



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

Case Reference : **MAN/00DA/HYI/2023/0011 & 0013**

Building : **Cypress Point
Leylands Road
Leeds
LS2 7LB**

Applicants : **Thomas Goodwin & Others**

Representative : **Mr Goodwin**

Respondent : **Junestead (Cypress Point) Limited**

Representative : **Mr L Levine**

Type of Application : **Remediation Order – s123 of the Building Safety Act 2022**
Remediation Contribution Order – s124 of the Building Safety Act 2022

Tribunal : **Judge J Holbrook
Regional Surveyor N Walsh
Mr J Stead**

Date of Decision : **29 July 2024**

DECISION

DECISION

The applications are granted. Accordingly, the Tribunal makes the accompanying remediation order and remediation contribution order.

REASONS

INTRODUCTION

1. These proceedings concern the remediation of serious fire safety defects at Cypress Point, a tall residential building in Leeds (“the Building”). Some of those defects have already been remedied, but should the freeholder/landlord of the Building now be ordered to remedy the defects which remain outstanding? And should it be ordered to reimburse leaseholders for the costs they have incurred in remedying some of the other defects?
2. These are the questions posed by two applications made to the Tribunal under Part 5 of the Building Safety Act 2022 (“the BSA”) by a majority of leaseholders of the Building’s 45 residential flats. The BSA was Parliament’s legislative response to the Grenfell Tower tragedy, and provisions in Part 5 of the Act, relating to building remediation and leaseholder protection, came into force in late June 2022. These provisions include power for the Tribunal to make remediation orders (under section 123) and remediation contribution orders (under section 124). The Applicants in these proceedings seek both types of order.
3. We have decided to grant the applications, and therefore to make both a remediation order and a remediation contribution order. In the paragraphs which follow, we describe the background to this matter; explain the effect of relevant provisions in the BSA; and set out our reasons for making those orders. The orders themselves are made separately: they accompany this decision.

APPLICATIONS AND HEARING

4. In August 2024, the Tribunal received an application under section 123 of the BSA for a remediation order. This was followed, in September, by an application under section 124 for a remediation contribution order. Each application is made by the long leaseholders of 26 flats at Cypress Point and is led by one of their number, Thomas Goodwin. A list of the Applicants is set out in the Annex hereto.
5. The Respondent to both applications is Junestead (Cypress Point) Limited, the freehold owner of the Building and the Applicants’ immediate landlord. This is one of a group of companies owned and controlled by Lionel Levine, and Mr Levine has represented the Respondent throughout these proceedings.

6. The final hearing of the applications took place in Manchester on 9 July 2024, when the Applicants were represented by Mr Goodwin (with the assistance of his fellow leaseholder, Aaron Dobie) and the Respondent was represented by Mr Levine. Although that hearing had been listed for two days, in the event it took just half a day to complete. This was possible because, as it turns out, there is substantial agreement between the parties about the nature and extent of the defects to the Building which still need to be remedied and about the works which are required to do that. Consequently, the Tribunal was not asked to consider expert witness evidence or to determine disputed questions of fact. Instead, on the basis of a helpful discussion about the Building's history and the Respondent's current plans for further works, the hearing largely comprised brief submissions about whether or not the orders in question should be made. Although we did not hear formal witness evidence, the discussion at the hearing was facilitated by reference to various documents in an agreed bundle containing written representations and relevant documentary evidence, including technical reports about the Building's defects.
7. The Tribunal did not inspect the Building (although photographic evidence was considered). Judgment was reserved.

FACTUAL BACKGROUND

8. A PAS:9980 Fire Risk Appraisal of External Walls Report ("FRAEW") was produced for Cypress Point last year (PAS:9980 being a code of practice which sets out a method for competent professionals to conduct such risk appraisals for existing multi-storey, multi-occupied residential buildings). That report (dated 24 April 2023, and prepared by Richard Coggon, a fire engineer with Fire Prevent Ltd) contains the following general description of the Building, which it is convenient to reproduce here in full:

"Cypress Point is a detached purpose built nine storey general needs residential building, on the outskirts of Leeds city centre. The building was constructed 2008/2009 and has a height of 26.62 metres from the lowest ground floor level to the finished floor of the top floor (8th floor). The North, East and West elevations of the building are positioned more than 1 metre from the relevant boundaries. The building South elevation and a small part of the West elevation is however within 1 metre of the relevant boundary.

