



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case reference** : **LON/00AG/HIN/2022/0019**

**Property** : **4 Star Yard, London, WC2A 2JL**

**Applicant** : **Raingate Limited**

**Representative** : **Ranjit Bhose KC  
Wedlake Bell LLP**

**Respondent/Council** : **London Borough of Camden**

**Representative** : **Archie Maddan, counsel**

**Type of application** : **Appeal in respect of an Improvement  
Notice.**

**Tribunal** : **Judge Siobhan McGrath  
Helen Bowers MRICS  
Fiona McCleod MCIEH**

**Date of Decision** : **20<sup>th</sup> March 2024**

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**DECISION**

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## **Introduction**

1. This is an appeal against an improvement notice which had been served under section 12 of the Housing Act 2004 (the Act). The issues in the case are of importance as they involve consideration of the impact of the incidence of ACM cladding to a building in the assessment of risk under the Housing Health and Safety Rating System (HHSRS).
2. The improvement notice relates to residential premises contained within two mixed use buildings (the property), known as Nos.79-86 Chancery Lane which are connected by a four-storey high link bridge. The property includes 5 residential flats located on the first floor which have a dedicated entrance and are known as 4 Star Yard, London, WC2A 2JL.
3. The appellant, Raingate Limited, is the freeholder of the buildings. The respondents are the London Borough of Camden. At the hearing of the appeal Raingate was represented by Ranjit Bhowse KC and Camden were represented by Archie Maddan of counsel. Oral evidence was given on behalf of Camden by Iain Clark who is a Principal Environmental Health Officer for the council. On behalf of Raingate, evidence was given by Dr Stephen Battersby an independent Environmental Health Officer and by Diego Alves of Black Cat Consultancy who is a civil and structural engineer.
4. In brief summary, the basis of the appeal is that Raingate contend that the service of a formal Improvement Notice was unnecessary and that it would have been sufficient for the council to have served an advisory Hazard Awareness Notice instead.

## **The Housing Health and Safety Rating System**

5. The HHSRS was introduced by the Housing Act 2004 (the 2004 Act) as the system to be adopted by Environmental Health Officers (EHOs) to evaluate potential risks to the health and safety of occupiers in dwellings which have been caused by deficiencies in the property which are assessed by using objective criteria. The purpose of HHSRS is to ensure that residential

premises provide a safe and healthy environment for any actual or potential occupier or visitor. In order to satisfy the criteria, a dwelling should be designed, constructed and maintained with non-hazardous materials and should be free from both unnecessary and avoidable hazards.

6. Part 1 of the 2004 Act equips local housing authorities with powers to inspect and, where deemed necessary, take action to compel the owner to remedy defects. Risks can be categorised as either Category 1 or Category 2 hazards. Where it has been decided that remedial action is required to address the defects, an EHO may serve an Improvement Notice, a Prohibition Order, a Hazard Awareness Notice or they may take emergency action.
7. The detail of the system is considered later in this decision but broadly speaking the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2006/3208) prescribe a method for calculating the seriousness of hazards which take into account both the likelihood of harm occurring and its severity should it occur.
8. The role of the EHO therefore is pivotal. The legislation gives the EHO the responsibility of making judgements about hazards and the risks created by the hazards on behalf of a local authority. Having made such a judgement, the EHO then must make an assessment of the best course of action to mitigate the risks. The EHO acts as the authorised officer of the council. The council's duty under the Act is contained in section 3 they "must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them". The various 'actions' that are available are set out under a number of provisions in the Act, and Part 9 of the Housing Act 1985 (demolition orders and slum clearance).

### **The Factual Background**

9. The property at 4 Star Yard forms part of larger premises spread over two buildings. The buildings are connected by a four-storey high link bridge over a pedestrian alleyway known as Chichester Rents. The main use of the buildings is as commercial premises. The building is arranged over 6 storeys plus a

basement and the height of the building is said at its maximum, to be 18 metres, although that is not agreed by the parties. The main buildings are of traditional historic build. The bridge comprises glazed elevations, and (it is now known) Category 3 ACM cladding with PIR insulation to the window surrounds on these elevations and to the soffit of the link bridge at first floor level. The glazing and cladding were installed as part of a refurbishment programme in or about 2014, although the link bridge was a pre-existing structure. The fifth floor of the bridge is clad in zinc.

10. Only the first floor contains residential accommodation. There are five flats which are partly in the south building and the 1<sup>st</sup> floor of the linking bridge. Otherwise the premises are used as legal chambers and retail outlets including cafes, a gym and a nightclub/bar.
11. Following the Grenfell Tower Fire in June 2017, the Government were concerned to ensure that as far as possible the safety of occupiers in high-rise properties was addressed. Therefore, local authorities were asked to identify and actively ensure that all building owners of high-rise residential buildings with potentially unsafe cladding were taking appropriate measures to guarantee their buildings were safe and that residents felt safe.
12. Of particular concern was the impact of aluminium composite material (ACM) cladding when used in high rise buildings. In May 2018, the Minister for Housing Communities and Local Government(MHCLG), gave a direction to local authorities under section 3 of the 2004 Act requiring them to pay particular regard to the Department's consolidated advice on ACM cladding and to take appropriate steps to identify buildings over 18 metres with ACM and to notify MHCLG of such buildings and to take all necessary enforcement action.
13. Pursuant to this direction, Camden was in correspondence with owners and managers of buildings of that description within the borough. In 2021, contact was made with Mr Alan Belding who is the facilities director for Yorke Property Management Limited which is responsible for the management of 4

Star Yard. Mr Clarke who, as mentioned, is a principal EHO for Camden, dealt with this property. In September 2021, Mr Belding submitted a web form to provide information about the building. This confirmed that the building was above 18 meters and it also included information from the “as built” drawings from Deepdale who had been the sub-contractors responsible for all the relevant cladding. The information provided confirmed that elements included aluminium composite panels and also surmised that the insulation may include Kingspan K15, Celotex fr 500 and Xtratherm PIR.

14. On 7<sup>th</sup> October 2021 after meeting at the property Mr Belding provided Mr Clark with copies of the Deepdale drawings. Following this exchange, Mr Clark emailed Mr Belding advising him that that someone should be engaged to carry out a proper investigation of the property to fully advise on the potential fire risk etc. He said that the most immediate concern was to establish what type of ACM material was in place and the extent of its use. He then referred Mr Belding to government guidance on how to access free testing and provided a list of companies from whom reports had previously be seen by Camden. That list included by Black Cat Building Consultancy and Tri Fire Limited.

15. On 20<sup>th</sup> October 2021 Mr Belding emailed Mr Clark to let him know that he had issued the plans and architects commentary to two of the companies on the list with a view to getting a fee proposal. On 6<sup>th</sup> December Mr Alves of Black Cat Building Consultancy attended the building and carried out a visual inspection from which he was able to say that his initial impression was that ACM was present and likely to be widespread to the “bridge” over Chichester Rents.

