and 17 February 2022 with Miss Goodlad and others. They then produced a detailed report of their observations, including their HHSRS assessment at 1,252 (category 1, Band C (which ranges from 1000 to 1999)), dated 7 March 2022. Since the improvement notices repeat much of the substance of the JIT report, we do not describe it in more detail here.

26. On 25 March 2022, Miss Goodlad and her colleagues met with the managing agents to discuss their findings. They explained that the Council would be serving improvement notices to require remedial works, apart from any other enforcement action which might be taken by the Fire Service. They said they had been advised those improvement notices would have to be served on all leaseholders, not the Landlord or the Company.

27. The Council proposed a timescale of one year to complete remedial works because they believed this was "*lenient*". Miss Goodlad may have believed that was agreed at the meeting, but we are not satisfied that it was. We accept Mr Penfold's evidence that the meeting was not really a discussion, but the officers from the Council explaining what they were going to do. Miss Goodlad acknowledged that Mr Penfold had been concerned about the implications and reactions from leaseholders. She said that at the meeting she and the other officers had tried to explain this was the only course open to them. The meeting had probably taken about an hour. The Council officers had emphasised that they did not want individual leaseholders to start attempting to do work themselves to individual parts; this needed to be a joined-up response.

28. Miss Gannon pointed out that the agents had not suggested a PAS9980 assessment or proposed a different period at the meeting. We bear that in mind. However, whether or not the sole director (Joanna Jones) had been invited to the meeting, these were managing agents meeting the Council to report back to their clients. The changing standards and (then) Building Safety Bill were all new and/or uncertain on 25 March 2022. We accept Mr Penfold's evidence that at the meeting his colleague had expressed concern about funding, saying something like: "*the worry is, who is going to pay for it all*". Further, the contemporaneous note taken of the meeting by an unnamed officer of the Council makes no suggestion that the works or period had been agreed. It suggests the Council had indicated that if leaseholders were unable to arrange to carry out the works within the specified time they could approach the Council to ask them to vary the notices. Miss Goodlad told us that if the leaseholders had asked for three years to carry out the works that would have been considered.

29. Soon afterwards, on 6 and 7 April 2022, the Council served its improvement notices on the leaseholders. Miss Goodlad said that, on 7 and 8 April 2022, copies were sent to all other third parties, including

mortgagees, tenants, the Landlord, the Company and the managing agents. The Council later realised some of their notices contained errors, so they sent replacement notices to the relevant leaseholders on 6 and 10 May 2022.

30. The improvement notices are unusually lengthy, using descriptions which appear to be based on the JIT report. Schedule 2 to each notice specifies extensive works, including removal of HPL cladding panels and replacement with materials complying with current requirements, intrusive external and internal surveys of compartmentation and fire stopping, carrying out any works to remedy any defects identified, and many other matters, as summarised below. The notices required the addressees to begin these works by 9 June 2022 and complete them by 6 April 2023. Miss Goodlad confirmed that so far as she was aware the Fire Service had not taken any enforcement action relating to the Property.

Work following the improvement notices

31. Paragraph 9 of Schedule 2 to the improvement notices required the addressees to remove the existing closers for the front entrance door of each flat and replace them with an overhead hydraulic door closer. It was agreed this had been done. As noted above, work on door closers had been suggested in the 2021 report and the new closers were all installed in June 2022, on the outside of each flat entrance door, at a cost to the leaseholders of over £10,000.

32. Also in the summer of 2022, release handles were installed to the interior of all doors (apart from the rooftop door) in the external staircase, to allow anyone who had entered the staircase to return to the building. At the same time, the codes for the communal doors to access the individual floors were standardised. This work was not specified in Schedule 2 to the improvement notices, but had been prompted by the narrative in Schedule 1 to the notices. This had warned that someone entering the external staircase, having the door close behind them and then finding fire or smoke on a lower floor would be unable to escape back into the building. It had also noted the previously different access codes on different floors, which could have obstructed someone seeking to use a higher or lower floor to escape.

33. Paragraph 6 and the related paragraphs in Schedule 2 to the improvement notices required an intrusive survey of the compartmentation and fire stopping between the external walls and internal plasterboard linings, carrying out works as necessary to ensure the required level of compartmentation and fire stopping. The first sentence of paragraph 7 and the related paragraph required a similar survey of internal compartmentation and fire stopping, paying particular attention to the soil vent cupboards, electrical cupboards and the wall between the ground floor plant area and the shared lobby with Flat B.

34. Initial pre-tender support from the BSF helped the Company to procure appropriate further investigations and reports, including advice on the grant funding agreement produced by the BSF for proposed funding for remedial work. In November 2022, Tennyson Suite ("**TS**") produced a Fire Risk Appraisal of External Walls ("**FRAEW**") report under the PAS9980 guidance, based on their inspection in October 2022. In December 2022, they produced a compartmentation survey based on their inspections in October 2022 of a sample of communal areas (those thought to impact on escape areas – such as those leading to and between the flats, service riser cupboards and plant rooms) and flats.

35. The parties agreed that paragraph 6 of Schedule 2 to the improvement notices had been complied with. The FRAEW survey had been carried out and indicated no need for any further compartmentation or fire stopping between the external walls and internal plasterboard linings. They also agreed that the first sentence of paragraph 7 had been complied with, because an adequate internal compartmentation survey had been carried out.