The building has a concrete frame structure and concrete floors from ground up to the 7th floor. Part of the 7th floor and the 8th floor have a timber frame structure. The common balcony walkways on the building West elevation are constructed from a galvanised steel frame structure with timber decking floors.

The building external walls are predominantly a mixture of masonry brickwork, render and stone wool fibre timber look-a-like cladding panels. The inner leaf of the building is masonry blockwork on all levels with the exception of part of the 7th floor and the 8th floor where the

inner leaf is a cement particle sheathing board. The door and window frames are uPVC and the building has a flat roof in all areas.

The ground floor of the building comprises of a secure residential carpark, externally accessed plant areas, externally accessed bin storeroom, a single commercial unit and a residential entrance foyer. The upper floors of the building predominantly comprises of residential apartments, and in total there are 45 apartments from the 1st floor up to the 8th floor.

Attachment type balconies are present on the building East and North-East elevations, and are vertically stacked up to seven storeys. These balconies are of a steel frame construction, with a steel balustrade that has a glazed infill and an aluminium decking floor.

Terrace balconies are present on the building 7th and 8th floors only. These balconies are set back from the building external walls on the lower floors and form part of the building structure. The balustrades are masonry with a steel handrail and the flooring is aluminium decking.

The building is provided with common walkway balconies from the 1st floor up to the 7th floor on the West elevation that are vertically stacked. The balconies have a steel frame construction, with a masonry balustrade on the 1st floor and a steel balustrade with glazed infill on all other floors. The flooring of the balconies is timber decking, which exposed on the underside.”

9. The original development was carried out by the Respondent in the late 2000s, and it has been the freehold owner of the Building at all material times since. The Respondent has disposed of the individual flats in the Building on long (200 year) leases. It continues to be the landlord under those leases.
10. Fire safety concerns in relation to the Building were first identified in November 2019 as a result of a survey carried out in the wake of the Grenfell Tower fire. These concerns largely related to the presence of timber cladding to external elevations and to the presence of timber on the communal walkways on the west elevation and as decking to individual flat balconies.
11. In 2021, the Respondent applied to Homes England for grant funding to remedy all these defects. Some grant funding was forthcoming in response, but only in respect of works to remediate defective cladding (so not for the remediation of defects to the common walkways or to individual flat balconies). The remediation of the common walkways on the Building’s west elevation was therefore put on hold, but it was nevertheless recognised that there were significant advantages (in terms of minimising the costs of scaffolding etc.) to the flat balconies being remediated at the same time as the adjacent external wall cladding. The cladding and balcony works therefore went ahead as a package (henceforth known as “Phase 1”) and were completed in January 2022. However, the balcony aspects of the Phase 1 works were funded not by the Respondent, but by means of a “Supplementary Service Charge”

levied by the Respondent on the leaseholders of relevant flats in April 2021. The amount of that charge was £1,751.09 for each flat affected.

12. A fire safety report produced in December 2021 concluded that the timber elements of the common walkways on the Building's west elevation still needed to be removed and replaced with non-combustible materials, and it subsequently became apparent that, as a consequence of changes to the rules about grant funding for fire safety works, such funding might be available for these works after all.
13. The most recent survey of the Building was undertaken in April 2023 for the purpose of producing the FRAEW referred to above (see paragraph 8). The resulting report concludes that the overall risk of fire spread associated with certain existing defects to the Building is "Medium (High)" (using the methodology outlined in PAS:9980). It describes those defects in the following terms:

1) Timber Cladding System:

- a. The timber cladding system covers high level soffit areas adjacent to the rendered external wall at each floor level of the west elevation common walkway balconies between the 1st and 6th floor.
- b. There is a large cavity in the system between the timber cladding panels and the masonry blockwork of the render system at the rear. No cavity barriers were noted in line with the compartment walls of apartments in the system. Lack of fire stopping where extraction ducting and services penetrate apartments.
- c. Penetrations had not been provided with any form of cavity barrier.
- d. The extensive system cavity does not contain cavity barriers level with compartment walls of apartments, and there are no cavity barriers located around extraction ducting penetrations.
- e. Fire stopping is required in line with the render masonry blockwork wall where extraction ducting and service penetrations exit into the timber cladding system cavity.
- f. The external surface of the system does not achieve a European fire classification of B-s3, d2 or better.

