

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
CASE REFERENCE: LON/00BE/BSB/2024/0602
PREMISES: EMPIRE SQUARE, 34 LONG LANE, LONDON, SE1 4NH

FAIRHOLD ATHENA LIMITED

Applicant

-and-

THE BERKELEY GROUP HOLDINGS PLC

Respondent

-and-

ROBERT ZAMPETTI & OTHERS

Interested Persons

REMEDATION CONTRIBUTION ORDER
Section 124 of the Building Safety Act 2022

UPON considering the applications, evidence and submissions in this matter

AND UPON the Tribunal being satisfied that EMPIRE SQUARE, 34 LONG LANE, LONDON, SE1 4NH (the "**Property**") is a relevant building for the purposes of the Building Safety Act 2022

AND UPON the Tribunal being satisfied that it is just and equitable to make remediation contribution orders for the reasons set out in the decision dated 5 June 2025] (the "**Decision**")

IT IS ORDERED THAT:

1. This is a Remediation Contribution Order made pursuant to section 124 of the Building Safety Act 2022 (as amended by the Leasehold and Freehold Reform Act 2024) which applies to the Respondent.
2. The Respondent shall make payment to the Applicant, by no later than 4pm on **3 July 2025**, of the sum of **£1,225,801.20** in respect of costs incurred to 22 April 2025 for the provision of a waking watch as more

particularly described in paragraphs (126) – (149) of the Decision.

3. The Respondent shall make a monthly payment to the Applicant in the amount of **£13,890.24** starting from 23 April 2025 in respect of continuing costs for the waking watch to the basement car park continuing for so long as that waking watch is reasonably required as more particularly described in paragraphs (151) of the Decision.
4. The Respondent shall make payment to the Applicant, by no later than 4pm on **3 July 2025**, of the sum of **£95,061.45** in respect of costs incurred in respect of expert reports in relation to the Property as more particularly described in paragraphs (153 – 159) of the Decision.
5. Payment as required by these Orders may be remitted by bank transfer to such account as is specified by the Applicant.
6. The Respondent must pay the reasonable costs incurred and to be incurred by the Applicant in respect of the provision of legal services of and incidental to this case reference LON/00BE/BSB/2024/0602 and case reference LON/00BE/HYI/2023/0013 as more particularly described in paragraphs (172) – (196) of the Decision, to be subject to detailed assessment on the standard basis by application to the County Court if not agreed.
7. The Respondent must pay the reasonable costs incurred and to be incurred by the Applicant in respect of services rendered by: (i) Firstport; (ii) Estates & Management and (iii) any expert retained by the Applicant in connection with: (i) the presence of; (ii) remedial actions taken in respect of and (iii) relevant steps taken in relation to, the Relevant Defects in the Property as more particularly described in paragraphs (160) – (171) of the Decision.
8. The Respondent must pay to the Applicant the sum of **£9,687,500** for remediation of the relevant defects at the Property, as further detailed in the decision dated 5 June 2025 and the Remediation Order dated 5 June 2025, by 3 July 2025.
9. Paragraph 8 above is suspended on the following conditions:
 - (a) The Respondent agrees with the Applicant an update to leaseholders, to be provided by the Applicant no less often than once every third month from the date of this order (and more frequently if there are particular steps to report), regarding the progress made in remediation by the Respondent, 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.

(b) The Respondent undertakes the scope of works in schedule 1 of this order.

(c) The Respondent meets the following key milestones:

- (i) The Applicant and Respondent execute the Works Remediation Contract by 19 June 2025
 - (ii) The Respondent submits the Gateway 2 application to the Building Safety Regulator by 5 March 2026
 - (iii) The Respondent commences the Works at the Property by no later than 5 December 2026
 - (iv) The Respondent completes remediation at the Property by 5 March 2029.
10. Failure to comply with paragraph 9 will result in paragraph 8 taking immediate effect.

Permission to apply for variation of the provisions above

11. The parties have permission to apply for variation of the Order.

12. In particular, the Applicant has permission to apply:

- (a) For an order for quantification of the sums in paragraph 7 above; and
- (b) For an order for variation of the sum in paragraph 8 above, where that sum is insufficient to complete the Works;

And the Respondent has permission to apply:

- (c) For a variation of the dates in paragraph 10 above, where the dates provided for cannot be met for good reasons.
13. 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.
14. An application made under paragraph 12(c) 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).

Use of sums paid

15. Sums paid to the Applicant pursuant to paragraph 8 above shall only be used in meeting the costs of remedying Relevant Defects relating to the Property; and/or otherwise in connection with such defects.

Balancing provisions

16. If any part of the sums paid by the Respondent to the Applicant pursuant to paragraph 8 above are still held by the Applicant 12 months from the date of practical completion of the works required under the Remediation Order dated 5 June 2025, the Applicant shall return such sums to the Respondent within a reasonable timeframe.
17. At any time after 5 March 2031, either party may give notice to the other that they wish to trigger this paragraph 17. If they do so:
 - a. the Applicant must within three months of such notification produce a witness statement detailing:
 - i. the total relevant costs incurred, by reference to these Orders and the relevant paragraphs of the Decision;
 - ii. any additional costs sought and the grounds on which such costs are sought;
 - iii. any balance held under paragraph 16 above; and
 - iv. any proposals; and
 - b. either party may apply to the Tribunal for permission to apply to vary these Orders, or for directions as to the distribution of any funds held under paragraph 16 above, or for orders as to further payment to the Applicant by the Respondent or otherwise.
18. These Orders are enforceable under section 27 of the Tribunals, Courts and Enforcement Act 2007 as if the sums were payable under an order of the Court.

Schedule 1:

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 non-combustible 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) 1m² free area on the first to fifth floors; and
- b) 1.5m² 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) 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 1m² 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 1m² is achieved. If they do not the actuators are to be replaced to achieve a 1m² 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:
5. 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 0.4m² 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.