



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

Case Reference : CHI/00HB/HYI/2023/0007
CHI/00HB/HYI/2023/0012

Property : Orchard House, 515-517 Stockwood Road,
Bristol BS4 5LR

Applicants : (1) Stephanie Culpin
[REDACTED]

Representative :

Respondent : Stockwood Land 2 Limited

Representative :

Type of Application : Building Safety Act 2022- Remediation
Order

Tribunal Member(s) : Regional Judge Whitney
Mr D Ashby FRICS
Mr M Ayres FRICS

Date of Hearing : 20th November 2023

Date of Decision : 12th December 2023

Decision

Background

1. The First Applicant seeks a remediation order pursuant to Section 123(2) of the Building Safety Act 2022.
2. The Applicant describes the Property as:

“Orchard House is a circa 1960s building that has been refurbished and extended in recent years. In 2018 building work was completed to covert(sic) the building into 54 self contained flats. Part of this building work included extending the back of the building.”
3. Directions were issued on 29th August 2023 in respect of the First Applicants application listing the matter for a case management hearing on 20th September 2023. At that hearing the First Applicant attended but there was no attendance by the Respondent. Directions were issued listing the matter for a hearing on 20th November 2023.
4. On 2nd October 2023 the Second Applicant made application in similar terms to that made by the First Applicant. Directions were issued on 16th November 2023. Those directions provided that at the hearing of the First Applicants application the Tribunal would consider consolidating the two applications.
5. A hearing bundle was sent by each Applicant. References to C[] are to the First Applicant’s bundle and to P[] are to the Second Applicants bundle.

The statutory provisions

Building Safety Act 2022

6. Section 123 of the Act provides:

123 Remediation orders

(1) The Secretary of State may by regulations make provision for and in connection with remediation orders.

(2) A “remediation order” is an order, made by the First-tier Tribunal on the application of an interested person, requiring a relevant landlord to remedy specified relevant defects in a specified relevant building by a specified time.

(3) In this section “relevant landlord”, in relation to a relevant defect in a relevant building, means a landlord under a lease of the building or any part of it who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect.

(4) In subsection (3) the reference to a landlord under a lease includes any person who is party to the lease otherwise than as landlord or tenant.

(5) In this section “interested person”, in relation to a relevant building, means—

(a) the regulator (as defined by section 2),

(b) a local authority (as defined by section 30) for the area in which the relevant building is situated,

(c) a fire and rescue authority (as defined by section 30) for the area in which the relevant building is situated,

(d) a person with a legal or equitable interest in the relevant building or any part of it, or

(e) any other person prescribed by the regulations.

(6) In this section “specified” means specified in the order.

(7) A decision of the First-tier Tribunal or Upper Tribunal made under or in connection with this section (other than one ordering the payment of a sum) is enforceable with the permission of the county court in the same way as an order of that court.

7. For the purposes of sections 119 to 125 of the Act, “relevant building” is defined in section 117 (so far as is material in this case) as a self-contained building, in England that contains at least two dwellings and is at least 11 metres high or has at least five storeys. A building is “self-contained” if it is structurally detached.
8. Section 120 defines “relevant defect” for the purposes of sections 122 to 125 and Schedule 8 to the Act as follows:

120 Meaning of “relevant defect”

[...]

(2) “Relevant defect”, in relation to a building, means a defect as regards the building that—

(a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and

(b) causes a building safety risk.

(3) In subsection (2) “relevant works” means any of the following—

(a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;

(b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;

(c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).

“The relevant period” here means the period of 30 years ending with the time this section comes into force.

(4) In subsection (2) the reference to anything done (or not done) in connection with relevant works includes anything done (or not done) in the provision of professional services in connection with such works.

(5) For the purposes of this section—
“building safety risk”, in relation to a building, means a risk to the safety of people in or about the building arising from—

(a) the spread of fire, or

(b) the collapse of the building or any part of it;

“conversion” means the conversion of the building for use (wholly or partly) for residential purposes;

“relevant landlord or management company” means a landlord under a lease of the building or any part of it or any person who is party to such a lease otherwise than as landlord or tenant.”

