### IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER) CASE REFERENCE: LON/00BE/HYI/2023/0013 PREMISES: EMPIRE SQUARE, 34 LONG LANE, LONDON, SE1 4NH

### **ROBERT ZAMPETTI & OTHERS**

**Applicants** 

-and-

### FAIRHOLD ATHENA LIMITED Respondent

-and-

# THE BERKELEY GROUP HOLDINGS PLC LONDON BOROUGH OF SOUTHWARK Interested Persons

# **REMEDIATION ORDER in respect of EMPIRE SQUARE, 34 LONG LANE, LONDON, SE1 4NH**

UPON considering the applications, evidence and submissions in this matter AND UPON:

- A. The First Interested Person ("Berkeley") representing to the Tribunal that it will undertake the works in the document entitled "Empire Square draft scope Rev 04" dated 29 May 2025 ("the Works") appended at schedule 2 hereto so as to remediate the relevant defects set out in the attached Schedule of Relevant Defects.
- B. The Respondent and Berkeley agreeing the main content of a Remedial Works Agreement permitting Berkeley to undertake the Works, subject to the standard to be met for the Works

AND for the reasons set out in the Tribunal's decision of 5 June 2025

# **IT IS ORDERED THAT:**

- 1. The Respondent shall remedy the relevant defects at EMPIRE SQUARE, 34 LONG LANE, LONDON, SE1 4NH (the "Property"), comprising the East Block, the West Block, and the South Block (together 'the Blocks') set out in the attached Schedule of Relevant Defects ("the Relevant Defects") by undertaking the Works by 5 March 2030.
- 2. The Respondent must carry out the Works (and/or any permitted different works in accordance with paragraph 5(a) below) (together "the Remedial Works") and remedy the specified Relevant Defects in compliance with the Building Regulations applicable at the time the Remedial Works are carried out, so that the Relevant Defects no longer exist and such that the Remedial Works achieve approval by the Building Safety Regulator (or such other Building Control authority and/or, if applicable and permissible, such registered building control approver as has responsibility for the Remedial Works).
- 3. Paragraphs 1 and 2 above are suspended on the following terms:
  - (a) No less often than every third month after the date of this Order (and more frequently if there are particular steps to report), the Respondent must update the leaseholders regarding the progress made in remediation by the first Interested Person, to include but not limited to:
    - Executing the Works Remediation Contract;
    - appointment of contractors;
    - Gateway 2 submission;
    - Gateway 2 approval;
    - dates of phases of Works;
    - progress of those phases;
    - any delay;

by mailshot or by a dedicated section on Firstport's (or such other Managing Agent who may from time to time be retained by the Respondent) or Estates and Management's website, and by placing a copy in communal information boxes in each Block

- (b) The Respondent must comply with reasonable requests by the First Interested Person to exercise its rights as the Freeholder/Landlord to enable the First Interested Person to undertake the Works (for example, by ensuring access) by the following dates:
  - (i) Execution of the Works Remediation Contract by 19 June 2025;
  - (ii) Submission of the Gateway 2 application to the Building Safety Regulator by 5 March 2026

- (iii) Commencement of the Works at the Property by no later than 5 December 2026
- (iv) Completion of remediation at the Property by 5 March 2029.
- 4. Failure to comply with paragraph 3 without good reason will result in paragraphs 1-2 taking immediate effect.
- 5. The parties have permission to apply in relation to paragraph 1. In particular, the Respondent has permission to apply:
  - a. to be permitted to undertake different works to those specified by this Order, 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.
- 6. Any such application must be made using the Tribunal's Form Order 1. The application must be supported by 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 support of the application. The application must also include a realistic time estimate for the application to be heard.
- 7. An application made under paragraph 5(b) above will result in this Order being automatically stayed without further order, until the application is concluded (whether by decision of the Tribunal or by agreement between the parties or otherwise).
- 8. The Respondent shall file the completion certificate issued under Regulation 44 of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 (or such other completion certificate issued by the relevant Building Control authority and/or, if applicable and permissible, such registered building control approver as has responsibility for the Remedial Works) with the Tribunal and serve the same on the Applicants and the Second Interested Person within 1 month of receipt.
- 9. 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.