2) Specified Attachments - Common Walkway Balconies

- a. The building is provided with common walkway balconies from the 1st floor up to the 7th floor on the west elevation that are vertically stacked. The balconies have a steel frame construction, with a masonry balustrade on the 1st floor and a steel balustrade

with glazed infill on all other floors. The flooring of the balconies is timber decking, which is exposed on the underside on all floors except for the 1st floor.

b. The common walkway balconies have timber decking floors and are vertically stacked over all of the upper floors. The common walkway balconies have a non-fire resisting balcony structural frame and a lack of down stands placed 90 degrees to the face of the building where the balcony width is greater than 2 metres.

c. The common walkway balconies are the only means of escape route from some apartments.

14. We understand that the above references in the FRAEW to a “timber cladding system” should be understood as referring to the “boxing in” of certain services and extraction ducting etc., and not as references to an external wall cladding system of the type which was remediated as part of the Phase 1 works to the Building.
15. The FRAEW also detailed the works recommended to remedy these defects and we understand that the anticipated cost of these (“Phase 2”) works is in the region of £700,000 to £800,000. The Respondent has applied for grant funding for the Phase 2 works under the government’s Cladding Safety Scheme and, on 24 November 2023, Homes England confirmed that the Building is eligible for such funding. An initial payment of £75,600 (to cover professional fees) was made to the Respondent in December.
16. We understand that contractors and consultants selected under an agreed government framework arrangement have now been identified and that the main contractor is currently working up a full design and tender costs package under a pre-contract services agreement. A final costs schedule has still to be produced and approved, however, and the Respondent has not yet entered into a grant funding agreement with Homes England in respect of the Phase 2 works. Whilst the works themselves should take no more than four to six months to complete, there is still no start date for the Phase 2 works to begin on site.

RELEVANT PROVISIONS OF THE BSA

17. Part 5 of the BSA contains complex measures relating to remediation, building standards and redress. Sections 116 to 125 and Schedule 8 came into force on 28 June 2022, and are concerned with the remediation of “relevant defects” in “relevant buildings”.
18. By section 117 of the BSA, “relevant building” means (for our purposes and subject to exceptions and further definitions which are not needed here) a self-contained building, or self-contained part of a building, in England that contains at least two dwellings and is at least 11 metres high or has at least five storeys.

19. Relevant defects are defined in section 120(2) as follows:
- “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.”*
20. The expression “relevant works” is defined in section 120(3) and includes works relating to the construction or conversion of the building, provided it was completed in the “relevant period”, being the period of 30 years ending with the commencement of the section (and therefore beginning on 29 June 1992 and ending on 28 June 2022). A “building safety risk” is defined in section 120(5) as, in relation to a building, a risk to the safety of people in or about the building arising from the spread of fire, or the collapse of the building or any part of it.
21. Section 123 of the BSA makes provision for remediation orders, requiring a “relevant landlord” to remedy specified relevant defects in a specified relevant building by a specified time.
22. For the purposes of section 123, “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 (section 123(3)). Remediation orders are in the nature of orders for specific performance of those obligations and, though the orders are made by the Tribunal, they are enforceable through the County Court (section 123(7)).
23. Section 123 is supplemented by regulation 2 of the Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022 which provides, among other things, that the Tribunal may make a remediation order on an application made by an “interested person” (as defined in section 123(5)). An interested person includes any person with a legal or equitable interest in the relevant building or any part of it and therefore includes the leaseholder of an individual flat.
24. Section 124 of the BSA allows for the making of remediation contribution orders, by which developers, landlords, and their associates may be required to contribute towards the costs of remedying relevant defects. In summary, section 124 allows an interested person (as defined in section 124(5)) to apply to the Tribunal for an order requiring a current or former landlord or developer of the building, or someone associated with them, to meet costs incurred or to be incurred in remedying relevant defects. An interested person again includes the leaseholder of an individual flat. The landlord or their associate against whom the order is sought must in each case be a company or partnership. If the relevant qualifying conditions are met, the Tribunal may then make a

remediation contribution order if it considers it “just and equitable” to do so (section 124(1)).

DISCUSSION AND CONCLUSIONS

Does the Tribunal have power to make the orders applied for?