36. Mr Penfold confirmed the cost of the survey (or one of the surveys) was about £12,000 and this was paid from the pre-tender support provided by the Building Safety Fund. On 23 November 2022, substantial pre-tender support had been approved, taking the total to just over £180,000, conditional on provision of the FRAEW report for review and other restrictions. On 21 December 2022, Mr Penfold confirmed the funding had been received and arrangements would be made to procure a project manager to arrange remedial works.

37. From 30 December 2022, Miss Goodlad arranged to meet remotely with Tom Lawrence of TS to discuss their FRAEW report. As requested, Miss Goodlad and Rachel Shalan then re-assessed their HHSRS scoring based on that report and discussion. Their reduced score was 705, Band D, category 2. Miss Goodlad said this was a: "*high category 2 hazard, due to the number of hazards, severity of risk and likelihood of harm outcomes, as well as the lack of remedial works undertaken to date by the RTM*." Their revised calculation was not produced to us. Miss Goodlad could not explain how it had been arrived at, beyond saying she and Ms Shalan had gone through with a pen and paper to assess what had changed and what risks remained or were identified in the reports, and this was definitely not a detailed three-page document of the type annexed to the JIT report.

38. In March and April 2023, the managing agents had further meetings with the BSF administrators to discuss funding for the remedial works. In May 2023, a revised version of the FRAEW report was produced to comply with additional requirements from the BSF.

39. At the hearing, it was agreed that paragraph 11 of Schedule 2 to the improvement notices (which required checks of the escape lighting in the external staircase) had been sufficiently complied with. Mr Penfold confirmed that monthly checks and any maintenance work identified

by those checks was part of the general management service. As discussed at the hearing, we do not need to be concerned with paragraph 12 of Schedule 2 to the improvement notices because it simply makes the obvious point that any controlled works need to be submitted to the Building Control department at the Council.

Remaining work

40. We examine below each of the remaining categories of work specified in the improvement notice.

Replace HPL cladding around external staircase

41. Paragraph 1 requires removal of the HPL cladding from the "*external walls of the building*" and replacement in accordance with current building regulations, ensuring associated cavity barriers and fire stopping is provided as required by those regulations. It was agreed that the focus of this paragraph had reduced to the cladding around the external staircase. The FRAEW survey had shown that the other external wall areas identified in the JIT report were not a concern (because, for example, they were coloured film over Georgian wired glass, or ceramic), except possibly for what Miss Goodlad said was a "*tiny amount on the corner of the ground floor*". It was also agreed that the related paragraphs 2-5 of Schedule 2 are not required because there was no proposal to retain the existing HPL cladding and the other paragraphs do not add anything of substance to paragraph 1.

42. The FRAEW report identifies as "*life safety critical*" matters the need to replace the HPL panels around the external staircase, with separation from the rest of the building, and replacement of a ventilated timber wall surface around the refuse bin storage area.

43. Mr Collins of Managed Fire Solutions Ltd worked as a fire safety engineer for TS and had produced an expert report in accordance with the case management directions. His expertise was not challenged. Nor, largely, was his evidence. Despite warnings, the Council did not produce any expert evidence of their own. Mr Herrick of the JIT had produced a witness statement which appears consistent with the JIT report, but did not attend the hearing or produce an expert report. Mr Collins has a long list of fire safety qualifications and worked in the Fire Service for 31 years, rising to Head of Fire Protection at West Sussex Fire and Rescue Service. He had inspected the building the day before the hearing. He agreed removal and replacement of the HPL cladding around the external staircase was reasonably necessary and this was a category 2 hazard. He agreed that if the HPL panels were involved in a fire they would contribute to the spread of flames across the exterior and would obviously jeopardise this second means of escape.

44. However, he pointed out the non-combustible construction of the exterior walls of the building and in particular the fact that this is an alternative staircase. A second staircase is required because the corridors are longer than would normally be served by a single staircase

(more than nine metres), but the HPL cladding is around that alternative escape staircase. His opinion was that the alarms and other measures now throughout the building would give occupiers early warning and allow them to escape safely in good time using their usual route, the large concrete staircase at the front of the building. The housekeeping in the building is very good, with clear accessways.

45. If the HPL cladding caught fire it would spread up that cladding around the external staircase. It would probably have limited impact on the rest of the building, given the concrete and ceramic surfaces of the adjoining walls and the likelihood that the HPL panels would degrade, delaminate and fall away. The Luton and Bedfordshire fire station is full time, would be automatically notified of an alarm by the receiving centre and is less than five minutes away. There is good general firefighting access. The detached nature of the block and areas around it would allow a ladder to any platform. The dry riser in the building serves all the floors, enabling the Fire Service to use their own pump at ground level to get water to any floor.

46. Mr Collins did not dispute that it was not possible to return to the roof from the top floor of the external staircase because no internal release had been installed in the top door. Someone who had entered the external staircase from the roof area and had the door close behind them would need to descend a floor to use the release on any of the lower floors to re-enter the building. He also accepted that the first floor did not have direct access to the external escape staircase. He said the latter would add six seconds longer to evacuate (using the main staircase) and in the current circumstances this was a tolerable level of additional risk. He opined that it might take between 16 and 18 weeks to complete the remedial works to the external staircase. That time estimate was subject to potential delays for contractors, materials and statutory requirements, and assumed funding was in place.

