FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/HYI/2023/0012**
Property	**:**	**Centrillion Point, 2 Masons Avenue, Croydon CRO 9WX**
Applicants	**:**	**(1) SUNITA RAMESHBAI MISTRY** **(2) ALBA CONDE DEL RIO** **(3) RISHI PATEL** **(4) MARIOS GEORGIOU** **(5) MR SHAUKET AND MRS MEMOONA BOBAT** **(6) CHARULATA PATEL** **(7) JASMINE HEARNE** **(8) OLUWATOBILOBA DAIRO** **(9) CHUN CHUA** **(10) JILL WANT AND ROBERT WORBY** **(11) KPR INVESTMENTS LIMITED** **(12) DEBORAH ADAMS** **(13) DANIEL MORAN** **(14) GEORGE PANTHER**
Representative	**:**	**Sunita Rameshbai Mistry**
Respondent	**:**	**WALLACE ESTATES LIMITED**
Representative	**:**	**Mills & Reeve** **Mr David Sawtell, counsel**
Type of application	**:**	**For a remediation order under section 123 of the Building Safety Act 2022**
Tribunal	**:**	**Judge Sheftel** **Judge N Carr**
Date of Decision	**:**	**2 July 2025**

DECISION ON APPLICATION TO VARY THE REMEDIATION ORDER

Summary of Decision

The Respondent's application dated 15 May 2025 to vary the remediation order of 4 January 2024 is refused.

Background

1. On 4 January 2024, the Tribunal made a remediation order ('the Order') under section 123 of the Building Safety Act 2022 (the "BSA"). The Order required the Respondent to remedy certain specified defects at Centrillion Point, 2 Masons Avenue, Croydon CRO 9WX, by 31 May 2025. As is apparent from the Order, those defects are extensive, and include unprotected structural steelwork and floor supports (at risk of collapse in a fire), breaches/inadequate protection of the smoke stack walls, and substantial compartmentation issues in both common parts and throughout The Order provided that remediation of the relevant defects was to be completed by 31 May 2025. The Tribunal had already indicated its decision orally at the hearing on 1 December 2023 and informed the parties that the period for remediation would commence from that date, in Order for the Respondent to progress works as soon as possible.

2. On 28 April 2025, Ms Mistry, the lead Applicant, wrote to the Tribunal (copying the Respondent's solicitors) noting that although the specified period had nearly expired, no works had been carried out. The Tribunal subsequently wrote to the Respondent seeking its comments on the assertion that it had failed to comply with the Order.

3. By application dated 15 May 2025, the Respondent sought to vary the Order to give it more time to comply. The application was supported by a second witness statement from Natalie Chambers, director of the Respondent, dated 14 May 2025, setting out the Respondent's actions over the past 18-months.

4. The Tribunal listed the matter for hearing, which ultimately took place on 24 June 2025. In advance of that hearing, Ms Mistry provided a statement in response.

5. At the hearing, Ms Mistry represented the Applicants. Mr Sawtell of counsel appeared on behalf of the Respondent.

Discussion

6. Mr Sawtell began by stressing that the Respondent is both disappointed and frustrated to have to make the application. Broadly, the Respondent's position was that the delay was principally the fault of Durkan, the developer, whom it has contracted with to do the works. The Respondent asserted that it was a reasonable course of action to engage Durkan to do the works, although with hindsight it would have acted differently.

7. It was accepted that no works have been carried out (save for installation of a temporary fire alarm system), and indeed no scope of works has yet been agreed to enable them to commence. The Respondent and Durkan continue to be in negotiations about what is required, in particular in respect of two fundamental matters to remediation of the building; the works required and to be delivered both to the smoke stack and partition walls.

8. The Respondents seeks an extension to the Tribunal's Order, suggesting that a period of 68 weeks be allowed to complete the works. However, the application asserts that 68 weeks can commence only when the appropriate application to the Building Safety Regulator has been made, in connection with any agreed scope of works. It is accepted that no application has been made to the Building Safety Regulator, with the result that the Respondent is not in a position to say when the 68-week period could start. It therefore seeks by its application an extension to an indefinite date.

9. On any view, the period of extension sought is likely to be longer than the original 18-month period contained in the Tribunal's Remediation Order. The proposed 68 weeks is for the construction phase only. On her evidence in her first witness statement, Ms Chambers' evidence was that the construction phase would take 7 – 9 months (paragraph 35), and the preconstruction phase a year at most (paragraphs 36-37). .