16. On 7<sup>th</sup> December 2021, Mr Clark and Sean O’Keefe from the London Fire Brigade met with Mr Belding at the property. Following that meeting Mr Clark emailed as follows:

“As set out in my email of 7<sup>th</sup> October below, the priority should be to establish the materials in use on the bridge and their extent. If it is ACM this should be tested through the BRE testing programme to establish what Category this falls into, and advice should be taken on

what interim measures may be necessary until any final remediation can take place. You advised that the occupiers would be informed that the residential parts would change from a 'stay put' strategy to a 'simultaneous evacuation' strategy, and I therefore attach guidance from the NFCC which may be helpful in relation to the residential parts.

It is a concern that there has been little progress in identifying the materials over the last two months. Given that the risks from the bridge are potentially so high, priority should be given to this matter. Please could you keep us updated with progress into the investigation, and advise of the date of any survey etc.

Please note that some companies may take a considerable time between carrying out a survey and issuing a formal written report giving full details. Given the potential risks at this building, it would be appropriate to ask that if any higher risks are identified, these are communicated to you more quickly.”

17. After the meeting on 7<sup>th</sup> December, Mr Belding had also emailed Mr O’Keefe to say that Mr Alves had confirmed that there was ACM panelling at the building and that he (Mr Alves) was speaking with his fire engineer to assess and review the fire strategy for the building along with the Fire Risk Assessment. He also stated that he had asked their fire alarm service provider for the cost to install sounders within each flat to ensure a 75 Db sound level.
18. On the 21<sup>st</sup> of January 2022, Mr Alves carried out a further inspection of the buildings with Mr Belding and Alan and Ansoy Ltd (façade contractor) in attendance. On 31<sup>st</sup> January Mr Alves wrote to Mr Clark as follows:

“The inspection showed that in my professional opinion and experience on these materials, both the cladding is indisputably ACM and so is the PIR insulation. The insulation is not expanded polystyrene (EPS) as

reported elsewhere. Both materials are as shown in *Deepdale's* construction drawings.

I have taken the view that testing of the ACM is not necessary and is quite academic since there is no doubt of its composition, i.e. containing polyethylene (PE) which is the combustible element of the *Vitrabond* ACM product. However, I have taken a sample of the ACM which is in my possession should there be any dispute of its provenance.”

19. On 11<sup>th</sup> February 2022, Mr Belding forwarded Mr Clark a copy of the Black Cat Cladding Assessment Report where Mr Alves advised that the surface area of the link bridge that were clad in ACM was relatively small and that in the event of a fire, its contribution to a fire load was considered to be low. He concluded that no further remedial action was required. He also advised that an updated fire risk assessment was required and that it should include a strategy for the management of the fire risk to the occupants of the residential apartments.
20. On the same day Mr Clark replied to Mr Belding stating that he did not think the report was satisfactory nor that the conclusions were sound. He pointed out that no classification of the ACM had been given and that there was minimal information in the report on the actual opening up for the purpose of inspection. Amongst other matters he observed that although the ACM was a small percentage of the façade of the whole property, it formed a significant percentage of the two of the flats. In subsequent correspondence with DLUHC, Mr Alves confirmed on 17<sup>th</sup> February 2022 that the ACM was a Category 3 product.
21. On 5<sup>th</sup> May 2022, Mr Belding emailed Mr Clark enclosing a further copy of the Black Cat report together with copies of two documents both prepared by RPS consultants. The first was a Cladding Review dated 6<sup>th</sup> April 2022 and the second was a Fire Risk Assessment also dated 6<sup>th</sup> April 2022.

22. The conclusion in the Cladding Review which had been prepared by the Principal Consultant James Baines was that:

“The Façade condition report has identified that the cladding would present a low risk of combustion due to the PIR insulation being flammable but not being able to support combustion and would only char in the event of a fire on the external areas. The residential accommodation is further protected by the installation of fire curtains to the openings provided on the Clad elevations, which operate upon the activation of the office development automatic fire alarm and detection system.”

23. Mr Baines considered the façade assessment report provided by Black Cat Consultancy and the current fire risk assessment to be suitable and sufficient for the risks presented. The Fire Risk Assessment also prepared by Mr Baines found that the fire precautions provided for the building was suitable and sufficient for the building occupancy and use.

24. Mr Clarke considered the reports but was concerned that the walls had not in his view been properly investigated and he said that he could not understand how the conclusions in the Black Cat report had been reached. On 11<sup>th</sup> May 2022 he served a notice under section 235 of the Act requiring Raingate to provide a number of documents. On the on 27<sup>th</sup> May, Mr Belding responded providing various documents.

25. In response Mr Clarke informed Mr Belding that the council would carry out an inspection of the property. There followed an exchange of emails culminating in the service of a section 239 notice of intention to inspect the premises which was served on the owner and on the residential occupiers. On 4<sup>th</sup> July 2022 Mr Clarke and another EHO, Liam McIntyre, inspected the exterior of the property and each of the five residential flats.



26. On 21<sup>st</sup> July 2022, Mr Clarke emailed the London Fire Brigade in accordance with section 10 of the 2004 Act, to consult with his proposal to serve an Improvement Notice on Raingate. The action was agreed.
27. The improvement notice served on Raingate is dated 15<sup>th</sup> August 2022. On 26<sup>th</sup> August 2022, Raingate lodged its appeal against the notice with the Tribunal.

### **The assessment of hazards**

28. Part 1 of the Act provides for a system of assessing the condition of residential premises and for that system to be used in the enforcement of housing standards. The system operates by reference to the existence of hazards which may be assessed as being category 1 or category 2 hazards.
29. If a local housing authority is satisfied that relevant hazards exists then enforcement action can include the service of an improvement, the imposition of a prohibition order, the service of a hazard awareness notice or emergency action.
30. "Hazard," as defined by section 2 means: "any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)."
31. The categorisation of a hazard depends upon its being of a prescribed description falling within a prescribed band. Which band a hazard will fall within is the result of the attribution of a numerical score under a prescribed method for calculating the hazard's seriousness. More serious hazards are category 1 and less serious hazards are category 2.
32. The assessment of the numerical score and therefore the severity of a hazard is carried out by local authority EHOs who use the methodology prescribed by

the Housing Health and Safety Rating System (England) Regulations 2005 (the Regulations).

33. Section 9 provides for the giving of guidance to authorities in the exercise of their functions. The relevant guidance is:

- (1) The Housing Health and Rating System Operating Guidance (“Operating Guidance”), dated February 2006;
- (2) An Addendum to the Operating Guidance ‘for the hazard of fire and in relation to cladding systems on high rise residential buildings’ and
- (3) The Housing Health and Safety Rating System Enforcement Guidance, dated February 2006

34. It is the Regulations that prescribe the descriptions of category 1 and category 2 hazards and the method for calculating their seriousness by establishing a numerical score.