47. We accept Mr Penfold's evidence that given the height of the building the cost of the works in relation to the external staircase is likely to be more than a preliminary estimate obtained at an earlier stage (£200,000 plus costs of removal, professional fees and the like), but less than the "*benchmark*" of £1,500,333 excluding VAT (which we understand includes the £180,039.96 already paid for pre-tender support) recorded by the BSF administrators for potential remedial costs in relation to the building.

48. For the following reasons, we are satisfied that, although these works need to be arranged and carried out as soon as possible, it would not be appropriate (at least as matters stand) to use improvement notices to seek to compel the leaseholders to carry them out.

49. First, we accept Mr Collins' evidence. He was careful to emphasise that the staircase needs to be remedied, but the features and location of the building and the risk mitigation work carried out so far (as summarised above) make this less urgent than might otherwise be expected.

50. Second, while we make no specific findings about this, we accept Mr Bowker's submission that the effect of Part 5 of and Schedule 8 to the 2022 Act may well be that the cost of these works would not be recoverable from most, or at least some, of the leaseholders under their leases. Miss Gannon said that under section 72 of the 2022 Act the Landlord is not an accountable person where their repairing obligations in relation to the common parts are a function of an RTM company. But that is for the purpose of Part 4 of the 2022 Act, not the remediation and leaseholder protection provisions in Part 5 and Schedule 8. As to those, this is a relevant building and the conversion works were carried out within the relevant 30-year period. It is difficult to see why the remedial works would not be service charges in respect of a relevant measure relating to a relevant defect. It appears at least some of the leases will be qualifying leases; some leaseholders live in their flats and it is unlikely that all the other leaseholders will own more than two other dwellings. As matters stand, all of them may be treated as qualifying leases, since there is no indication the Landlord has sought the requisite qualifying lease certificates from them (paragraph 13 of Schedule 8).

51. If these works fall within the definition of cladding remediation under paragraph 8 of Schedule 8, no service charge is payable under a qualifying lease in respect of them. To the extent they do not:

    (a) the contribution condition in paragraph 3 of Schedule 8 may have been met, at least for now, because in January 2023 Joanna Jones had sent a request to the Landlord for a landlord's certificate and despite a follow-up in March 2023 none had been provided (paragraph 14 of Schedule 8);

    (b) it appears likely that the value of most of the leases would at the qualifying time have been less than £175,000. By paragraph 4 of Schedule 8, no service charge is payable under a qualifying lease with a value below that threshold in respect of a relevant measure relating to any relevant defect. Mr Bowker took us through a range of examples, using the multipliers prescribed for this purpose in the Building Safety (Leaseholder Protections) (England) Regulations 2022. The relevant sample values were all between £96,330 and £171,250 except for the top floor flat, which at £223,146 appears to be above the threshold; and

    (c) even for that top floor flat and any others above the threshold, the total relevant service charge under a qualifying lease would by paragraph 5 of Schedule 8 be capped at £10,000. By paragraph 7, that would be capped at £1,000 per year, so would not provide advance funding even if £10,000 was payable by each leaseholder and even if that would be sufficient for all the relevant remedial works. We note that the Homes England benchmark cost figure (mentioned above) is more than twice what that would amount to.

52. Third, we do not agree with the Council's interpretation (or application) of paragraph 4 of Schedule 1 to the 2004 Act or the decision in Braemar. Paragraph 4 applies where any specified premises in the case of an improvement notice are common parts of a building containing one or more flats or any part of such a building which does not consist of residential premises. It provides that the local housing authority must serve the notice on a person who is an owner of the specified premises and ought to take the action specified in the notice. For these purposes a person is an owner of any common parts of a building if they are: "*…an owner of the building or part of the building concerned, or (in the case of external common parts) of the particular premises in which the common parts are comprised.*" (para. 4(3)).

53. The Council made no case to explain why the cladding around the staircase did not fall within "*external common parts*". In any event, as Mr Bowker pointed out, the relevant parts of the decision in Braemar are obiter (not part of the binding reasons for the decision, which was concerned with a house in multiple occupation). They are only giving general guidance, as one of the parties in that case had requested. They refer to the definition in section 262 of the 2004 Act of "*owner*" [57], noting that an RTM company cannot be the recipient of an improvement notice because it is not an owner. They indicate that the freeholder and/or some or all of the leaseholders might properly be the recipients of an improvement notice in relation to common parts, depending on who ought to take the actions specified in the notice.

54. These paragraphs in Braemar simply suggest that where the freeholder is precluded from carrying out work except by cumbersome methods because an RTM company manages the building, the better course "*would seem*" to be to direct any improvement notice at the leaseholders who are members of the RTM company and so collectively in a position to exercise control over it. Reasons for saying that are at [59]: "*In the ordinary case the RTM company will be in a position both to carry out the necessary works and to recoup the expense of doing so from those who, by the terms of their leases, have agreed to bear that expense.*"

55. As Mr Bowker pointed out, the improvement notices are drafted in terms which require each leaseholder to carry out the works. There is no reference to the collective response the Council said they were trying to achieve. We had no evidence of membership of the Company.