9. Section 122 of the Act makes provision about remediation costs and provides:

122 Remediation costs under qualifying leases etc.

Schedule 8 –

(a) provides that certain service charge amounts relating to relevant defects in a relevant building are not payable, and

(b) makes provision for the recovery of those amounts from persons who are landlords under leases of the building (or any part of it).

10. Schedule 8 incorporates the definitions mentioned above and makes provision for other definitions including:

“... “relevant measure”, in relation to a relevant defect, means the measure taken –

(a) to remedy the relevant defect, or

(b) for the purpose of

(i) preventing a relevant risk from materialising, or

(ii) reducing the severity of any incident resulting from a relevant risk materialising;

“relevant risk” here means a building safety risk that arises as a result of the relevant defect...”

11. Schedule 8 also defines “qualifying lease” by reference to section 119, however the definition is not relevant in relation to the making of a remediation order.

12. Paragraph 2 of Schedule 8 provides as follows:

“No service charge payable for defect for which landlord or associate responsible

(1) This paragraph applies in relation to a lease of any premises in a relevant building.

(2) No service charge is payable under the lease in respect of a relevant measure relating to a relevant defect if a relevant landlord –

(a) is responsible for the relevant defect, or

(b) is associated with a person responsible for a relevant defect.

(3) For the purposes of this paragraph a person is “responsible for” a relevant defect if –

(a) in the case of an initial defect, the person was, or was in a joint venture with, the developer or undertook or commissioned works relating to the defect;

(b) in any other case the person undertook or commissioned works relating to the defect.

(4) In this paragraph –

“developer” means a person who undertook or commissioned the construction or conversion of the building (or part of the building) with a view to granting or disposing of interests in the building or parts of it;

“initial defect” means a defect which is a relevant defect by virtue of section 120(3)(a);

“relevant landlord” means the landlord under the lease at the qualifying time or any superior landlord at that time.”

13. Paragraph 8 of Schedule 8 provides as follows:

“No service charge payable for cladding remediation

(1) No service charge is payable under a qualifying lease in respect of cladding remediation.

(2) In this paragraph “cladding remediation” means the removal or replacement of any part of a cladding system that—

(a) forms the outer wall of an external wall system, and

(b) is unsafe.”

14. Paragraph 9 of Schedule 8 provides as follows:

“No service charge payable for legal or professional services relating to liability for relevant defects

(1) No service charge is payable under a qualifying lease in respect of legal or other professional services relating to the liability (or potential liability) of any person incurred as a result of a relevant defect.

(2) In this paragraph the reference to services includes services provided in connection with—

(a) obtaining legal advice,

- (b) any proceedings before a court or tribunal,
- (c) arbitration, or
- (d) mediation.”

15. Paragraph 10 of Schedule 8 supplements paragraphs 2 to 4, 8 and 9, as follows:

“(1)

(2) Where a relevant paragraph provides that no service charge is payable under a lease in respect of a thing –

(a) no costs incurred or to be incurred in respect of that thing (or in respect of that thing and anything else) –

(i) are to be regarded for the purposes of the relevant provisions as relevant costs to be taken into account in determining the amount of a service charge under the lease, or

(ii) are to be met from a relevant reserve fund.

[...]”

16. Those are the pertinent paragraphs of Schedule 8 in this case. For the sake of completeness, section 119 of the Act states that the “qualifying time” is the beginning of 14th February 2022.

The Hearing

17. The hearing took place remotely by video on 20th November 2023. It was recorded and in attendance were Stephanie Culpin, the First Applicant and Danielle Pring, the Second Applicant.

18. There was no attendance by the Respondent.

19. The Tribunal made enquires of the administrative file for the cases. The application and directions had been posted to the registered office of the Company and to its managing agents Eaves Property Management Services Limited. The Tribunal had emailed all documentation to the email address for the managing agents.