35. Regulation 2 defines “harm” as harm which is within any of the Classes I to IV in schedule 2 to the regulations. The Schedule provides that Class I harm is “such extreme harm as is reasonably foreseeable as a result of the hazard in question, including “death from any cause” and “80% burn injuries”. Class II harm is “severe harm” (including, for example, “serious burns”). Class III harm is “serious harm” (including, for example, “severe burns to hands”). Class IV is “moderate harm”.

36. Regulation 3 provides that a hazard is of a prescribed description for the purposes of the Act where the risk of harm is associated with any of the matters or circumstances listed in the schedule to the regulations. Paragraph 24 of the schedule prescribes “Exposure to uncontrolled fire and associated smoke.”

37. Where the EHO determines that a hazard exists and considers that it is appropriate to calculate its seriousness then regulation 6 sets out how to do

so. The process was summarised by the President in *Bristol City Council v Aldford Two LLP* [2011] UKUT 130 (LC) at [18-22] as follows:

18. The numerical score for a hazard is reached in a number of steps prescribed by regulation 6. First the inspector is required to assess the likelihood, during the period of 12 months beginning with the date of assessment, of a relevant occupier suffering any harm as the result of that hazard as falling within one of a range of 16 ratios of likelihood that are set out. For each range there is also set out a representative scale point of range (L, as it is called in a formula that later falls to be applied). Thus, for instance, in the range of ratios of likelihood between 1 in 4200 and 1 in 2400 the representative scale point of range is stated to be 3200.

19. Who is a “relevant occupier” is defined in regulation 6(7) by reference to particular matters contained in Schedule 1. For paragraph 2 (Excess cold) the relevant occupier is an occupier aged 65 years or over.

20. The second step requires the inspector to assess which of the four classes of harm a relevant occupier is most likely to suffer. Thirdly he must assess the possibility of each of the three other classes of harm occurring as a result of that hazard, as falling within a range of percentages of possibility. For each range there is also set out a representative scale point of the percentage range (RSPPR). Thus, for instance, for the range 0.15% to 0.3% the RSPPR is 0.2%.

21. Step four requires the inspector to bring the total of RSPPRs for the four classes up to 100%. To do this he adds the percentages of the three RSPPRs he has reached at step three, takes the total away from 100% and attributes what is left to the class of harm that he assessed to be most likely to occur.

22. Step five is the production of a numerical score for the seriousness of the hazard for each of the four classes of harm. For each of these, L (see paragraph 22 above) is multiplied by the RSPPR and then by a further factor, which weights the seriousness of the classes of harm. This factor is 10000 for Class I, 1000 for Class II, 300 for Class III and 10 for Class IV. The final step is to add the four individual numerical scores to produce the numerical score that can be related to the prescribed bands.”

38. Regulation 7 prescribes bands of hazards from A to J on the basis of a range of numerical scores. Regulation 8 provides that a hazard falling within band A, B or C is a category 1 hazard and that a hazard falling within any other band is a category 2 hazard. A category 2 hazard includes the 7 different bands, from D to J, with D (numerical score 500 to 999) being the most serious and J (numerical score 9 or less) being the least serious.

### **Enforcement Action**

39. By section 5 of the Act, if a local housing authority consider that a category 1 hazard exists then they *must* take enforcement action. If they consider that a category 2 hazard exists then they have a *power* rather than a duty to take enforcement action. However, it should be noted that it is permissible for an authority to decide not to take any enforcement action in respect of a category 2 hazard: *Liverpool CC v Kassim* [2011] UKUT 169 (LC) at [33]. In this case we are concerned with a category 2 hazard. Section 7 provides that where the authority has taken one kind of enforcement action in respect of a category 2 hazard, that does not prevent them from taking the same kind of action again or from taking a different kind of enforcement action in relation to the hazard “where they consider that the action taken by them so far has not proved satisfactory.”

40. Section 8 requires the authority to give reasons for taking enforcement action. They must prepare a statement of the reasons for the decision and those

reasons must say “why the authority decided to take the relevant action rather than any other kind (or kinds) of enforcement action available to them...”

41. Section 12 deals with improvement notices relating to category 2 hazards (section 11 deals with improvement notices for category 1 hazards). So far as relevant:

“(1) If–

(a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

the authority may serve an improvement notice under this section in respect of the hazard.

(2) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsection (3) and section 13.

(3) Subsections (3) and (4) of section 11 apply to an improvement notice under this section as they apply to one under that section....”

42. So far as relevant the effect of section 11(3) and (4) is that an improvement notice may not require remedial action to be taken in relation to the “external common parts” of a building that are “not included in any residential premises on which the hazard exists” unless the authority is satisfied (a) that the deficiency from which the hazard arises is situated there and (b) that it is “necessary” for the action to be taken in order to protect the health or safety of any actual or potential occupier of the flats: section 11(4). “External common parts” are defined by section 1(5) and include the “structure and exterior of the building” that are “outside it”.

43. Hazard Awareness Notices (HANs) relating to category 2 hazards are dealt with in section 29 of the Act. HANs are advisory and do not require the recipient to take any action. There is no statutory right of appeal against the service of an HAN.

## **The Improvement Notice**

44. The Improvement Notice in this case is dated 15<sup>th</sup> August 2022. It states that the council is satisfied that the Hazard of Fire (Category 2, Band D) exists at the property and that the most appropriate course of action was considered to be the service of the Improvement Notice.

45. The reasons for the classification of the hazard and service of the notice were stated to be the seriousness of the hazard and the numbers of people affected and Mr Clarke's conclusions were:

- (a) That "although the owner and manager of the building have known about the presence of ACM on the external walls of the building since at least September 2021, there has been little progress in investigating the materials used in and the build up of the wall systems including ACM and curtain walling system, and the risk arising from these."
- (b) That "generally the building is otherwise well managed and in good repair, however automatic fire detection systems and smoke control systems are inadequate for the increased risk."
- (c) That "although the building has formally changed to a simultaneous evacuation strategy, occupiers are not clear what this involves and there is insufficient AFD to support simultaneous evacuation."
- (d) And that: "the owner and manger have confirmed they do not intend to carry out any further investigation to establish the risk or any remediation works. The Authority cannot be confident that the building manager is able to identify risks or implement suitable control measures".
- (e) That no other course of action was appropriate.

46. Later in these reasons we will give our view on Mr Clarke's decision but it is worth stating now that, for the avoidance of doubt, we do not regard Raingate or Mr Belding to have been deliberately obstructive or slow in dealing with this matter.