56. Moreover, the Council made no case to explain how the Company could collect the requisite funds. The Council had not adequately considered funding in the first place. After the relevant parts of the 2022 Act came into force (in the summer of 2022, soon after the improvement notices were served), it became unlikely that the Company could expect to recover sufficient funds from leaseholders through the service charge, as explained above. We asked whether the Council was saying funds could be raised with a call to members of the Company. Miss Gannon said that was the Council's case, but we were taken to nothing in the

articles of association of the Company or company law which might enable such a call. Article 1 has the standard limitation of the liability of members to £1.

57. If an improvement notice became appropriate for the relevant work, it is not clear why it could not be served on the Landlord alone if, for example, the Company agreed a workable scheme for the Landlord to procure the work. Further, following the creation in the 2022 Act of mechanisms designed to deal with precisely this type of building, it is not clear why an application against the Landlord for a remediation order and/or the Landlord and/or others for a remediation contribution order could not be an appropriate course of action, if enforcement action is needed.

58. We do not make adverse findings about the Landlord. We did not hear from them because they did not take an active part in these proceedings. However, it seems likely that the freehold has some value and generates some income. There are substantial telecommunications masts and equipment, including extensive cabling and a plant room, taking up much of the free space on the roof. This is likely to be generating rent or licence fee income for the Landlord, as is the ground floor electricity substation. Mr Penfold explained that the managing agents are often asked to arrange access for engineers but receive no contribution from the Landlord towards their management fees or costs. Ground rents are payable under the leases. Those leases only have about 100 years unexpired, giving obvious potential for the freeholder to benefit from premiums for lease extensions - at least after the current problems with the building are resolved.

59. Ultimately, even if it could be appropriate to serve improvement notices on the leaseholders (personally, or to seek to procure the works by the Company, alone or at the same time as the Landlord), we consider that it would not be appropriate to do so in relation to the external staircase without allowing them more time to pursue their application to the BSF and take any other appropriate steps to seek to secure any other funding.

60. The BSF was established to fund (or forward fund) such work. The leaseholder protection provisions in the 2022 Act ensure that many leaseholders will not have to contribute towards the cost of such work and the other leaseholders cannot be asked to make up the shortfall. We accept that the managing agents have been endeavouring to pursue their BSF application as quickly as possible. It is obvious from the correspondence in the bundles that (even now the standards, funding criteria and forms of funding agreement are clearer) this is a difficult and highly administrative exercise taking up a huge amount of time in itself. It is not realistic to expect a managing agent to deal with all of this. The BSF administrators have already recognised that, appointing a client supporting advisor (Mott MacDonald) to help them make progress and seek to procure a suitable project manager.

61. The Company and leaseholders now have the clarity they needed that, unfortunately, internal compartmentation works will not be funded by the BSF unless they can be shown to mitigate the need for external works. That is not the case here, so they do not need to seek to procure these works at the same time.

62. We would like to see a specialist construction project manager being appointed. It appears they could, using the pre-tender support funding, enable more efficient engagement with the BSF and planning and procurement of the works. Mr Penfold agreed and said by way of example that before procurement of the project manager could proceed he had been asked by the BSF to complete a further questionnaire, this time explaining how the Company would seek to recover any funding from the developer or other third parties. The BSF would then decide whether they would fund the two items identified in the FRAEW report as life safety critical (the external staircase cladding and the timber surface around the bin store, as described above) and so whether to allow the pre-tender support funds to be used for the fees of a project manager to plan and procure such work.

Interior compartmentation work

63. The second sentence of paragraph 7 of Schedule 2 follows on from the requirement for the survey of (internal) compartmentation and fire stopping (paying particular attention to the soil vent cupboards, electrical cupboards and the wall between the ground floor plant area and the shared lobby with Flat B). It requires the carrying out of all works necessary to ensure compartmentation and fire stopping in accordance with the approved document B. The Council could not explain the concluding words: "*Ensure all points highlighted in paragraphs 10.2 to 10.7 and appendix four have been addressed*". These were probably intended to refer to the JIT report, although the Council did not show it had sent that report to the leaseholders with the improvement notices.

64. The work sought is consistent with the findings of the TS reports, which refer above "*tolerable*" risk to firestopping issues to compartmentation between flats, escape routes and electrical/riser cupboards. The compartmentation survey describes various specific issues. The Applicants had arranged for 15 additional wireless detectors for the fire alarm system to be installed in all but one of the riser cupboards, at a cost of £2,580 plus VAT. We saw examples of these when we inspected and Mr Penfold confirmed they had been installed in December 2022.

65. Mr Collins agreed the remaining work was reasonably necessary and should take 8-10 weeks, subject to the same qualifications as summarised above. However, he considered this was not urgent because the defects would not significantly contribute to major spread of fire, given the nature of the construction of the substance of the building (other than the specific cladding areas identified above).

66. When we inspected, we asked Miss Goodlad to point out any areas where she was particularly concerned about the compartmentation. She took us to the ground floor plant room area, showing us cable and other penetrations. We noted communal fire alarm detectors in the area and the largely brick and concrete surrounding surfaces. Miss Goodlad had already indicated that her main concern was the first floor riser cupboards. These had more penetrations through the floor and ceiling levels than on the upper floors, with extensive cabling and soil pipes, and the riser with cabling did not have a detector installed in it.