# SCHEDULE 1: Schedule of Relevant Defects

# In relation to all Blocks

- 1. The presence of an EPS render system as detailed in the FRAEW reports of Kiwa dated April 2024.
- 2. The absence of fire-stopping to service penetrations through cross-corridor walls in the ceiling void.
- 3. Insofar as the survey of the compartmentation in locations where Soil Vent Pipes (SVPs) are present in walls separating apartments from communal corridors anticipated in the Works demonstrates the presence of a relevant defect.
- 4. Insofar as the survey of the letterboxes installed in apartment entrance doors anticipated in the Works demonstrates the presence of a relevant defect.
- 5. The presence of timber decking on projecting balconies insofar as this is recommended in the FRAEW reports or is required by the Building Safety Regulator

# In relation to the West Block

- 6. The presence of timber decking on the balconies of the Tower.
- 7. Insofar as the investigation into the fire resisting compartmentations at floor slab level between apartments behind wall type 2 (glazed curtain wailing) as noted in section 5.4.2 of the West Block FRAEW by Kiwa Fire Safety Compliance dated 23 April 2024 anticipated in the Works demonstrates the presence of a relevant defect.
- 8. Insofar as there is not firestopping in respect of the penetrations into the stair 1 smoke shaft.
- 9. The existing windows adjacent to stair 3 where Automatic Opening Vents ('AOVs') are otherwise required
- 10. The vents adjacent to stair 5 fail to achieve 1 metre squared free area ventilation.
- 11. The presence of the side vent in the smoke shaft adjacent to stair 1.
- 12. Insofar as the openings to the smoke shaft adjacent to stair 1 on the first to sixth levels do not display the required free area of 1 metre squared.
- 13. The fact that the doors to the smoke shaft serving the key workers' area on the fifth floor and below are manual operation as opposed to automatic operation.

# In relation to the East Block

- 14. The free area on the weather louvre in the AOV adjacent to stair 1 on the first to fifth floors is less than 1 metre squared.
- 15. The free area on the weather louvre in the AOV adjacent to stair 1 on the sixth floor is less than 1.5 metres squared.

# In relation to the South block

- 16. Insofar as the sample survey of the compartmentation within the metal standing seam roof void set out in section 5.7.1 of the South block FRAEW by Kiwa Fire Safety Compliance dated 24 April 2024 anticipated in the Works demonstrates the presence of a relevant defect.
- 17. Insofar as the sample survey of the translucent glass blocks wall (wall type 9) anticipated in the Works demonstrates the presence of a relevant defect.
- 18. The existing windows at either end of each corridor adjacent to stair 1 and stair 3 where AOVs are otherwise required.

#### The underground car park

- 19. The absence of plenums to the car park extractor fans providing adducted connection to the external wall louvre.
- 20. The car park gate design is not solid.
- 21. The presence (insofar as there are any) of obstructed fans.
- 22. The presence (insofar as there are any) of fans where deflectors are incorrectly installed or blowing in the incorrect direction.
- 23. In respect of the following stairs: (i) East Block stairs 1 and 2; (ii) South Block stairs 1, 2 and 3; (iii) West Blocks stairs 1 and 3, the absence of ventilated intermediate lobby protection between the car park and lift lobbies providing 30 minutes fire resistance.
- 24. Stair 2 of the East block where the stair currently opens directly into the car park, there is a requirement for one additional unventilated lobby providing 30 minutes fire resistance.

#### Schedule 2:

#### Empire Square draft scope Rev 04 – 29/05/2025

#### DESCRIPTION OF SITE AND SCOPE OF REQUIRED WORKS

The Works comprise the design and construction of fire safety remedial works to the external walls, balconies and areas of internal compartmentation, as identified within the Fire Risk Assessment of the External Wall (FRAEW) PAS 9980 Report, and as described within the Type 4 FRA. The works shall be carried out in order to satisfy the requirements of the Building Safety Regulator (BSR) and Berkley are responsible for the requisite gateway signoffs required to facilitate the completion of the works.

The scope of works includes:

- A. Removal of rendered External Wall Insulation (EWI) system and replacement with noncombustible EWI system and associated build up and accessories.
- B. Removal of combustible balcony decking in accordance with the requirements of the FRAEW and the BSR.
- C. Installation of cavity barriers.
- D. Fire stopping internally.
- E. Smoke ventilation works both internally and in the undercroft car park
- F. Associated enabling works, access, and making good.

#### Work at the East Block

The Developer will carry out the following work at the **Empire Square East Block**.