47. Schedule 1 to the Notice sets out Mr Clarke's detailed view of the nature of the hazard and the deficiencies. In summary these include the following:

- (a) *External Wall Systems* – that there is limited information about the external wall systems. Despite the cladding survey carried out by Black Cat and the Cladding Assessment Report from February 2022, “the report of this survey gives minimal information about the survey, what was examined and how, the composition of the wall, the materials used, build up etc.”
- (b) The Bridge is clad with ACM which is fixed to the east and west vertical elevations from the 1<sup>st</sup> to the 5<sup>th</sup> (top storey) including around the large windows of the Kitchen/Dining/Living Rooms of flats 2 and 3 and projection “cheeks” close to curtain walling on Chichester Rents. ACM is fixed to the underside of the projecting floor slabs at all levels on a horizontal plane, forming a continuous run from the underside of Flats 2 and 3 to the top storey of the building.
- (c) The location, depth and extent of cavities has not been established or the presence and adequacy of cavity barriers. The full range of materials or fire performance used within the ACM system has not been established. The make up of the inner leaf of the external wall behind the ACM cladding system within the flats had not been established, including the thickness of plasterboard etc. The curtain walling system used on the Chichester Rents elevation of the residential storey had not been established.
- (d) Due to the continuous position of the ACM cladding “if any part of the cladding was to catch fire it would be likely to spread vertically upwards, downwards and horizontally (including along the underside of the first-floor slab...”
- (e) *Evacuation Policy* – although the change in evacuation policy from stay put to simultaneous evacuation had been communicated to the occupiers, during inspection there was no signage displayed in the residential common parts. There was uncertainty about the policy amongst the occupiers.

- (f) *The Automatic Fire Detection (AFD) system* - No detectors or alarms were provided in bedrooms or rooms with openings adjacent to the ACM wall system or the curtain wall system so that no early alarm would be given if combustible materials were alight within the external wall and flame, smoke or toxic gases were entering the bedrooms. The AFD system was inadequate. Although the system would usually be appropriate for rented properties it was not suitable where there was increased risk. I. The AFD system within flats 2 and 3 (which form the lower storey of the linking bridge) were not linked to the Fire Curtain.
- (g) *Fire Risk Assessment* – the Fire Risk Assessment provided by Andrew James of RPS Group in April 2022 was inadequate. In particular it noted the presence of ACM cladding and PIR insulation being adjacent to the residential flats but made no recommendations in relation to this or other wall systems.
- (h) *Smoke Control* – there was automatic smoke ventilation to the central lobby section only and the layout and design of the residential corridor escape route is such that there the ability to clear smoke from the majority of the escape route was limited.
- (i) *Inner Rooms and Escape Windows* – one of the 2 bedrooms in flat 1 is an inner bedroom and it would be necessary to pass through the kitchen/living room to escape. The bedroom is not fitted with a smoke detector or a sounder and although the door is substantial and of fire resisting construction, it does not have intumescent strips or cold smoke seals. In mitigation the bedroom is on the first floor with openable windows large enough to use to escape. For flat 5 the layout was such that the escape route led past the cooking facilities. Like flat 1, the bedroom is not fitted with a smoke detector or a sounder and although the door is substantial and of fire resisting construction, it does not have intumescent strips or cold smoke seals The flat is on the first floor and the window in the bedroom was large enough to support escape but the opening was limited by a lockable restrictor and blocked by a large headboard. The window in the living room was obstructed with a decorative stone feature.
- (j) *Fire Stopping of penetrations* – generally fire stopping and compartmentation appeared to be good.



(k) *Factors affecting risk positively* – residential occupancy is low, all flats are on the 1<sup>st</sup> floor with good access for firefighting and rescue. At the bottom of the single staircase the escape route leads in 2 directions with a fairly good degree of protection from fire. Flat entrance and doors in the common parts are in good order and of the correct standard. There is AFD and emergency lighting within the escape route. The building is in single management. Flats 1 and 5 have only traditional materials on their external walls. Compartmentation is good.

48. Schedule 2 to the Notice sets out the remedial works and other actions required. The mitigations in the Notice are expressed in the alternative. The first was the replacement of combustible materials in the external walls to the property and in particular the removal of category 2 and category 3 ACM cladding. The Notice required Raingate to confirm within 4 months of the notice that the action would be taken, to provide a proposed outline of the actions to be taken with estimated timescales including preparatory works, obtaining permissions, appointing a project team and contractors, agreeing design and specification of replacement materials and the start and duration of the works on site. The alternative action was to provide evidence of the fire safety of the external walls. It was said that such evidence may include a successful BR135 classification or where that could not be provided to engage a competent person to carry out a full Fire Risk Appraisal of the External Walls (FRAERW) carried out in accordance with PAS 9980:2022, or with a similar scope and methodology and to provide a full copy of the report to the Council. The notice goes on to describe the investigations and appraisals required.

### **The Tribunal's Approach to Appeals**

49. Schedule 1 to the Act makes provision for a person who has been served with an improvement notice to appeal. Paragraph 10 gives an unconditional right of appeal but paragraphs 11 and 12 makes specific provision for particular grounds of appeal. Paragraph 12 deals with cases where an appeal is made on

the ground that a different course of action in respect of the defects was, in fact, the best course of action.

50. By paragraph 15(2) of the schedule an appeal is to be by way of a re-hearing but “may be determined having regard to matters of which the authority were unaware.” On appeal a tribunal may confirm, quash or vary the improvement notice.

51. In *Waltham Forest LBC v Hussain* [2023] EWCA Civ 733, the Court of Appeal was concerned with the proper approach to an appeal from decisions under Part 3 of the Act (selective licensing), and the interpretation of paragraph 34(2) to Schedule 5 of the Act. It held, materially, that:

(1) The tribunal’s task is to decide whether the decision under appeal was “wrong” at the time when it was made. “Wrong” means a decision with which the tribunal disagrees.

(2) The fact that the tribunal is empowered by the proviso to consider “matters” that were not known to the housing authority when it made its decision is an indication that the tribunal must make up its own mind on the question before it but these are restricted to “matters which tend to show that the local housing authority’s decision was right or wrong at the time when it was made.”.

(3) In deciding whether the decision under appeal is “wrong” the tribunal “must pay careful attention to the reasons why the authority reached the decision that it did. It must afford the decision under appeal weight.

52. There is no material difference between the wordings of paragraph 34(2) to Schedule 5 of the Act, and of paragraph 15 to Schedule 1. The parties agreed that the general approach in *Hussain* applies in the instant case and the Tribunal endorses that view.

53. At the hearing we asked counsel to address the question of whether the Tribunal should assess the question of what is the “best course of action” at the date of the improvement notice or at the date of the hearing. Both Mr

Bhose and Mr Madden agreed that the relevant date was the date of the notice otherwise the effect would be to undermine the principles of *Hussain*. The Tribunal agrees and observed that if, in fact, that remedy was no longer appropriate because of a change in circumstances since the date of the improvement notice it would be open to a local authority to vary the notice either of its own initiative or in response to a request by the recipient. Alternatively, it would be open to the local authority to withdraw the notice and either take no further action or to take a different course of action.