67. We are satisfied that, although these internal firestopping works should be arranged, it would not be appropriate (as matters stand) to use improvement notices to seek to compel the leaseholders to carry them out. That is largely for the same reasons as those described above in relation to the external staircase cladding. In particular:

    (a) We accept the evidence of Mr Collins. When we asked about the first floor riser cupboards, he explained his opinion that the penetrations are relatively minor and into a "*sterile*" shaft. There was nothing in the shaft which would burn, or burn sufficiently to bring fire upwards through the space. He contrasted this with the example of lack of firestopping between a living room and kitchen, which can be a serious concern because there will often be substantial combustible material to transmit fire. He described the firestopping issues in this building as relatively minor contraventions. They were breaches of compartmentation but of the type which may be found in most buildings and were not significant potential contributors to major fire spread. Appropriate detectors had been installed in all the relevant voids except one and there was a detector in the communal corridor outside that void.

    (b) There is a real prospect that service charges for these works would not be recoverable from most or many of the leaseholders, or would be capped, as a result of the relevant provisions of the 2022 Act (as explained above). We had no real estimates of the potential costs of the remaining firestopping works, but we accept the Applicant's undisputed assertion that part of these may cost about £80,000 and work in the communal risers alone would cost more than £20,000. The considerations about the BSF are not the same, because they have now confirmed they will not fund these types of work. But it was reasonable for the managing agents to have spent time attempting to claim BSF funding whilst arranging installation of the additional detectors. Now they know other sources of funding will be needed, they should be allowed time to investigate this and discuss with the Council whether (for example) to consider an application for a remediation contribution order and/or ask leaseholders what further work they may be prepared to provide advance funding for voluntarily to improve fire safety as soon as possible.

(c) In the interim, we would like to see at least an additional detector installed in the single remaining void. It may also, for example, be sensible to look at whether there is sufficient funding for the firestopping in the first floor riser cupboards to be remedied first, before any other work is planned. However, we are not satisfied that enforcement action should be taken to compel this without giving an opportunity for the leaseholders to address any such items which deserve a higher priority and any further work voluntarily. They have already funded and carried out substantial risk mitigation work, before and after the improvement notices.

Communal doors and front door to Flat A

68. Paragraph 8 of Schedule 2 requires professional examination of all common fire doors, including doors to corridors, service cupboards, staircase lobbies and landings, ensuring the defects identified in "*schedule 1 (Observations/Internal/Fire doors) above … and appendix two have been covered*." It requires overhaul or replacement of any defective fire doors and door sets, replacing any missing cold smoke seals and intumescent strips, with gaps of no more than 4mm between doors and frames. Those items listed in appendix two which have not already been addressed include the electronic locking mechanism and opening direction of the front doors (Schedule 1 notes: "*…the numbers of people will be relatively low…*"), gaps around communal doors and several communal doors which did not fully self-close.

69. Paragraph 10 requires replacement of the entrance door to flat A with a 60-minute fire door, intumescent strips and cold smoke seals. It required the door to open inwards, not out into the "corridor", and be closed fully by the self-closing device. Under the terms of the sample lease provided, flat doors and frames are included in the premises demised to the leaseholder.

70. It was agreed that none of this work (other than the specified hydraulic overhead self-closing device, which had already been fitted to the existing door to Flat A) had been done or costed yet and that it was reasonably required. Mr Collins agreed that the entrance door to Flat A should be replaced with a 60 minute fire door, since it opens into the ground floor lobby area between the main staircase and front entrance. He estimated that one to two weeks would be enough to procure the materials and fit them. He said it was not necessary for the door to be changed to swing inwards.

71. Mr Collins accepted that the other work to check and resolve deficiencies in the common fire doors was reasonably required, because these doors are critical to preventing spread of smoke and flame. He estimated it would take 18-20 weeks to carry out the requisite checks and works, subject to the same qualifications as before. However, his opinion was that this work was not urgently needed because lack of it would not significantly contribute to major fire spread.

72. We accept his evidence, which was consistent with our inspection and observations above about the other features of the building. Flat A opens directly into the lobby area between the main staircase and the front door, which is particularly important while the alternative escape staircase remains compromised. However, the lobby area is wide and unobstructed, as are the corridors and other access areas.

73. No serious issues with the communal fire doors were obvious in the sample we saw, or were pointed out to us on inspection. Apart from the potential for changes to the entrance doors, the specified works may at least partly be matters of repair and maintenance. The doors should be inspected and any remedial work should be carried out, but again we are not satisfied that enforcement action should be taken at this stage without giving an opportunity for the Company and leaseholders to seek to arrange this voluntarily as part of their next stages of works.

74. Accordingly, on the evidence produced to us in these lead cases, we would in relation to the paragraphs requiring work on doors uphold only the improvement notice addressed to the leaseholders of Flat A and only to the extent that it requires upgrading of the fire door and the seals between it and the door frame, as set out at the start of this decision. We have allowed above a reasonable margin of error beyond the times suggested by Mr Collins to ensure that the leaseholders of Flat A have plenty of time to arrange this work and co-ordinate timing with the occupiers (we were told that Flat A is let).

Guarding for glazed panels at the ends of corridors

75. The last paragraph of Schedule 2 requires either guarding or replacement of the glazing below 1.2m with a surface which complies with the relevant Building Regulations. At the ends of the corridors, an opening window has a restrictor fitted but the fixed lower glazed panel (which may be the original from the 1970s) is not safety glass, with the risk that someone could fall over and through the glass. Miss Goodlad and/or Ms Shalan had assessed a risk score of 670, Band D, category 2.