20. The Tribunal was satisfied that the Respondent knew or ought to have known about these proceedings and they had chosen to take no part.

21. The Tribunal determined that it would consolidate the two applications and proceed to determine both. Given the matters relied upon in each Application were essentially the same we were satisfied it was in the interests of justice to proceed.

22. Ms Culpin led in presenting the case for the Applicants. She explained she understood Eaves Property Management Limited continued to manage the property for the Respondent. She understood the Respondent had made an application for planning permissions to add further storeys to certain parts of the Property. No remedial works had currently been undertaken.

23. The Tribunal did not inspect but relied upon photographs within the bundle and its own enquiries to view the same using internet resources.
24. Ms Culpin explained that the building had originally been an office block that was converted into flats. It was 5 storeys high including the ground floor and the FREW dated 21st May 2021 C[69] and prepared by Berto Chartered Surveyors stated the building was 12.686 metres in height C[92].
25. Ms Culpin explained she purchased her flat in 2018 and she continues to reside in her flat. A copy of the lease between her and 515 Stockwood Road LLP is at C[1-41]. At C[168-175] were office copy entries provided by the Land Registry confirming that Stockwood Land 2 Limited had been registered as the proprietor of the freehold for the Property since 22nd April 2022.
26. Ms Culpin and Ms Pring indicated that the items they were seeking a remediation order in respect of were the works as set6 out in the FREW prepared by Berto Chartered Surveyors at C[132] which stated:
- “1. High level of risk management system implemented (Fire Risk Assessor who created FRA can advise how best to achieve this and update the FRA in line with this report (including regards 3,below).*
- 2. FRA actions implemented including fire stopping inadequacies noted internally. Fire Risk Assessor to confirm these have been closed out.*
- 3. Fire stopping survey required to the building in general as per the concerns raised in the FRA and to be inspected and remediated if necessary, by a reputable accredited fire stopping installer.*
- 4. Replace infill panels above the windows to the East block with a non-combustible type using Euroclass A1 materials.*
- 5. Replace spandrel panels to the Link block with a non-combustible type using Euroclass A1 materials.”*
27. Ms Pring confirmed she was seeking a similar order. She purchased her flat in 2019 and continued to live in her flat. She included a copy of the Title Register in her bundle P[58-59]. She also included a copy of the freehold title register P[60-77]. She confirmed she paid less than £175,000 for her flat.
28. Ms Pring explained she had been advised by █████ █████ a representative for the Respondent that works could commence within a month and should not then take too long. This was the only information as to timings.
29. The Applicants requested the Tribunal to make the remediation order sought.

Decision

30. As set out in paragraph 19 and 20 above we did consider whether or not we should proceed. We were satisfied that notice of the hearing and copies of the directions had been sent to the companies registered office address as well as to its agents. As a result we are satisfied that the Respondent knew or ought to have known of the hearing and so it was appropriate for us to proceed.
31. We also considered whether the two applications should be consolidated. Given the terms of each were essentially the same we are satisfied that it was proportionate to do so and proceed to determine both applications. Whilst separate bundles were supplied the information contained within the same was almost identical and was information which would be known to the Respondent.
32. We make the following findings having regard to the statutory tests to be applied:
 - (1) By reasons of each of the Applicants holding a leasehold interest as at the relevant date (14th February 2022) and continuing to hold such interest each are an “interested person”: section 123(5)(d).
 - (2) We are satisfied that the Respondent is a “relevant landlord” for the purposes of section 123(3) being the landlord of each of the Applicants pursuant to their leases and as confirmed in the title registers supplied and referred to above.
 - (3) We are satisfied that the Property is a “relevant building” pursuant to section 117(2) on the basis that the building is 5 storeys high and the FRAEW prepared for the Respondent identifies the building is in excess of 12 metres high.
 - (4) We have considered the evidence within the bundles and in particular the FRAEW prepared by Berto Chartered Surveyors C[69-136]. Whilst the building appears to have been originally constructed in the 1960’s it was extended and substantial refurbishment and reconfiguration was undertaken to convert the Property into residential flats. The report refers to building control sign off of such works taking place on 10th January 2019 C[132]. We have also considered the correspondence produced within the bundles, principally that from the Respondents managing agent such as at P[157 & 158]. We are satisfied having regard to all the evidence that the defects identified within the report are “relevant defects” pursuant to section 120(3).
 - (5) Given the findings within the FRAEW (see C[132]) we are satisfied that the defects have caused and continue to cause a “building safety risk”.
33. We are satisfied given our findings above that we should make an order pursuant to section 1234(2) requiring the Respondent to remedy the specified defects.