### **Expert Evidence**

54. At the outset Mr Bhose observed that Mr Clark was not being called as an expert witness and that in fact, it would have been impossible to do so as, he submitted, Mr Clark lacked independence as he was defending his own exercise of judgement in the HHSRS assessment and his decision on the best course of action. Despite this, he said, Mr Clark had made three witness statements all of which were replete with expressions of opinion. He therefore submitted that whilst the strict rules of evidence do not apply in the Tribunal, there are still rules that must be followed and witnesses of fact may not give expert evidence. Accordingly, that opinion evidence was both irrelevant and inadmissible.
55. In response Mr Madden submitted that EHOs routinely give evidence in respect of their decisions in cases before the Tribunal. That evidence is evidence of fact. Mr Clark is in no different position and although he may not be treated as an expert witness, he is a qualified professional public servant. The Tribunal is capable of disregarding an expression of opinion if it goes beyond what is permissible. It goes too far to say that his evidence is inadmissible. He submitted that Mr Clark has to explain how and why he made the decision in this case because that decision sits in a factual landscape.
56. The Tribunal agreed with Mr Madden. It's task in dealing with cases under the Housing Act 2004 or indeed the Housing and Planning Act 2016 would be impossible unless the evidence of EHOs could be fully considered and tested.

It would be an unsatisfactory approach to scrutinise each of Mr Clark's comments to determine whether it was an expression of fact or opinion. EHOs before the Tribunal will be mindful of the limits of the evidence they can give and how it will be treated by the Tribunal. EHOs are public servants with training and a culture of impartiality. The Tribunal is capable of distinguishing between a factual description and justification and expert evidence. We therefore declined to make the ruling sought by Mr Bhowse.

57. There was also some discussion about Mr Alves' competence to comment on other expert reports and whether his evidence in that respect should be excluded. The Tribunal rejected any such proposition. The Tribunal is well able to measure the weight of expert evidence and whether in any respects it strays outside of the expert witness's area of knowledge and expertise.

## **The Issues**

### *HHSRS Assessment – likelihood of occurrence.*

58. It is worth reminding ourselves that the likelihood of an occurrence is a question posed under the HHSRS system and is very specific: the EHO must assess the likelihood, during the period of 12 months beginning with the date of the assessment, of a relevant occupier suffering any harm as the result of that hazard as falling within one of a range of 16 ratios of likelihood. As already indicated, this is a value judgement rather than an exact science.

59. The hazard of fire relates to the threat from exposure to uncontrolled fire and associated smoke at a dwelling. Following the Grenfell Tower fire an addendum for the profile for the hazard of fire and in relation to cladding systems on high rise residential buildings was issued. The current advice on ACM cladding is summarised at paragraph 2.0 and includes the following:

“The expert panel does not believe that any wall system containing an ACM category 3 cladding panel, even when combined with limited

combustibility insulation material would meet current Building Regulations on buildings over 18m”

60. At paragraph 5.0, it is recognised that “An HHSRS inspection in relation to fire will be non-intrusive and so it will not be possible to confirm whether some deficiencies exist .... And a rating is likely to be provisional pending either detailed testing or a copy of relevant information, such as an up-to-date testing report.... As part of the inspection surveyors should ask to see relevant information such as up-to-date reports or certificates of any testing as the cladding should only be considered not to be a deficiency where there is sufficient supporting evidence.”

61. At paragraph 10, which deals with preventative measures and the ideal it is stated that:

“The MHCLG Expert Panel’s advice following large scale testing is that ACM with an unmodified polyethylene filler or core (category 3 in screening tests) with any type of insulation presents a significant hazard on buildings over 18m. The issue of partial cladding, such as decorative panels has also been addressed in MHCLG advice to building owners which said that “the clearest way to ensure the safety of residents is to remove all ACM, including small or partial areas of ACM, and replace it with a safe material. This remains the most appropriate remediation solution.”

62. Mr Clark is a Principal EHO in the Private Sector Housing Team at Camden. He holds a BSc in Environmental Health and has been an EHO since 2010. He is lead officer for the council for dealing with privately owned High Rise Residential Buildings with fire safety issues. He has undertaken a number of short courses to help him deal with this area of challenge.

63. We have already set out Mr Clark’s reasons for the Improvement Notice, additionally the Tribunal were given a copy of Mr Clark’s notes headed “Justification of Likelihood.” These state as follows:

“ACM is highly combustible and in combination with PIR insulation and cavities, if fire reaches any part of the ACM system it is likely to spread to all parts of the system. The location of ACM on the lowest level of the ‘bridge’ forming over the walkway with café premises beneath increases likelihood of fire entering the cladding system, or fire breaking out of an office or residential premises from a window junction, leading to rapid spread of flame and toxic smoke from combustible insulation and other materials entering residential premises. The ability of either the ACM or curtain walling wall system to resist the spread of flame, smoke and toxic products of combustion is not known. As well as physical harm arising from smoke and flame, the worry of knowing there is contestable material on the walls of your home is likely to give rise to increased levels of psychological harm over a 12 month period. Therefore there is a significantly increased likelihood of harm arising occupiers of the five flats over a 12 month period.

The location of the residential premises on the first floor reduces risk of the most serious harms compared to a typical building; however the possibility of rapid spread of fire across external walls across compartments before the arrival of firefighters and the presence of combustible insulation on the walls of residential parts which is likely to release toxic smoke increases the chance of Class 1 and 2 harms occurring compared to a typical block of flats without these deficiencies mental health effects are likely to lead to an increase in Class 3 harms in particular.”

64. In Mr Clark’s assessment, he increased the likelihood, during the period of 12 months beginning with the date of the assessment, of a relevant occupier suffering any harm as a result of that hazard” from the range of 1 to 2157 (with a representative scale point (RSP) within the range of ratios of likelihood “1 in 130 to 1 in 75,” the (RSP being 100) He explained this increase in the likelihood of harm by the increased potential for rapid fire spread due to the

various wall systems, toxic fumes and smoke and the escape route being compromised. Additionally, he considered the psychological harm arising from knowing there is combustible material on the walls of your home. In his assessment, he also adjusted the spread of harms in the Class II and III categories, citing the additional toxic fumes likely in a fire and the risk of psychological harm.

65. At the time of reaching this conclusion Mr Clark had seen the Black Cat Cladding Assessment Report, undertaken by Mr Alves as well as the April 2022 RPS Cladding Review and the Fire Risk Assessment. However, he considered that these reports were unsatisfactory, and that Mr Alves could not comprehensively comment on the ACM unless he had investigated all parts which he had not. It was Mr Clark's view that Mr Alves' conclusions were wrong and that it was imperative to understand the construction of the internal leaf of the external wall. This evidence echoed the reasons given in the improvement notice where Mr Clark variously said that "the actual makeup of the wall behind the ACM has not been established or investigated" and that "the curtain walling system used on the Chichester Rents elevation of the residential storey has not been established or investigated" and "the make up (and therefore combustibility) of the inner leaf of the external wall behind the curtain walling system within the flats has not been established" and "the build up and finishing of the join between the ACM system and the curtain walling system has not be investigated."