76. Mr Penfold explained that guarding had been procured and installed in 2022, but residents had then asked that it be removed because children had been climbing up the guarding to look out of the windows. When we inspected, the guarding had been removed. Miss Goodlad fairly acknowledged that the Council's decision on whether to serve an improvement notice in relation to this hazard would depend on what other defects there were in the relevant premises.

77. It was not disputed that this problem needs to be resolved. There was nothing to indicate that the reasonable costs of doing so would not be recoverable from leaseholders through the service charge. While remedial works need to be arranged, it appears these lower glazing panels have been contrary to Building Regulations for a long time. In view of the efforts made (albeit unsuccessfully) to guard against the risk of falls through the lower panes of glass and the other circumstances

summarised above, we are not satisfied that enforcement action should be taken at this stage without giving an opportunity for the Company and leaseholders to arrange alternative remedial action voluntarily within a reasonable time.

Internal works to Flat 7

78. The Council said that Flat 7 had been converted by its leaseholders from a two-bedroom flat into a house in multiple occupation, subdividing the kitchen and living room to create a third bedroom. They said it was occupied by four people. They describe in Schedule 1 to the relevant improvement notice specific defects relating to the interior of Flat 7.

79. The additional remedial work specified in Schedule 2 to the relevant improvement notice is reproduced in Schedule 4 to this decision, but in summary it requires:

    (a) fire protection around a soil pipe in the utility cupboard where it penetrates ceiling and floor;

    (b) a mains-powered interlinked fire alarm system to minimum specified requirements;

    (c) providing a protected escape route for the occupiers who would have to pass through the kitchen to escape from their bedroom, by constructing a partition wall and fire door or installing a water-mist sprinkler system (or implementing a different design agreed with the Council);

    (d) new 30-minute fire doors to each of the bedrooms and living space;

    (e) replacement of the front door locks with thumb-turn controls; and

    (f) fire separation around the soil pipe in the washing machine/hot water cylinder cupboard in the bathroom.

80. The leaseholders of Flat 7 made no case to dispute any of the alleged defects or suggest that it was not appropriate to make an improvement notice to require them to carry out any of the specified works. We were not given access to the interior of Flat 7 when we inspected.

81. We accept the evidence of the Council in relation to these matters. We are satisfied that we should uphold the relevant improvement notice to the extent that it requires these works to the interior of Flat 7. The works specified by the Council appear thorough, but this was already a modest two-bedroom flat which has been converted into a house in multiple occupation. In the circumstances, robust protective measures appear appropriate, especially given the additional risks in this building as matter stand. In case the specified works have not already been

carried out, we have allowed until the end of September for work to start and until the end of the year for all the work to be completed, to ensure that the leaseholders have plenty of time to arrange this with their contractors and the occupiers.

Costs

82. The tribunal is generally not a costs-shifting jurisdiction. However, under Rule 13(2), we have a discretion to order a party to reimburse the whole or part of any tribunal fee paid by another party.

83. Miss Gannon submitted that each party should bear their own costs. We do understand why the Council was concerned about this building. It would have appeared particularly troubling on inspection, before the further work carried out after the JIT report and improvement notices. The Council had a duty to act because a category 1 hazard had been identified. They were also co-operative in relation to the many very late appeals from leaseholders. We have upheld specific parts of two of the 61 appealed improvement notices.

84. However, the Council does not appear to have followed the Enforcement Guidance. They did not adequately consider how such substantial works might be funded or whether there were alternatives to an immediate improvement notice or more severe enforcement action. They appear to have decided that given the apparent risks if the cost was too high and could not quickly be funded a prohibition order would have to be imposed. They then scaled up the type of approach which might be taken in a "normal" improvement notice case to one which was excessive. The decision to serve these lengthy improvement notices on each leaseholder may have been based on advice but it was wrong. The obvious immediate effect was that the leaseholders would have to incur thousands of pounds just in tribunal application fees if they wished to appeal. This was a difficult situation, but the Council should have taken any necessary specialist advice on and sought to agree a phased plan of action with the leaseholders, considering whether this would enable them to (for example) serve a hazard awareness notice in the first instance and review at suitable stages whether further enforcement action was required.

85. Later in 2022, the approach being taken to this type of high risk building under the BSF criteria and the 2022 Act clarified what was expected to be funded (or advance funded) by the BSF and the position of landlords and leaseholders. Further, the 2022 Act gave alternative means of enforcement action against landlords and developers. Even if we ignore all of that, the Council ought to have reviewed their position when the further risk mitigation works had been carried out and they had agreed this was now a category 2 hazard, so they had discretion as to whether to take any enforcement action at all. Because they failed to do so, a large number of the other leaseholders appealed against the improvement notices addressed to them, incurring additional tribunal application fees. Further, all the Applicants will have incurred far more

on legal fees preparing for and attending the hearing, which would have been better spent on further remedial works (even if some legal and expert fees would have been incurred in any event to enable work, prioritisation and timing to be agreed with the Council).

86. In the circumstances, the Council should reimburse the whole of the application fee and the hearing fee paid by the leaseholder of Flat 33, but not the application fee paid by the leaseholders of Flat 7. Subject to any application under Rule 23(6), the Council should reimburse the whole of the application fees paid by all the other Applicants apart from the leaseholders of Flat A.