25. It will be readily apparent from the above summary of the most immediately relevant provisions of the BSA that certain qualifying conditions must be satisfied before the Tribunal’s jurisdiction to make either a remediation order, or a remediation contribution order, is engaged. On the present facts, however, there is no doubt that these qualifying conditions are indeed satisfied and that the Tribunal therefore has power to make either or both types of order. In particular, it is agreed that:
 - 25.1 Cypress Point is a relevant building, as defined by section 117 of the BSA.
 - 25.2 The defects to the Building (both the defects to the cladding and to individual flat balconies which were remedied by the Phase 1 works, and the defects to the common walkways which are yet to be remedied by the Phase 2 works) are all relevant defects, as defined by section 120(2). Each of these defects plainly poses (or posed) a risk to the safety of people in or about the Building arising from the spread of fire.
 - 25.3 The Respondent is a relevant landlord for the purposes of section 123. This follows from the fact that, under the individual flat leases, the Respondent covenants to repair “the Retained Parts” of the Building, which includes all external or structural walls and any other parts of the Building which are not demised to individual leaseholders.
 - 25.4 The Respondent is also a body corporate or partnership of a kind which may be specified in a remediation contribution order (section 124(3)). This is because the Respondent is a landlord under a lease of the Building or any part of it. But it is also because it is a developer in relation to the Building. A “developer”, in relation to a relevant building, 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 (section 124(5)).
 - 25.5 The Applicants are all interested persons, both for the purposes of section 123, and for the purposes of section 124.
26. It is also agreed that at least 19 of the 26 flats owned by the Applicants in these proceedings are held on “qualifying leases”, as defined by section 119(2) of the BSA. Whilst we consider it appropriate to record this agreed fact, it is important to note that having qualifying leaseholder status is

not a requirement for applying for an order under either section 123 or section 124 of the BSA. Although this does not necessarily mean that such status is irrelevant when it comes to the exercise of the Tribunal's discretion to make such orders, in our judgment it is not a determining factor in the present circumstances. We explain why below.

Should the Tribunal make a remediation order?

27. The Applicants acknowledge that defects to the Building's external cladding system, and to individual flat balconies, were successfully remedied during Phase 1, and that positive steps towards the remediation of remaining defects have been made since the Respondent's successful application to the Cladding Safety Scheme for grant-funding for Phase 2. Nevertheless, they point out that, whilst the defects to the common walkways on the Building's west elevation have been known about since 2019, there is still no start date for remediation works to commence, and no remediation work has been carried out since Phase 1 completed in January 2022. Instead, the Respondent has used the intervening period attempting to secure funding, from insurance companies as well as from the Cladding Safety Scheme, and has been unwilling to self-fund the remaining works, despite being the developer of the Building. The Applicants argue that a remediation order should therefore be made as, without such an order, they will have no guarantee that the Phase 2 remediation works will be completed by a particular date (or at all). The continuing uncertainty is having a significant impact on leaseholders, not least because it is difficult – if not impossible – to secure mortgage finance for flats within the Building while the current uncertainty continues.
28. The Respondent is not unsympathetic to the Applicants' position: Mr Levine said that he would welcome certainty too and would like to see the Phase 2 works proceed without delay. Nevertheless, he opposed the grant of a remediation order because he does not know when full grant funding for those works will be available. Whilst no documentary evidence concerning the Respondent's financial position was produced, Mr Levine asserted that it does not have the means to carry out the Phase 2 works unless and until grant funding is obtained.
29. Remediation orders are still a relatively novel remedy. However, in other cases determined so far under the BSA, tribunals have consistently held that the remedy is fundamentally a discretionary one. We agree: notwithstanding the fact that an applicant for a remediation order can demonstrate that the qualifying conditions under section 123 are met, the Tribunal must still be satisfied that it is appropriate to make the order.
30. In the present circumstances, we are indeed satisfied that it is appropriate to make a remediation order. Since 2019, the Respondent's consistent position has been that, whilst it would like the Building to be fully remediated, this can only be at the expense of others – whether they be the leaseholders, third parties or the public purse – and not at any

financial cost to itself, notwithstanding the fact that it was the developer of the Building in the first place. We consider this position untenable as a matter of principle: quite apart from the fact that, as developer, the Respondent has responsibilities for design and construction defects, it also has a contractual duty to the leaseholders under the individual flat leases to repair and maintain the structure of the Building. Whilst the BSA has effectively intervened in that contractual relationship to restrict the Respondent's ability to pass on to leaseholders the costs it incurs in discharging its obligations (to the extent that those costs relate to the remediation of relevant defects), this is no excuse for failing to discharge them in a timely fashion. The policy underlying the BSA is clear: the costs of remediating relevant defects should fall primarily on those who are responsible for them. Responsibility, in this sense, is not synonymous with fault; a developer may have done all that could reasonably be expected of it to build a safe building, but will still be "responsible for" relevant defects caused by others.