66. Mr Clark was also critical of the other reports, both in his reasoning in the Improvement Notice and in his evidence, where he said were parts of reports were cut and pasted from other reports and the evidence in the building itself had not been sufficiently considered. In particular, he said that Mr Kiziak had not shown that he was qualified to deal with the particular problems of fire safety.

67. The Operating Guidance addendum identifies three elements in the causes of fire: first the ignition of fire, second the design, materials and maintenance of the building and finally the qualify of the means of escape.

68. So far as the ignition of fire is concerned, it was put to Mr Clark and contended that there was very little risk of fire in this particular building. The common parts were well managed and there was no evidence of open flame cooking in the cafes on or close to the site. Although the most likely source of ignition for fire was the residential premises, there were sufficient mitigations. Mr Clark did not accept that the chances of a fire igniting were nugatory.
69. Mr Clark was also critical of the evacuation policy and available signage which he considered to be inadequate. He was concerned that occupiers may run towards the fire and indeed one of the escape routes led occupiers underneath the cladding itself. He considered that the Automatic Fire Detection (AFD) was inadequate for the risk, although it is worth noting that this has been improved since August 2022.
70. In deciding on the spread of harms, Mr Clark had taken into account the effect of ACM cladding on the mental health of the occupiers. It was put to him that this was an error and that the approach could not be accommodated under the operating guidance either as originally drafted or as a result of the addendum. In particular, it was said, relevant harm relates to harm caused by a fire rather than anticipated harm were a fire to occur. The Tribunal pointed out that a fire had occurred in that the impact on mental health resulted from the harm seen to have been caused by the Grenfell Tower Fire but it was submitted that as the operating guidance was presently drafted, that could still not be a relevant factor.
71. Mr Clark's conclusion on the spread of harms was that adjustments should be made from the average in both Class II and III to reflect the serious risk of harm from additional toxic fumes likely in a fire, and the risk of psychological harm. At the same time he did not adjust the most serious Class I because of the location of the residential flats on the first floor.



72. Mr Alves is a structural engineer who for the past 30 years has been a property façade consultant. The Tribunal had no doubt that Mr Alves has a high level of expertise in façade assessment.
73. As we have seen it was Mr Alves' conclusion that the cladding would present a low risk of combustion in particular because of the nature of the PIR insulation which he said will combust until the fire is removed and then will char. He also said that he had spent a great deal of time looking at the building. He said that the glazing was safety glass, that the inner leaf between the commercial and residential comprised two layers of plasterboard on both sides, giving four layers in total. He stated that the wall beneath the windows was not an "inner leaf". The link bridge is on a concrete slab that continues beneath the bridge. There is a screed over the concrete of 50-60 mm depth and then the finish cover. He said that the presence of the slab avoids the need for cavity barriers as it goes all the way under the bridge. However, this information was not as a result of his own investigation but was taken from the design as built plans.
74. In response to cross examination Mr Alves confirmed that there had been no intrusive investigation of the outer walls and agreed that there was nothing in his report about glass and that the information about the frames came from the detailed drawings which he said was sufficient as it was the only way that it could have been constructed. In his view that soffit under the bridge would be the same as the flank walls in his experience and that Deepdale, the developers, have a good reputation.
75. It was Mr Alves view that given the amount of ACM cladding, by the time any fire took hold the occupiers will have evacuated the building.
76. Mr Alves also said that he could now see the argument for further investigation but that was not his view at the time of the report. Finally, he said that since the Grenfell Tower fire he had been involved in advising on residential properties throughout England and Scotland. During that time he had recommended the removal of cladding in virtually 100% of residential

properties. In this case he said that the building was essentially commercial with a small element of residential.

77. Dr Stephen Battersby has been an EHO since 1974 and has extensive experience of assessing housing conditions. He was an associate of the Safe and Healthy Housing Unit at Warwick University and was part of the team responsible for the design of the HHSRS. He was responsible for developing the training package for local authority officers on the HHSRS and delivered that training from 2005 to 2018. He was employed as a consultant to RHE Global to develop the 2018 Addendum to the HHSRS Operating Guidance and he prepared associated Worked Examples.

78. Dr Battersby's report is dated 13<sup>th</sup> July 2023. One of the actions he was instructed to take was to carry out his own HHSRS assessment of the property both as at August 2022 (when the notice was served), and as at July 2023.

79. His conclusion in relation to the Common Parts as at August 2022 was that taking all of the factors listed in schedule 1 of the notice into account and using the other information available from the documentation he assessed the likelihood to be 1 in 560 (representing a range of between 1 in 420 and 1 in 750). His justification is as follows:

“In my opinion having regard to the published worked examples and the Operating Guidance as well as the Addendum, the likelihood of a fire that could cause harm to a member of the vulnerable age group is increased from the average by about three times due to the presence of ACM to some external parts of the building plus some disrepair (displaced gaskets to the cladding). There are also some unknowns such as the combustibility of the inner leaf of the external wall behind the curtain walling system within the flats and, indeed, the fire grading of glazing. The FRA and other statements refer to the passageway (Chichester Rents) being locked through the night; refuse storage being adequate; controlled access to the building; and a 24-hour security for the offices. The evidence provided to me by the Applicant is

that little is cooked in the Pret a Manger on the ground floor. Thus in my opinion there is little opportunity for an external fire to start and so is most likely to occur in a flat only. Although LB Camden considered the FRA as inadequate it included items that had not been attended to from a previous assessment and also some matters of "medium" priority. Common areas also have a fire alarm detection system. The individual flats, the most likely source of fire also have their own system of automatic detection (heat and smoke detectors) and alarm and flats have fire rated doorsets, doors in the escape route and riser cupboard doors are also fire rated”

80.As to the harm outcomes, Dr Battersby considered that the Class I and Class II harms were increased as the result of the presence of the ACM and that insulation could give off toxic fumes. Furthermore, not all sections of the escape route had adequate means of smoke clearance and the distance of travel to a place of safety for some of the flats was excessive. The consequent Hazard Rating was therefore 192 Band F. He considered that the increase in likelihood adopted by Camden to be incorrect and made a comparison with the published Worked Example for a 16-storey block clad in ACM where the likelihood was assessed as 1 in 180 where in that example, there were a number of serious deficiencies including lack of AFD and an opportunity for external arson.

81. Dr Battersby’s opinion was that it was unusual not to risk assess each individual flat separately because different hazard ratings can be expected for dwellings within the same building depending on their location and any deficiencies to the individual dwelling. Dr Battersby took this approach and in respect of the individual flats he assessed all of these as at August 2022 at Band F. For 2023, he re-assessed each individual flat which resulted in each having Band F, G or H rating.