Name: Judge David Wyatt **Date:** 5 July 2023

Schedule 1 – original Applicants

Flat No.	Date of Lease	Title Number	Name of Leaseholder
3	24.03.2005	BD243025	Karen Patricia Winters
4	03.09.2004	BD240223	Paul Anthony Law and Lesley Jane Law
6	01.12.2004	BD241396	Susan Marylyn Trewin
7	29.10.2004	BD240638	Paul Anthony Martin and Qiaozhen Zhang
9	03.09.2004	BD239794	Kay Parker
10	30.11.2005	BD246803	John David Cardiff
12	03.09.2004	BD239795	Warren Gould
14	03.09.2004	BD239811	Terence Rex George Warner and Linda Elizabeth Warner
17	22.03.2005	BD243092	Julia Anne Gibbins
18	29.10.2004	BD240637	Susan Marks
19	03.09.2004	BD239796	Alan Geoffrey Ainge and Carol Ainge
20	04.07.2005	BD245971	Sotirios Zerikiotis
22	06.09.2004	BD239918	Lestock Edward Charles Livingston Learmonth
23	18.02.2005	BD242774	Ioannis Pritsioulis Stamoulakis and Vasoliki Stamoulakis
24	24.03.2005	BD243026	Vyvienne Susan Penelope Eyles
26	03.09.2004	BD240055	Michael John King
29	03.09.2004	BD240025	Denis Francis O'Sullivan and Hema O'Sullivan
31	03.09.2004	BD240088	Nicola Alexandra Darragh-Cassidy
32	03.09.2004	BD240089	Edward Martin Taggart and Juliette Anne Taggart
33	27.10.2004	BD240806	Stanley William Jones and Joanna Elizabeth Jones

35	03.09.2004	BD239917	Philip John McClean and Stella An McClean
37 (also 38)	03.09.2004	BD240026	Rosalind Althea Coverdale and Lestock Edward Livingstone-Learmonth
38 (also 37)	03.09.2004	BD240027	Rosalind Althea Coverdale and Lestock Edward Livingstone-Learmonth
39	21.03.2005	BD243023	Michael John Appleton
40	03.09.2004	BD240087	Ajmal Hussain
43	03.09.2004	BD240612	Reverend Richard Charles Henry Franklin and Anne Lloyd Franklin
44	08.04.2005	BD243803	Kenneth William John Harrall
45	30.11.2004	BD241543	Alan Paul Bates
46	03.09.2004	BD239830	Stephanos Petinos Dickson and Katie Louise Margaret Dickson
47	03.09.2004	BD240119	Helen Michael
48	03.09.2004	BD239797	Nigel Anthony Cropp
49	03.09.2004	BD239995	Danny Stephen John Ribbans and Maria Ribbans
52	03.09.2004	BD240146	Thomas William Williams
55	03.09.2004	BD239916	Tomasz Mariusz Dziwak and Magdalena Katarzyna Sewerynska
58	03.09.2004	BD240053	Timothy Conway Payne and Isabell Therese Payne
2A	06.04.2005	BD243840	Dalia Sabri
A	24.01.2008	BD262524	Gordon Reeves and Kay Gillian Reeves

Schedule 2 – Applicants added in January 2023

Flat	Lease	Title	Name of Leaseholder
5	11.05.2011	BD243462	Lauren Georgia Allsop
8	17.01.2005	BD241609	Philip David Wood
11	31.01.2005	BD241828	Nafeesa Khalid and Hayder Ali Chowdrey
15	13.01.2005	BD241542	Kerthana Shivani Prakash
16	07.10.2004	BD240057	Roy Palmer
21	24.04.2005	BD243126	Mr Agron Sulaj
25	29.09.2004	BD239887	Neil Frank Dudley and Natacha Audrey Dudley
27	12.04.2004	BD240118	Merle San Pedro Loja
28	05.05.2005	BD243328	Cathie Murphy
30	03.11.2004	BD240497	Dr Smita Jagsi
34	23.09.2004	BD239792	Mr Christopher David Fleming
36	23.06.2005	BD244094	Richard Stephen Jenkins and Katarzyna Justyna

41	28.10.2004	BD240424	Juliet Elizabeth Hicks
42	14.10.2004	BD240176	Mark Joslyn Scarlet
50	04.05.2005	BD243266	Desmond Paul Murphy
51	06.04.2004	BD240028	Joelle Fielder
53	25.10.2004	BD240352	James Inkster and Tammie Lynne Sanders
54	06.10.2004	BD240029	Jonathan Peter Welch
57	07.10.2004	BD240056	Anthony Martin Turner and Malcolm Turner
59	01.10.2004	BD239943	John Joseph Rason and Laraine Sally Rason
60	24.01.2005	BD241731	Dr Smita Jagsi
61	21.01.2005	BD241731	Erin Lynch

Schedule 3 – Applicants added at the hearing

Flat	Lease	Title	Name of Leaseholder
1A	23.09.2004	BD241051	Richard Evans and Shirley Anne Evans
2	28.09.2004	BD241674	Iyabode Obatoyinbo

Schedule 4 – Paragraphs in Flat 7 improvement notice requiring remedial work inside Flat 7 (references to "case officer" are to the officer at the Council)

1. Ensure the soil vent pipe in the utility cupboard (accessed from the bathroom) in flat 7 is protected in 60-minute fire resisting materials or is provided with adequate fire collars where it penetrates the concrete ceiling and floor.