31. Mr Levine argued that a remediation order is unnecessary in this case because, now that grant-funding has been approved in principle, all the outstanding defects in the Building will eventually be remediated: a remediation order would merely reinforce matters which are already in hand. Similar arguments have been made by respondents in other remediation order cases around the country in recent months. Such arguments have not found favour with tribunal panels hearing those cases, and nor does the Respondent's argument appeal to us now. The test for granting a remediation order is not one of "necessity", and the Tribunal has, on several previous occasions, considered it appropriate to make remediation orders to provide reassurance to leaseholders that necessary remediation works will be done and that they will be done within reasonable timescales. In doing so, the Tribunal is not necessarily doubting a respondent landlord's good intentions, but is imposing a judicial backstop to ensure that those good intentions are followed through. The order provides a direct means of recourse if they are not, and we consider it wholly appropriate for just such a backstop to be imposed in this case.
32. As far as the works to be specified in the remediation order are concerned, the parties are in agreement: a list of the necessary works appears at paragraph 11.1.2 of the FRAEW report and this list should therefore be reproduced in the order.
33. This leaves the question of timing. Mr Levine told us that the Phase 2 works should take no longer than six months to complete. However, the continuing discussions around funding arrangements were such that he was presently unable to offer a likely date for the works to commence. This was the primary reason why Mr Levine opposed the making of a remediation order. In our view, however, it is also a primary reason why such an order *should* be made. We acknowledge that it is reasonable to allow the Respondent some further time to complete its negotiations with Homes England, and also to complete other pre-construction processes and activities. It would therefore be unreasonable for the

remediation order to require the Phase 2 works to be completed within six months from now. However, by adopting the Applicants' suggested long-stop completion date of 31 July 2025, we consider that the order would afford the Respondent a reasonably generous period within which to commence and complete the works.

34. In addition, we consider it appropriate that the remediation order should include provision enabling the parties to apply to the Tribunal to extend time for compliance with the order and/or for the Respondent to be permitted to remedy the relevant defects by carrying out different works, if appropriate. Any such application would be considered on its merits, but it should be noted that time for compliance would not be extended without good reason, and that further delay in obtaining grant funding for the necessary works is unlikely to be considered a sufficiently good reason.

Should the Tribunal make a remediation contribution order?

35. This aspect of these proceedings concerns the financial contributions made by the Applicants to the costs of remediation works to their individual flat balconies, which works which were undertaken by the Respondent as part of Phase 1. It is therefore convenient to begin by setting out some more of the history to the balconies issue.

36. The balconies in question are described in the 2023 FRAEW in the following terms:

“Attachment type balconies are present on the building East and North-East elevations, and are vertically stacked up to seven storeys. These balconies are of a steel frame construction, with a steel balustrade that has a glazed infill and an aluminium decking floor.”

37. This, of course, is a description of the balconies *after* they had been remediated as part of Phase 1: they had previously had timber decking, not aluminium. The fire safety report produced in 2019 had identified that the timber decking constituted an unacceptable fire risk but, because the Respondent had been unable to obtain grant-funding for this element of the Phase 1 works, it had levied a “Supplementary Service Charge” of £1,751.09 for each flat affected (including each of those owned by the Applicants).

38. It is agreed that this charge was paid in full by each Applicant.

39. As the label “Supplementary *Service Charge*” suggests, the Respondent had proceeded at the time on the assumption: (1) that it was contractually liable to repair and maintain the balconies under the terms of the flat leases; and (2) that it had a contractual right to recover the costs of doing so by means of the service charge machinery in those leases. Indeed, the Respondent had sought (and obtained) an order of the Tribunal dispensing with the statutory requirements to consult leaseholders before carrying out qualifying works to be funded by means

of a service charge. However, it is now recognised that that understanding had been erroneous: the flat leases are drafted in terms which include the balcony (if the flat in question has one) within the demise. The consequence is that it is the tenant, not the landlord, who covenants to repair and maintain the balcony.