82. His conclusion, having regard to all factors including the high level of management at the property, is that the likelihood is much less than 1 in 100 even if greater than the average and that the HHSRS hazard rating used by

Camden overstated the risk as at the date of the Notice. It was his view that it is unlikely that a Band D hazard existed although he did agree that a Category 2 Hazard did exist and still exists. He said that in his experience most local authorities rarely serve Improvement Notices for a hazard in Band F or below if that is the only hazard.

83. In his report Dr Battersby went on to give his view on the most appropriate course of action and remedial works. In his view both a Hazard Awareness Notice and the suspension of an Improvement Notice ought to have been considered. He believed that the overestimate of likelihood had led Camden into error. He concluded that the works contained within the Notice on both options (schedule 2) were extensive and he did not believe they were proportionate to the risk. In his view any Improvement Notice that was served should have required:

- To have a Type 4 Fire Risk Assessment carried out;
- To enhance the AFD in the flats (as has been done);
- To ensure all entry points for electric cabling in flats were fire stopped (also now done);
- To install signage by escape/rescue windows marking them as such and to keep them clear;
- To install smoke seal/intumescent strip to bedroom door in Flat 5 (one of the two flats flat where escape from all the flat would be via a high-risk area (kitchen) or via the window in the bedroom); and
- To provide signage for an alternative escape route via main entrance door (not under the ACM on the underside of the "bridge").

84. At the hearing, Dr Battersby said that he accepted what Mr Clarke said about the unknown inner leaf of the exterior walls. This is also mentioned in his report. That was the reason he suggested a Type 4 Fire Risk Assessment which is more extensive than the assessment required in the Improvement Notice itself. On that basis he accepted that the wording of his conclusion about the second recommendation was inaccurate.

85. Dr Battersby was also asked to consider the impact of the existence of ACM at the building on the mental health of the current occupiers. He acknowledged that the fire at Grenfell Tower and the increased awareness of the danger of ACM cladding may well have cause stress and anxiety but he was firmly of the view that as currently drafted, this could not be taken into account under the Operating Guidance.

### **Decision and Reasons**

86. For the following reasons the Tribunal has decided to vary the Improvement Notice served by the council.

87. In *Aldford Two* guidance is given as to the approach the Tribunal should take when considering whether it agrees with the authority's hazard rating score. The President said this:

“52. ... The appeal in this case has arisen because the RPT failed to give any proper consideration to the assessment of the hazard on which the council's case depended and failed to give adequate reasons for its decision to quash the improvement notice. The 2004 Act, the Regulations and the statutory guidance have created a system of assessment that is complex and which may seem forbidding to RPTs. By reducing to numerical terms essentially subjective judgements of risk the system may give a misleading impression of scientific precision to the assessment results ...

55. The conclusion to be drawn from this, in my view, is that RPTs, when confronted by cases in which enforcement action by councils is in issue, should not shy away from making their own assessment of the hazard and should not treat the figures given for national averages as compelling. Any such assessment must take account of those figures, but it must be reached in the light of the evidence given in relation to the facts of the particular case. Reasons must of course be given for it. The tribunal will bring its knowledge and experience to bear in evaluating the evidence and reaching its conclusion, and it will,

importantly, bring common sense to bear in the judgement that it makes.”

88. In this case, the Tribunal considers that the likelihood assessed by Mr Clark was too high and but not as low as suggested by Dr Battersby. We consider that the nature of the hazard caused by the presence of ACM is such that the likelihood of harm should be similar to that in the worked example. Even accepting the differences in the type of the buildings in the worked example and in this property and also the additional risks of ignition in the example, we cannot ignore that fact that ignition is still a possibility. Even more importantly, because there has been insufficient intrusive investigation of the make-up of the building, the risk of harm is unknown. This reflects the approach in the addendum.

89. The role of the Tribunal is to consider whether the council decision was “wrong.” However, we consider that since a HHSRS calculation depends on the application of a number of different judgements, if we do not agree with one of those judgements it will not necessarily mean that the calculation is “wrong” in the sense that it needs to be overturned. In this case both Mr Clark and Dr Battersby agreed that there is a Category 2 hazard. This difference is that as at August 2022, Mr Clark assessed this to be a Category 2 Band D hazard and Dr Battersby assessed it to be a Category F hazard. Dr Battersby’s evidence was that local authorities would rarely issue an improvement notice for a Band F hazard but we take the view that this approach is too generalised. In a case which concerns ACM cladding and where there had been something of a breakdown in communications between the EHO and the building owner, we consider that the service of an improvement notice could properly be regarded as the best form of action by Camden.

90. It is important to remember the context for the focus by councils on buildings exceeding 18 metres following the Grenfell Tower fire. Although it is not accepted that this building exceeds 18 metres, when Mr Belding submitted his

web form in 2021 he stated that it did and so it was reasonable, in terms of context, for Mr Clark to proceed on that basis.

91. In addition to the requirement in section 3(1) to keep housing conditions under review, section 3(3) requires that for the purpose of carrying out that duty, local authorities must comply with any directions given by the appropriate national authority and as we have seen in May 2018, the Secretary of State gave such a direction in respect of buildings over 18 metres with ACM and to take all necessary enforcement act.
  
92. Also relevant to the context is the addendum to the operating guidance and in particular the MHCLG advice to building owners which said that “the clearest way to ensure the safety of residents is to remove all ACM, *including small or partial areas of ACM*, and replace it with a safe material. This remains the most appropriate remediation solution.”
  
93. We also have some sympathy with Mr Clark in his concern for the effect of the presence of ACM on the mental health of occupiers. Although Mr Clark was criticised for this conclusion we think that as an observation it is justifiable and in fact the alteration in the spread of harms decided by Mr Clark was not significant. However, we agree with Dr Battersby that as currently drafted, the HHSRS operating guidance does not accommodate its inclusion. We hope this is a matter that can at least be considered in the work being undertaken to refresh the HHSRS system.
  
94. As we have already commented, although Mr Clark thought that Raingate and Mr Belding were not acting quickly enough and not providing information promptly enough, we do not consider that there was deliberate obstruction. The applicant had received professional advice from very competent surveyors recommended by the council. They found it difficult to understand why this was not acceptable and it seems the relationship between Mr Clark and Mr Belding deteriorated. It was not really until Dr Battersby produced his report that the applicant shifted in its approach to the matter. That fixed approach was apparent from Mr Belding’s Brief Reply to the issues raised by the

respondent's statement which is dated May 2023, where strong reliance is placed on the expert reports and no alternative approach was considered.

95. Crucially however, although Dr Battersby does not seek to question those reports, he, like Mr Clark, considers that the information on which they are based is insufficient although he does not say so in so many words. What he does is to recommend a Type 4 Fire Risk Assessment which would require intrusive investigations to ascertain, amongst other matters, the nature of the inner leaf of the exterior walls.