2. Install a mains-powered, interlinked fire alarm system compliant with BS EN 14604:2005 and installed in accordance with BS 5839-6: 2013, Grade D, Category LD2. The system must comprise (as a minimum): smoke alarms in the hallway, bedrooms and any living room and a heat alarm in the kitchen. The system must incorporate an integral rechargeable standby power supply, or each detector must be fitted with long life, (10 year) lithium battery cells. The alarms must be mains-wired, but wireless interlinking is acceptable. The system must be connected to an independent circuit at the main electrical distribution board of the house and all wiring must comply with current IEE regulations. On completion of the installation obtain and submit to the Council a commissioning certificate in accordance with Annex F of BS 5839-6: 2019.

3. In the event of a fire the occupants of one bedroom would be required to pass through the kitchen (a 'risk room') to exit the property. Provide adequate means of escape in case of fire by carrying out one of the following works:

Option 1 – Construct protected route

Construct a partition wall in the kitchen/living area to separate the escape route from the kitchen for the occupants of the inner room. The partition must be of 30-minute fire resistant construction and must meet the following standard:
1) Form a timber stud partition using 50mm x 70mm softwood studs fixed at 600mm centres;
2) Supply and fix 12.5mm plasterboard (or similar approved material) to both faces of a timber stud partition using 40mm galvanised nails spaced at not more than 150mm centres; and
3) Scrim all joints and apply a 5mm plaster coat to give a smooth surface.
4) Install a 30-minute fire door as detailed below:

Provide and install a newly manufactured fire door and frames in the new partition opening onto the hall so as to provide 30-minute fire-resisting construction and to satisfy the requirements of BS 476: Part 22: 1987 and BS 476-31-1:1983. The door must be installed to satisfy the requirements of BS 8214: 2016 as set out below:
1) Fitted with three (3) plain steel butt hinges of not less than 100mm x 75mm.
2) Fitted with heat activated intumescent seals and cold smoke seals.
3) Fitted with a self-closing device (preferably of the overhead hydraulic type) manufactured to satisfy the requirements of BS EN 1154:1997.
4) The self-closing device must be capable of closing the door positively onto the latch, or, where a latch is not required, of holding the door closed for not less than 30 minutes.
5) The gap between the door edge and door lining (or frame) must be not more than 4mm.
6) All hinges and latch parts necessary for holding the door in place during a fire shall have a melting point in excess of 800°C and comply with BS 8214: 2016 and BS EN 12209: 2003.
7) Where there are gaps between the door lining and the surrounding construction all voids must be filled using fire stopping material.
8) Where glazing is incorporated into fire doors, 6mm Georgian-wired glass or fire-resistant glazing is to be used. The glazing must be fixed according to BS 476 Parts 20-23.
9) Any locks in doors opening onto the escape route, and final exit doors, shall be capable of being opened from the inside without the use of a key.

Option 2 – Install a sprinkler system
Install an active water-based fire suppression system. The system design is to be a 'Total Compartment Application System' designed to discharge water mist to protect the kitchen/living area in entirety. In the event of a fire the system must be capable of automatic detection and activation via a linked heat alarm or via a heat sensitive 'break glass' sensor. The system can either be connected to the mains water supply, (subject to satisfactory water pressure), or can be self-contained in an adequately sized water storage vessel.

Where an alternative scheme can achieve the same objective, the Case Officer should be notified in order that a suitable alternative can be agreed.

4. Provide newly manufactured fire doors to each of the bedrooms and the living space opening on to the hallway/escape route so as to provide 30-minute fire-resisting construction and to satisfy the requirements of BS 476: Part 22: 1987 and BS 476-31-1:1983. The doors and frames must be installed to satisfy the requirements of BS 8214: 2014 as set out below:

(1) Fitted with three (3) plain steel butt hinges of not less than 100mm x 75mm.
(2) Fitted with heat activated intumescent strips and cold smoke seals.
(3) Fitted with a self-closing device (preferably of the overhead hydraulic type) manufactured to satisfy the requirements of BS EN 1154:1997.
(4) The self-closing device must be capable of closing the door positively onto the latch, or, where a latch is not required, of holding the door closed for not less than 30 minutes.
(5) The gap between the door edge and door lining (or frame) must be not more than 4mm.
(6) All hinges and latch parts necessary for holding the door in place during a fire shall have a melting point in excess of 800°C and comply with BS 8214: 2014 and BS EN 12209: 2016.
(7) Where there are gaps between the door lining and the surrounding construction
all voids must be filled using fire stopping material.
(8) Where glazing is incorporated into a fire door, 6mm Georgian-wired glass or fire resistant glazing is to be used. The glazing must be fixed according to BS 476 Parts 20-23.
(9) Any locks in doors opening onto the escape route, and final exit doors, shall be capable of being opened from the inside without the use of a key.

5. Replace the front door key locks with a lock incorporating a thumb-turn on the internal face of the door.

Main exit doors should meet the security requirements of Building Regulations Approved Document Q, and be fitted with:

Multi-point locks meeting the requirements of PAS 8621: 2011

6. Reinstate the plasterboard in the washing machine/hot water cylinder cupboard located in the bathroom. This provides fire separation to the soil pipe. Ensure that 30 minutes fire resistance is achieved with 12.mm plasterboard that is sealed and skimmed.

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).