- 1. The insulated render system including the Expanded Polystyrene (EPS) insulation will be removed from the façades of the buildings and replaced with an insulated render system that uses suitable non-combustible insulation. These works include all associated works to facilitate the removal and replacement of the EPS system.
- 2. To the extent that cavities are present in the replacement system, cavity barriers will be installed in the following locations:
  - a) horizontally in line with each floor;
  - b) vertically in line with internal compartment walls; and
  - c) around openings.
- 3. The firestopping and internal compartmentation will be remediated above cross corridor communal area doors only.
- 4. A review of the drawings will be undertaken in conjunction with the Authorised Representative to identify the location of any SVPs in walls separating apartments from communal corridors. Once the locations have been identified a survey of the compartmentation at these locations will be undertaken.
  - a) If the survey demonstrates that the as-installed condition does not give rise to an Original Build Defect as defined in the Agreement, then no works will be required.
  - b) If the survey demonstrates that the as-installed condition constitutes an Original Build Defect as defined in the Agreement the works required to remediate such Original Build Defect, as agreed between the parties' respective experts, acting reasonably, will be procured by the Developer as part of the Works.
- 5. Undertake a sample survey of the letterboxes installed to apartment entrance doors.

- a) If the survey demonstrates that the as-installed detail does not give rise to an Original Build Defect as defined in the Agreement, then no works will be required.
- b) If the survey demonstrates that the as-installed detail constitutes an Original Build Defect as defined in the Agreement the works required to remediate such Original Build Defect, as agreed between the parties' respective experts, acting reasonably, will be procured by the Developer as part of the Works.
- 6. The free area on the weather louvre in the AOV adjacent to stair 1 will be increased to provide:
  - a) 1m<sup>2</sup> free area on the first to fifth floors; and
  - b) 1.5m<sup>2</sup> on the sixth floor.

#### Work at the South Block

The Developer will carry out the following work at the Empire Square South Block.

- 1. The insulated render system including the Expanded Polystyrene (EPS) insulation will be removed from the façades of the buildings and replaced with an insulated render system that uses suitable non-combustible insulation. These works include all associated works to facilitate the removal and replacement of the EPS system.
- 2. To the extent that cavities are present in the replacement system, cavity barriers will be installed in the following locations:
  - a) horizontally in line with each floor;
  - b) vertically in line with internal compartment walls; and
  - c) around openings.
- 3. The firestopping and internal compartmentation will be remediated above cross corridor communal area doors only.
- 4. A review of the drawings will be undertaken in conjunction with the Authorised Representative to identify the location of any SVPs in walls separating apartments from communal corridors. Once the locations have been identified a survey of the compartmentation at these locations will be undertaken.
  - a) If the survey demonstrates the as-installed detail does not give rise to an Original Build Defect as defined in the Agreement, then no works will be required.
  - b) If the survey demonstrates that the as-installed detail constitutes an Original Build Defect as defined in the Agreement the works required to remediate such Original Build Defect, as agreed between the parties' respective experts, acting reasonably, will be procured by the Developer as part of the Works
- 5. Undertake a sample survey of the compartmentation within the metal standing seam roof void only, as set out at section 5.7.1 of the South block FRAEW by Kiwa Fire Safety Compliance dated 23/04/2024.
  - a) If the survey demonstrates that the as-installed condition does not give rise to an Original Build Defect as defined in the Agreement, then no works will be required.
  - b) If the survey demonstrates that the as-installed condition constitutes an Original Build Defect as defined in the Agreement the works required to remediate such Original Build Defect, as agreed between the parties' respective experts, acting reasonably, will be procured by the Developer as part of the Works.
- 6. Undertake a sample survey of the translucent glass blocks wall (wall type 9).
  - c) If the survey demonstrates that the as-installed condition does not give rise to an Original Build Defect as defined in the Agreement, then no works will be required.
  - d) If the survey demonstrates that the as-installed condition constitutes an Original Build Defect as defined in the Agreement the works required to remediate such Original Build

Defect, as agreed between the parties' respective experts, acting reasonably, will be procured by the Developer as part of the Works.

- 7. Undertake a sample survey of the letterboxes installed to apartment entrance doors.
  - a) If the survey demonstrates that the as-installed condition does not give rise to an Original Build Defect as defined in the Agreement, then no works will be required.
  - b) If the survey demonstrates that the as-installed condition constitutes an Original Build Defect as defined in the Agreement the works required to remediate such Original Build Defect, as agreed between the parties' respective experts, acting reasonably, will be procured by the Developer as part of the Works.
- 8. AOV windows at either end of each corridor adjacent to stair 1 and stair 3 will replace the existing windows.

#### Work at the West Block

The Developer will carry out the following work at the Empire Square West Block.