40. The Respondent argued that the fact that it had no duty under the leases to remediate the balconies means that the Tribunal has no jurisdiction to make a remediation contribution order in respect of the sums in question. This argument is incorrect (and probably stems from a mistaken attempt to read into section 124 of the BSA a condition which applies only to section 123). There is no doubt that the payments made by the Applicants concerned were “costs incurred ... in remedying relevant defects (or specified relevant defects) relating to the relevant building”. As such, they fall within the permitted scope of a remediation contribution order for the purposes of section 124(2). The extent of the Respondent’s repairing obligations is irrelevant.
41. The question, then, is whether it is just and equitable to make a remediation contribution order in the present circumstances. The Applicants assert that it is indeed just and equitable to do so, and that the Respondent should be ordered to reimburse them in full for the payments concerned. The Respondent opposes the grant of such an order: it points to the fact that the balconies are included within the individual demises (and that the Applicants are thus responsible for repairs). It also points to the fact that it had been unable to obtain grant funding for the balcony remediation works, and that the Applicants had paid the Supplementary Service Charge(s) without voicing objections about their liability to do so.
42. We have no hesitation in finding that it is just and equitable to make a remediation contribution order which will require the Respondent to reimburse the Applicants in full for the Supplementary Service Charge(s) they have paid. We come to this conclusion for the following reasons:
 - 42.1 The Respondent is the developer of the Building and, as we have already stated, the underlying policy of the BSA is that the costs of remediating relevant defects should fall primarily on those who are responsible for them. Where there is a question whether such costs should fall on the developer or on the leaseholders of a building, the choice will generally be a simple one: it should be the developer who pays.
 - 42.2 The fact that the balconies concerned are individually demised under the flat leases is therefore immaterial: the balconies are nevertheless part of the Building, and their design and construction gave rise to relevant defects for which the Respondent is responsible.
 - 42.3 Given that the Supplementary Service Charge(s) were demanded and paid about a year before the relevant provisions of the BSA

were enacted, it is not surprising that leaseholders did not question their liability for those charges at the time. Nevertheless, had all or any of those leaseholders not paid the charges prior to 28 June 2022 then, by virtue of the provisions in Schedule 8 to the BSA, they would have ceased to be payable. In particular, paragraph 2(2) of Schedule 8 applies where (as in this case) the landlord on 14 February 2022 was also the person responsible for the relevant defect (because it was the developer of the building) or was associated with that person. If that degree of connection exists between the landlord and the defect the leaseholder under any lease of any premises in the building is relieved from liability to pay service charges in respect of measures, among other things, to remedy the relevant defect.

- 42.4 This does not give rise to an *automatic* right to repayment of relevant service charges paid before the BSA came into force. However, the fact that the Respondent could not today make the charge which it made in 2021, even if the terms of the flat leases permitted it to, seems to us to be a strong indicator that it would be just and equitable to now order reimbursement of the earlier charges, and all the more so given that the Respondent was the developer in relation to the Building and that paragraph 2(2) of Schedule 8 is therefore engaged. This is also the reason why, in our judgment, it is unnecessary to ask whether or not the Applicants hold their flats on qualifying leases (any leaseholder of a flat in the Building who does not hold a qualifying lease would still be protected by paragraph 2(2)).

OUTCOME

43. For these reasons, the Tribunal makes the orders accompanying this Decision.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 29 July 2024

ANNEX

(List of Applicant leaseholders)

Flat Number	Applicant's Name
2	Adam Murray
8	Yin Wah Ho
10	Sio Hong Mak
11	Venkata Satyanarayana Thumu
12	Ben Thompson
15	Thomas Goodwin
16	Chris Hand
18	Sam Norris
19	Cheuk Kit Ho
20	Penguino Properties Ltd – Katy Maslin
21	Graham Charles Turrell
23	David Thomson
24	Gordon D Shaw
25	Venkata Satyanarayana Thumu & Ajantalakshmi Chintam
26	David Cant
29	Neal Avent
30	Bandana Gurung
31	Neil Campbell
32	Stephen Richardson
34	David Roberts
35	Aaron Dobie
36	Ben Murray
37	Yu Chun Wong
38	Ben Thompson
41	Alagan Sathianathan
43	Naomi Gibson



**First-tier Tribunal
(Property Chamber)
Residential Property**

Tribunal Reference: MAN/00DA/HYI/2023/0011
Building: Cypress Point, Leylands Road, Leeds LS2
7LB
Applicants: Thomas Goodwin & Others
Respondent: Junestead (Cypress Point) Limited