10. Ms Chambers, in her second witness statement, sets out in detail the history of the past 18 months, and maintains that the Respondent has been proactive throughout in negotiating with Durkan and that the delays are not of its making. Mr Sawtell pointed to three stages of delay that have occurred:

    (1) The period to July 2024 comprising the negotiations with Durkan leading to the signing of a remediation works agreement;
    (2) The fire alarm installation, which was completed in January 2025; and
    (3) Investigation into the defects to enable development of the design for the works from January 2025 to date.

11. It was also suggested that once the remediation agreement with Durkan had been entered into, the Respondent lost a certain amount of control with regard to the progress that could be made – in effect, it was in Durkan's hands. We do not accept that this takes the Respondent's argument much further. It was the Respondent that negotiated the agreement with Durkan and thereby agreed the provisions regarding control of the project, timescales and deadlines, and that might allow it to terminate the agreement should sufficient progress not be made. The Respondent is not, as Mr Sawtell submitted, in an analogous position to a landlord whose developer has entered into the Government's Self-Remediation Terms, in which the landlord has no control over the terms agreed (and indeed is not party to the agreement).

12. Based on the Respondent's own evidence in the original hearing, it was acknowledged that the Respondent has been in contact with Durkan for at least two years. According to Ms Chambers' first statement at paragraph 25, on 31 July 2023, the Respondent's then solicitors wrote to Durkan setting out its responsibilities and obligations as a developer under the BSA and invited its representatives to attend a site inspection. On 11 August 2023, it received a reply from the Durkan's then solicitors confirming that Durkan would attend. As noted at the hearing, Durkan had also remediated unsafe cladding at the building in or around 2021. As

such, it is all the more difficult to justify that works have not even started almost two years later and despite the Order.

13. For the avoidance of doubt, the Tribunal fully accepts that the Respondent has been in active discussions with Durkan throughout. That is clear from Ms Chambers' evidence. However, that cannot detract from several key points which are not in dispute:

    (1) The remediation Order was made solely against the Respondent. It was not made against Durkan, and Durkan was not a party to those proceedings. The Respondent is the only party that can carry out works as it is the freeholder of the building. Aside from the Order, it also has responsibilities under repairing covenants in its leases.

    (2) The Order is not concerned with who bears the cost of such works – it simply orders them to be carried out by the Respondent;

    (3) No works have been commenced, let alone completed.

    (4) No scope of works has been agreed.

    (5) No application has been submitted to the Building Safety Regulator in respect of such works.

14. Further, it is clear from Ms Chambers' evidence that as long ago as July 2024, the Respondent was aware that the works could not be completed on time. Nevertheless, the Respondent chose, on advice, not to inform that Tribunal at this stage. While Ms Chambers' statement maintains that attempts were made to keep leaseholders informed of progress in relation negotiations and proposals, it appears that they were not advised of this fact. It is said that the decision not to apply for a variation to the Order in July 2024 was due to the fact that it would be "*sensible to delay making the application until some substantive progress had been made and the application to the Building Safety Regulator had been submitted so that we had a clearer idea of timescales when approaching the Tribunal*".

15. Firstly, it remains the case that no application to the Building Safety Regulator has been submitted.

16. Secondly, in seeking variation of the Order now, it is suggested that it is "*…difficult to give a set timescale for the works to be completed at this time, because they cannot be commenced until after the BSR application has been approved*". No timeframe is provided for agreement of the scope of works. No timeframe is provided for the subsequent preparation of the Gateway 2 application to the Building Safety Regulator, which application will require careful preparation so as to receive approval as quickly as possible. It is not disputed that to date, over 18 months since the Order was made, no Gateway 2 application has been made (according to the Respondent's skeleton argument, such application "is anticipated imminently").

17. Both of those facts are set in the context that the period set by the Order has now expired.

18. As noted above, the purpose of a remediation order is to remedy specified relevant defects. The Tribunal's jurisdiction under section 123 of the BSA is not concerned with who pays for those works. While the advantages to the Respondent to Durkan undertaking the work can be understood from its own financial perspective, it was always the Respondent's obligation to ensure that the specified relevant defects were remedied in accordance with the time stipulated in the Order. The Respondent could at any time have sought a remediation contribution order from the developer but has never done so. As such, the lack of cooperation from the developer can only be of limited relevance to the application before us.

19. As to the role of the Building Safety Regulator and the delays said to be occurring in processing applications, we accept that the period for the grant of approval for works is, to a certain extent, outside of the Respondent's control. However, the question is likely to be one of a matter of a few weeks here or there.