34. We have considered what works are required. We note the Applicants are lay people who have relied upon the information within the FRAEW. This lists conclusions and sets out what they believe is required to alleviate any fire defects. It appears this was obtained at the landlords instruction (although it may have been paid for by the leaseholders). Overall doing the best we can we are satisfied in the circumstances of this case that it is appropriate to require the Respondent to undertake the works required within that report.
35. We heard little as to the time we should allow for such works to be undertaken. We are however an expert tribunal and apply our expertise. We do however take account of the unchallenged evidence of Ms Pring as to the time required. We determine that the Respondent should complete all works as required to satisfy the outcomes as identified with the FRAEW (C[132]) within 6 months of this decision.
36. The Tribunal's remediation order accompanies this decision. The Tribunal retains jurisdiction for so, long as the relevant defects remain at the Property and there is a possibility of a variation to the order, either as to scope or as to timing.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.



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PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

**CHI/00HB/HYI/2023/0007
CHI/00HB/HYI/2023/0012**

IN THE MATTER OF THE BUILDING SAFETY ACT 2022

BETWEEN

**(1) Ms S Culpin
(2) Ms D Pring**

-and-

Stockwood Land 2 Limited

**Remediation Order
In respect of
Orchard House, 515-517 Stockwood Road, Bristol BS4 5LR**

Upon considering the applications, evidence and submissions in this matter, and upon considering the provisions of the Building Safety Act 2022, and for the reasons set out in this decision the Tribunal orders that:

1. Stockwood Land 2 Limited shall remedy the relevant defects specified by the attached Schedule at Orchard House, 515-517 Stockwood Road, Bristol BS4 5LR by the time specified in paragraph 2 below.
2. Stockwood Land 2 Limited shall by 12th June 2024 complete all of the works.
3. The parties have permission to apply in respect of paragraphs 1 and 2 and the attached Schedule. Any such application must be made using a Tribunal Order 1 form (a copy of which is attached). The application must be supported by detailed evidence including if required expert evidence for which the Tribunal gives permission.

4. Stockwood Land 2 Limited must notify the Tribunal and the Applicants that it has complied with the Order within 28 days of practical completion of all necessary works.
5. By section 123(7) of the Building Safety Act 2022 this Order is enforceable with the permission of the county court in the same way as an order of that court.

Regional Judge Whitney, Mr M Ayres and Mr D Ashby
Dated 12th December 2023

Schedule of required works

1. High level of risk management system implemented (Fire Risk Assessor who created FRA can advise how best to achieve this and update the FRA in line with this report (including regards 3. below).
2. FRA actions implemented including fire stopping inadequacies noted internally. Fire Risk Assessor to confirm these have been closed out.
3. Fire stopping survey required to the building in general as per the concerns raised in the FRA and to be inspected and remediated if necessary, by a reputable accredited fire stopping installer.
4. Replace infill panels above the windows to the East block with a non-combustible type using Euroclass A1 materials.
5. Replace spandrel panels to the Link block with a non-combustible type using Euroclass A1 materials.
6. Carry out all works and remedy the relevant defects in compliance with the Building Regulations applicable at the time the remedial work is carried out so that the relevant defects no longer exist.
7. Complete a post-Works Fire Risk Appraisal of External Walls (FRAEW) pursuant to PAS 9980:2022 which should not prevent a satisfactory Form EWS1: External Wall Fire Review from being issued.
8. Make good any damage caused to the Property on account of the works.