- 1. The insulated render system including the Expanded Polystyrene (EPS) insulation will be removed from the façade of the building and replaced with an insulated render system that uses suitable non-combustible insulation. These works include all associated works to facilitate the removal and replacement of the EPS system.
- 2. To the extent that cavities are present in the replacement system, cavity barriers will be installed in the following locations:
  - a) horizontally in line with each floor;
  - b) vertically in line with internal compartment walls; and
  - c) around openings.
- 3. The firestopping and internal compartmentation will be remediated as follows:
  - a further investigation will be carried out into the fire resisting compartmentation at floor slab level between apartments behind wall type 2 (glazed curtain walling) as noted at 5.4.2 of the West Block FRAEW by Kiwa Fire Safety Compliance dated 23/04/2024;
  - b) if the investigation referred to in a. above demonstrates that the as- installed detail does not give rise to an Original Build Defect as defined in the Agreement then no further works will be required;
  - c) if the investigation referred to in a. above demonstrates that the as- installed detail constitutes an Original Build Defect as defined in the Agreement the works required to remediate such Original Build Defect, as agreed between the parties' respective experts, acting reasonably, will be procured by the Developer as part of the Works.
  - d) Above cross corridor communal area doors.
  - e) The penetrations into the stair 1 smoke shaft will be checked and firestopped if firestopping is not present.
- 4. A review of the drawings will be undertaken in conjunction with the Authorised Representative to identify the location of any SVPs in walls separating apartments from communal corridors. Once the locations have been identified a survey of the compartmentation at these locations will be undertaken.
  - a) If the survey demonstrates that the as-installed condition does not give rise to an Original Build Defect as defined in the Agreement, then no works will be required.
  - b) If the survey demonstrates that the as-installed condition constitutes an Original Build Defect as defined in the Agreement the works required to remediate such Original Build Defect, as agreed between the parties' respective experts, acting reasonably, will be procured by the Developer as part of the Works.

- 6. Undertake a sample survey of the letterboxes installed to apartment entrance doors.
  - a) If the survey demonstrates that the as-installed condition does not give rise to an Original Build Defect as defined in the Agreement, then no works will be required
  - b) If the survey demonstrates that the as-installed condition constitutes an Original Build Defect as defined in the Agreement the works required to remediate such Original Build Defect, as agreed between the parties' respective experts, acting reasonably, will be procured by the Developer as part of the Works.
- 7. The timber decking will be removed from the balconies of the tower only and replaced with an alternative that achieves Class A2-s1, d0 classification, as specified in the drawing at Schedule 1 hereto
- 8. AOV windows adjacent to stair 3 will replace the existing windows.
- 9. The vents adjacent to stair 5 will be replaced with manual vents that achieve 1m<sup>2</sup> ventilation.
- 10. The side vent will be removed from the smoke shaft adjacent to stair 1 and made good.
- 11. The openings to the smoke shaft adjacent to stair 1 on levels 01 to 06 are to be checked to ensure the required free area of 1m<sup>2</sup> is achieved. If they do not the actuators are to be replaced to achieve a 1m<sup>2</sup> opening.
- 12.Ensure the doors to smoke shaft serving the key workers' area, on the fifth floor and below, are changed from manual to automatic operation.

#### Work at the underground Car Park

The Developer will carry out the following work at the **Empire Square underground car park**. This work is subject to the Developer's verification testing of the as-installed system, confirming that the system is achieving the results documented in the SVC report. Should the Developer's verification testing demonstrate that the as-installed system is performing at an improved level to that documented in the SVC report a further review of scope of works will be required consistent with the Developer's obligation under clause 3.11 of the Agreement.

- 1. Provide plenums to the car park extract fans to ensure there is a ducted connection to the back of the louvre to enable fans to discharge to external atmosphere.
- 2. Change the car park gate design to be solid to reduce volume of extracted air being recycled back into car park.
- 3. Review the additional make-up air openings in the car park wall to establish whether it is feasible to use these to improve air distribution.
- 4. Undertake a survey of all fans to identify the fans which are obstructed by structure or services. Relocate the fans, which are obstructed, where feasible, to improve performance:
- Undertake survey of all fans to identify those where deflectors are incorrectly installed or blowing in the incorrect direction. Correct the fans where these issues are identified, to optimise their performance.
- 6. Provide ventilated intermediate lobby protection between the car park and lift lobbies. If a 0.4m<sup>2</sup> permanently open vent cannot be achieved mechanical ventilation will be provided. Lobbies are to achieve a 30 minute standard of fire resistance. This provision will be to the following stairs:
  - a) East block stairs 1 and 2;
  - b) South block stairs 1, 2 and 3;
  - c) West block stairs 1 and 3.

- 7. To stair 2 of the East block, where the stair currently opens directly into the car park, provide one additional unventilated lobby achieving a 30 minute standard of fire resistance.
- 8. Verify the design proposals using CFD modelling prior to the works specified in 1 to 8 above commencing.