20. Ultimately, this also demonstrates the fundamental difficulty with the present application. The Respondent seeks an additional 68 weeks to carry out the works. However, since no application to the Building Safety Regulator has been made, the Respondent is unable to say when such period of 68 weeks should start. The jurisdiction of the Tribunal to make

a remediation under section 123 of the BSA includes provision that the specified works be done within a 'specified time'. However, paragraph 32 of the Respondent's evidence simply asks that the time for compliance be extended pending approval of the Respondent's "imminent" application to the Building Safety Regulator and that the Respondent "*should notify the Tribunal and the applicants once approval has been received and provide further details of the likely timescales for the remediation works to be completed with a view to a revised deadline being set*". This would in effect create an open-ended period which the Tribunal would not be prepared to make, and which (more importantly) would not appear to be within our power to make.

21. Further, even leaving aside the jurisdictional problem, the Respondent is effectively asking the Tribunal more than double the original time specified in the Order to remedy the specified relevant defects. In circumstances where the works have not been commenced and the Respondent cannot even say when they would start, this is difficult to justify. We sought submissions from Mr Sawtell inviting him to persuade us it would be reasonable to make such an order, but in the round he was in an invidious position given the matters set out above.

22. The Respondent's application has been met with dismay by the Applicants, who continue to live in an un-remediated building. Ms Mistry stated that she was "*disappointed but not surprised*" by the delay. She also commented that in a full remediation schedule issued by Thomasons on 25 March 2025 (i.e. almost 15 months after the Order), aside from the identification of wooden panels in the reception area, the matters were essentially the same as identified in the Order. As such she submitted that in the circumstances, the application remained opposed: she could not justify to other leaseholders agreeing to an extension of more than the period of the original Order, and instead wished to proceed to enforce in the County Court. We alerted Ms Mistry to the potential cost and delay of taking such a course, which may or may not result in an injunction/damages and would likely in any event result in the Respondent being given more time to comply because, ultimately, the

building stills requires remediation. She was satisfied that was the only reasonable option open to the leaseholders at this stage on the basis of the compound failures of the Respondent.

Adjournment request

23. In Mr Sawtell's skeleton argument and again during the course of the hearing, it was suggested that the hearing be adjourned. In the skeleton argument it was suggested that there be a 2-day hearing at which oral evidence could be heard so as to resolve disputes of fact. This was clarified at the hearing, suggesting that an adjournment until a date before the end of July 2025 could allow the hearing of evidence from Durkan (or at least, a witness statement from Durkan be provided) as to progress on the outstanding items of which remain disputed and whether an application has yet been made to the Building Safety Regulator.

24. The application was opposed by the Applicants.

25. In an oral decision delivered to the parties at the hearing, the application for an adjournment was refused. While the Tribunal has power under our case management powers to order an adjournment, it was not considered that it would be in the interests of justice or in accordance with the overriding objective to do so. In particular:

    (1) The Respondent's application is grounded on the premise of an open-ended extension, which the Tribunal cannot order (for the reasons fleshed out above but indicated to the parties at the hearing). An adjournment to facilitate curing that fundamental jurisdictional point should not be granted lightly.

    (2) The Respondent has already put in detailed written evidence in support of its application for the Tribunal's consideration. .

    (3) Moreover, a month had passed since the application had been made, during which the Respondent could have sought answers from Durkan or obtained a witness statement from them.

(4) It is readily apparent that no real progress has been made between Durkan and the Respondent in the period between the making of the application and the hearing.

(5) There is no guarantee that Durkan would agree the two outstanding issues before the reconvened hearing, nor that there would necessarily be clarity as to when an application would be made to the Building Safety Regulator.

(6) Further, even taking the Respondent's evidence at its highest, given the lack of progress since the original Order, it would be difficult to conclude that either the Tribunal or the Applicant's could be confident of swift progress or that varying the Order would be reasonable, even were the Tribunal in receipt of evidence from Durkan.

(7) As such, the obtaining of a witness statement from Durkan would not provide a complete answer to the fundamental difficulties with the application.

26. In the circumstances, it was not considered proportionate or in the interests of justice to grant an adjournment. We find that the Tribunal should determine the application based on the evidence before it.

Determination of the Respondent's application

27. In the circumstances and for the reasons set out above, we are not satisfied either that we have jurisdiction to make the order sought, or that it would be reasonable to vary the original Order to give the Respondent an extension of time were the jurisdictional point cured. Mr Sawtell impressed on the Tribunal the importance of taking account of the practical consequences of either granting or refusing the application. We are acutely mindful of the fact that the principal concern is that the building be remediated and the position remains that this has not been done. In this regard, we also take into account the submissions of Ms Mistry that she cannot agree to the extension sought for the reasons

already given and that her preferred course is now instead to seek enforcement in the County Court.

28. Accordingly, the Respondent's application is refused.

Name:	Judge N Carr Judge Sheftel	**Date:**	2 July 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-Tribunal-lands-chamber

The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).