REMEDIATION ORDER

(Section 123 of the Building Safety Act 2022)

UPON the Tribunal considering the Applicants' application for a remediation order pursuant to section 123 of the Building Safety Act 2022 ("the BSA"), and the evidence and representations of the parties in these proceedings, and upon considering the provisions of the BSA,

AND for the reasons set out in the Tribunal's decision dated 29 July 2024,

IT IS ORDERED AS FOLLOWS:

1. By no later than **31 July 2025** the Respondent (the relevant landlord), shall remedy the relevant defects (and for the avoidance of doubt which fall within the meaning of 120 of the BSA) at the Building as specified by and in accordance with the attached Schedule ("the Works").
2. The parties have permission to apply in relation to paragraph 1 and the attached Schedule. In particular, the Respondent has permission to apply:
 - a. to be permitted to undertake different works to the Works, if it is revealed by investigation and analysis by a suitably qualified consultant that reasonable alternative works will remedy the relevant defects; and
 - b. to extend the time for compliance with this Order.
3. Any application made under paragraph 2 must be made using the Tribunal's Form "Order 1". The application must be supported by a

witness statement endorsed with a statement of truth, with detailed evidence explaining the reason for the application and a proposed draft order setting out the variation sought. There is permission for the parties to rely on relevant expert evidence in connection with the application. The application must also include a realistic time estimate for the application to be heard and be served on the lead Applicant.

4. The Respondent shall notify the Tribunal, the Applicants, and other leaseholders of the residential flats in the Building, within one month of the certified date of practical completion of the Works, and shall send them copies of plans showing the Building as altered by the Works within three months of such notification.
5. By section 123(7) of the BSA 2022, this Order is enforceable with the permission of the County Court in the same way as an order of that Court.

Signed: J W HOLBROOK
Judge of the First-tier Tribunal
Date: 29 July 2024

© CROWN COPYRIGHT 2024

SCHEDULE

Part 1: Relevant Defects

1) Timber Cladding System:

- a. The timber cladding system covers high level soffit areas adjacent to the rendered external wall at each floor level of the west elevation common walkway balconies between the 1st and 6th floor.
- b. There is a large cavity in the system between the timber cladding panels and the masonry blockwork of the render system at the rear. No cavity barriers were noted in line with the compartment walls of apartments in the system. Lack of fire stopping where extraction ducting and services penetrate apartments.
- c. Penetrations had not been provided with any form of cavity barrier.
- d. The extensive system cavity does not contain cavity barriers level with compartment walls of apartments, and there are no cavity barriers located around extraction ducting penetrations.
- e. Fire stopping is required in line with the render masonry blockwork wall where extraction ducting and service penetrations exit into the timber cladding system cavity.
- f. The external surface of the system does not achieve a European fire classification of B-s3, d2 or better.

2) Specified Attachments - Common Walkway Balconies

- a. The Building is provided with common walkway balconies from the 1st floor up to the 7th floor on the west elevation that are vertically stacked. The balconies have a steel frame construction, with a masonry balustrade on the 1st floor and a steel balustrade with glazed infill on all other floors. The flooring of the balconies is timber decking, which is exposed on the underside on all floors except for the 1st floor.
- b. The common walkway balconies have timber decking floors and are vertically stacked over all of the upper floors. The common walkway balconies have a non-fire resisting balcony structural frame and a lack of down stands placed 90 degrees to the face of the building where the balcony width is greater than 2 metres.

c. The common walkway balconies are the only means of escape route from some apartments.