96. As was explained at the beginning of this decision, the purpose of the HHSRS is to ensure that residential premises provide a safe and healthy environment for occupiers and visitors. This goes some way to explaining the difference between the building experts and the EHOs. We recognise that Mr Alves has advised on the safety of numerous residential high-rise buildings but it is notable that in nearly 100% of those buildings he has advised that ACM cladding should be removed. In our view his treatment of this building as being commercial with a small element of residential is not sufficient justification for a departure from his usual approach to the preservation of life and health.

97. In this case Mr Clark has not even gone as far as to suggest that the only solution was the removal of the ACM cladding, instead he has given alternatives: remove the cladding or carry out further investigations. We do not consider that this was unreasonable or disproportionate.

98. We also do not consider that Mr Clark was wrong not to have served a Hazard Awareness Notice. In our view, he was correct that an advisory notice would not have been sufficient in this case, not because the owners were being obstructive but because they genuinely believed they had done all that was necessary. We do not agree that all that was necessary had in fact been done.

99. Now that we have the benefit of Dr Battersby's view of the further investigations that are required, we consider that, having regard to the



position in August 2022, the second option in schedule 2 of the notice should be varied to require that a Category 4 Fire Risk Assessment should be carried out in accordance with Dr Battersby's advice. Also, although we are content to approve the first option we believe it should be simplified in accordance with Dr Battersby's suggestions. However, before we make an order to that effect we think it sensible to give the parties an opportunity to provide the Tribunal with a formulation of the order to be made and we hope agreement of the terms of a draft can be reached. Therefore, the parties are invited to provide the Tribunal with a draft of the proposed variation order. If the text of such an order cannot be agreed, then each party may submit its own version and the Tribunal will decide the appropriate wording. Any draft order should be lodged with the Tribunal within 14 days of receipt of this decision.

### **Addendum and Decision on the Form of Variation of the Improvement Notice.**

100. In accordance with the decision issued to the parties in February 2024, the Tribunal received representations from both parties in respect of the terms of the Variation of the Improvement Notice. On behalf of the Respondents, Mr Clark submitted firstly, that Option 1 should be varied. The Applicant submits, in effect, the Option 1 should remain as originally drafted and that the burden on the Applicant should not be increased which they say would be the net result of Mr Clark's proposals. We agree with the Applicant. We see no justification for a variation to Option 1 and refer to paragraph 53 of this decision. We may have misled the parties by our observation relating to simplification of the order. Our intention was not to open-up the issue, merely to find a more concise expression of the requirements.

101. As to Option 2, Mr Clarke's proposals include a continuing supervisory role for the council. The Applicant objects to the suggestion that the Option should include a proviso that where it is proposed to retain any part of the existing wall system or components such as insulation in the external wall of the building, the Applicant must provide evidence as to the safety of the whole wall system "to the satisfaction of the Local Authority." In our view, that requirement is not appropriate in this case. Option 2 requires the Applicant to

direct an assessment by a competent professional and it is their recommendations that must be put into effect.

102. Accordingly, we endorse the proposals for Option 2 set out in the schedule provided by the Applicant and attached to this decision.

103. As to the timings for action under Option 2, the Applicant proposes a period of four months to complete a Type 4 Fire Risk Assessment and then, if works are required, to notify the Respondent by what date(s) it intends to undertake any works that the assessment has identified as necessary and if any date is more than 7 months from the date of variation of the Notice to explain why they cannot be undertaken earlier.

104. On behalf of the Respondent, it is proposed that the Risk Assessment should be completed within a period of four months but that any consequential works should be completed within 12 months of that report.

105. In our view, the Respondent's proposal is preferable. We consider that the fixed period of 12 months, as opposed to the, in effect, undefined period proposed by the Applicant, is preferable.

## **Conclusion**

106. Option 1 contained in the Improvement Notice dated 15<sup>th</sup> August 2022 is confirmed and no variation is made. Option 2 contained in the Improvement Notice is varied in accordance with the wording in the schedule contained in the Annex hereto. That schedule also includes dates for the provision of reasons A(4)(9) and evidence B(2). It is noted that the works identified in items (4) to (8) of the schedule were completed prior to the hearing of the appeal against the Improvement Notice.

Siobhan McGrath

~~12<sup>th</sup> February 2024~~

20<sup>th</sup> March 2024

**ANNEX TO DECISION – CASE REF LON/001G/HIN/2022/0019**

A. Undertake the following within 4 months of the date of variation of this Notice:

(1) The completion of a Type 4 Fire Risk Assessment' ("Assessment"). The Assessment is to include a fire risk appraisal of the external walls (FRAEW) to be undertaken in line with the methodology set out in PAS 9980:2022 and is to include such intrusive investigations as the assessor considers reasonably necessary in order to make their assessment including, in particular, to determine the make-up of the inner leaf of the ACM clad external walls to the building.

The Assessment (including FRAEW) is to be undertaken by a suitably competent fire risk assessor (which may include a 'Tier 3' assessor on the IFSM's Tiered Fire Risk Assessors Register, or a BAFE registered provider). The assessor is to hold Professional Indemnity Insurance to cover them for such works in a building of this type.

(2) Provision to the Council of the full Assessment (including FRAEW, any surveys and all accompanying evidence including photographs and detail of any assumptions or 'unknowns' made).

(3) The updating of the building wide fire risk assessment to include the results of the Assessment(including the FRAEW).

(4) The enhancement of the automatic fire detection system by:

(a) Installing smoke detectors in the living rooms of Flats 2 and 3;

- (b) Installing sounders within all of the Flats' bedrooms to achieve 75 DB at the bedheads;
  - (c) Installing heat detectors in the Flats' kitchens;
  - (d) Providing for the fire/heat and smoke alarms in the Flats to be linked back to the main building fire alarm system.
- (5) Works to ensure that all entry points for electric cabling in the flats are fire-stopped.
- (6) The installation of signage by escape/rescue windows marking them as such and that they are to be kept clear.
- (7) The installation of a smoke seal/intumescent strip to the bedroom door in Flat 5.
- (8) The provision of signage for an alternative escape route via the main entrance door into Star Yard.
- (9) Notify the Council by what date(s) it intends to undertake any works the Assessment (including the FRAEW) has identified as necessary. Such date to be no more than 16 months from the date of variation of this Notice. And within two months of receipt of the Assessment provide the evidence described in section B(2).

(If the Applicant does not propose to undertake any of the works so identified as necessary, it is to provide its full and detailed reasons, including any alternative works it proposes within 2 months of receipt of the report).

B. Undertake the following by the date(s) referred to or provided in accordance with paragraph 9:

- (1) The works notified in accordance with paragraph 9;

(2) Provision of evidence to the Council that all internal walls separating the flats and internal common parts achieve a standard of 60 minutes fire resisting construction.

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