Part 2: Remedial Actions

1. The structure, including the floor of the common walkway balcony structure on the West elevation of the Building should be protected by 30 minutes fire resisting construction (integrity and insulation).
2. The timber decking floor on all common walkway balconies should be removed and replaced with an alternative material that has a European fire classification of A2-s1, do or better, such as steel or aluminium. This floor surface should be imperforate (i.e. there should be no holes or perforations in the structure so that occupants are protected from the effects of heat and smoke from below).
3. In the areas of the common walkway balconies where the balcony is wider than 2 metres, down-stands should be placed at 90 degrees to the face of the Building on the compartment line of separation between apartments. The down-stands should project 0.3m to 0.6m below any other beam or down-stand that is parallel to the face of the Building.
4. The stair core open to the common walkway balconies should be made a protected means of escape stair by fully enclosing the stair using 30 minutes fire resisting materials and self-closing FD30S fire doors at each storey level. An openable vent should be provided at the head of the stair.
5. The timber cladding present on the Building west elevation common walkway balconies should be removed and replaced with an alternative material that has a European fire classification of A2-s1, do or better.
6. The softwood timber support battens in the timber cladding system present on the Building west elevation common walkway balconies should be removed and replaced with an alternative material that has a European fire classification of A2-s1, do or better, such as aluminium.
7. Cavity barriers should be installed vertically on compartment wall lines in the timber cladding system present on the Building west elevation. The vertical cavity fire barriers should be 'closed state' and should achieve a minimum of 30 minutes fire resistance for integrity and 15 minutes fire resistance for insulation.
8. Cavity barriers should be provided around extraction ducting in the timber cladding system present on the Building west elevation. The cavity barriers can consist of any of the following:
 - Steel at least 0.5mm thick.
 - Timber at least 38mm thick.

- Polythene sleeved mineral wool or mineral wool slab, in either case installed under compression when installed in the cavity.
- Calcium silicate, cement based or gypsum-based boards at least 12mm thick.
- Any other material which provides the required fire resistance (30 minutes integrity and 15 minutes insulation).

9. Consideration needs to be given to the compartmentation issues found in areas
such as above false ceiling voids between the commercial unit and the residential entrance foyer, and where services penetrate compartment walls and floors.
10. Carry out the Works and remedy the specified 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.
11. At the very least, a post-Works Fire Risk Appraisal of External Walls (FRAEW) pursuant to PAS 9980:2022 should not prevent a satisfactory Form EWS1: External Wall Fire Review from being issued with a rating of B1 or better.
12. Make good any damage caused to the Building on account of the Works.



**First-tier Tribunal
(Property Chamber)
Residential Property**

Tribunal Reference: MAN/00DA/HYI/2023/0013
Building: Cypress Point, Leylands Road, Leeds LS2
7LB
Applicants: Thomas Goodwin & Others
Respondent: Junestead (Cypress Point) Limited

REMEDATION CONTRIBUTION ORDER

(Section 124 of the Building Safety Act 2022)

UPON the Tribunal considering the Applicants' application for a remediation contribution order pursuant to section 124 of the Building Safety Act 2022 ("the BSA"), and the evidence and representations of the parties in these proceedings, and upon considering the provisions of the BSA,

AND for the reasons set out in the Tribunal's decision dated 29 July 2024,

IT IS ORDERED AS FOLLOWS:

1. Within 14 days the Respondent must make payments to the individual Applicants in accordance with the Schedule to this order.
2. This order is enforceable under section 27 of the Tribunals, Courts and Enforcement Act 2007, so that the sums payable under this order shall be recoverable as if they were payable under an order of the County Court.

Signed: J W HOLBROOK
Judge of the First-tier Tribunal
Date: 29 July 2024

© CROWN COPYRIGHT 2024

SCHEDULE

Flat Number	Applicant's Name	Required Payment
2	Adam Murray	£1,751.09
8	Yin Wah Ho	£1,751.09
10	Sio Hong Mak	£1,751.09
11	Venkata Satyanarayana Thumu	£1,751.09
12	Ben Thompson	£1,751.09
15	Thomas Goodwin	£1,751.09
16	Chris Hand	£1,751.09
18	Sam Norris	£1,751.09
19	Cheuk Kit Ho	£1,751.09
20	Penguino Properties Ltd – Katy Maslin	£1,751.09
21	Graham Charles Turrell	£1,751.09
23	David Thomson	£1,751.09
24	Gordon D Shaw	£1,751.09
25	Venkata Satyanarayana Thumu & Ajantalakshmi Chintam	£1,751.09
26	David Cant	£1,751.09
29	Neal Avent	£1,751.09
30	Bandana Gurung	£1,751.09
31	Neil Campbell	£1,751.09
32	Stephen Richardson	£1,751.09
34	David Roberts	£1,751.09
35	Aaron Dobie	£1,751.09
36	Ben Murray	£1,751.09
37	Yu Chun Wong	£1,751.09
38	Ben Thompson	£1,751.09
41	Alagan Sathianathan	£1,751.09
43	Naomi Gibson	£1,751.09