FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	:	**LON/00BG/BSA/2024/0005** **LON/00BG/BSB/2024/009**
Property	:	**Canary Riverside Estate, Westferry Circus, London E14 (the "Estate")**
Applicant	:	**Secretary of State for Housing and Communities and Local Government**
Represented by		**Walker Morris LLP**
Respondents	:	**(1) Canary Riverside Estate Management Limited** **(2) Octagon Investments Limited** **(3) Yianis Holdings Limited** **(4) Riverside CREM 3 Limited**
Represented by		**Freeths LLP**
Tribunal		**(1) Judge Vance** **(2) Judge Rushton, KC** **(3) Mr Andrew Thomas RBI FRICS MBA MIFireE**
Date of Hearing	:	**28 – 30 October 2025**
Date of Decision	:	**6 January 2026**
Venue	:	**10 Alfred Place, London WC1E 7LR**

DECISION

NB: References in square brackets and in bold below refer to pages in the core hearing bundle prepared by the Applicant (2,561 pages). Where preceded by the letter "S" they refer to pages in the Supplemental Bundle (810 pages) provided by the Applicant. Where preceded by the letter "R" they refer to pages in the second supplemental bundle (62 pages), provided by the Landlords (the first, second, third and fourth Respondents).

Decisions

1. We determine that for the reasons given below a building safety risk, constituting a relevant defect for the purposes of s.120 Building Safety Act 2022, exists in relation to the following wall types present at the subject Development:

    (a) EWT 01 Masonry Cavity Wall;

    (b) EWT 05 Curtain Wall and Spandrel Panels; and

    (c) EWT 06 EPS Render on Blockwork on Balconies.

2. The parties agreed, and we concur, that the following wall types constitute relevant defects;

    (a) EWT 02 – Zinc Cladding;

    (b) EWT 03 – EPS Render on Concrete block; and

    (c) EWT 04 – EPS Render on Plywood;

3. On the available evidence, we are not satisfied that a relevant defect is present in respect of EWT 07 Reconstituted Stone Cladding.

Background

4. This decision concerns two applications brought by the Secretary of State against the above-named Respondents for: (a) a Remediation Order ("RO") and/or; (b) a Remediation Contribution Order ("RCO"). Both applications are brought under the Building Safety Act 2022 ("BSA 2022") and concern the development known as Canary Riverside, Westferry Circus, London E14 ("the Development").

5. Octagon Overseas Ltd ("Octagon") is the freehold owner of the Estate. Canary Riverside Estate Management Ltd ("CREM") is the long leaseholder of various parts of the Estate and is a party to the occupational leases of the residential flats. In 2018, CREM assigned several leasehold interests on the Estate to Riverside CREM 3 Ltd ("Riverside") as part of a restructuring of the group of companies of which CREM, Octagon and Riverside are all members. At the rear within Eaton House, one of the towers within the Estate, are 45 serviced apartments known as Circus

Apartments, held under a long underlease by Circus Apartments Limited ("CAL").

6. In August 2016, the Tribunal appointed a manager to manage the Estate pursuant to the provisions of s.24 Landlord and Tenant Act 1987 ("the 1987 Act"). That management order has since been extended and varied on several occasions. In September 2019, the original manager, Mr Alan Coates was replaced by Mr Sol Unsdorfer, the current manager. There are currently multiple ongoing applications to vary the management order, all of which have been stayed pending the determination of an application brought by Canary Riverside RTM Company Limited seeking a determination that it had, on the relevant date, acquired the right to manage the Development. The Tribunal determined that application, in the RTM Company's favour, on 12 December 2025.

7. In directions dated 16 June 2025 (amended 29 August 2025) **[81F],** the Tribunal ordered the trial of a preliminary issue in both BSA 2022 applications. The preliminary issue is which, (if any) of the wall types present at the Development, as identified by the parties' fire safety experts, constitute a "Relevant Defect" within the meaning of s.117 BSA 2022.

8. The trial of that preliminary issue took place on 28, 29 and 30 October 2025. It was immediately preceded by the hearing of the RTM application. Separate site inspections in the BSA 2022 and RTM applications took place on 21 October 2025. Fire Engineering experts for the parties attended the site inspection for the BSA 2022 applications (Mr Brown, C.Eng. F.I.Fire.E, of Fire Expert Limited for the Applicant, and Mr Cooper, BEng (Hons) CEng CMIFireE, of Virtus SC Fire Engineering Ltd for the Respondents). Both experts attended the trial of the preliminary issue, for the purposes of cross-examination, at which the Applicant was represented by Mr Dutton KC and Mr Burrell of counsel, and the Respondents by Mr Bates KC and Ms Gibson, of counsel.

9. It is common ground that each of the following residential towers on the Development is a "Relevant Building" within the meaning of s.117 BSA 2022:

   (a) Berkley Tower 48 Westferry Circus, London E14 8RP ("Berkley");

   (b) Eaton House 38 Westferry Circus, London E14 8RN ("Eaton");

   (c) Belgrave Court, 36 Westferry Circus, London E14 8RJ/E14 8RL ("Belgrave"), and

   (d) Hanover House 32 Westferry Circus, London, E14 8RH ("Hanover").

10. Following an initial, non-intrusive, joint inspection on 18 July 2024, the parties' experts set out their initial positions regarding the status of relevant defects in a Scott Schedule dated 15 November 2024 **[82-91]**. Seven wall types were identified:

(a) EWT 01 – Masonry Cavity Wall;
(b) EWT 02 – Zinc Cladding;
(c) EWT 03 – EPS Render on Concrete block;
(d) EWT 04 – EPS Render on Plywood;
(e) EWT 05 – Curtain walls/spandrel panels;
(f) EWT 06 – EPS Render in and around Balconies;
(g) EWT 07 – Reconstituted Stone Cladding.

11. A further joint inspection on 17 and 18 December 2024 was followed by a joint statement on 27 February 2025 **[92-71]**. Mr Brown then submitted his report on 7 April 2025 **[172-380]**, with Mr Cooper's report following on 10 April 2025 **[950-1002]**. An updated joint statement from the experts was provided on 12 June 2025 **[1003-1006]**.

12. There is considerable agreement between the parties' experts. Both agree that a building safety risk exists in relation to three of the seven wall types identified on the Estate (EWT 02, EWT 03, and EWT 04). Of the remaining four wall types the Applicant's fire engineering expert considers each is a building safety risk, but the Respondents' expert disagrees.

13. On 19 September 2025, after the updated joint statement had been produced, the Respondents sent the Applicant three PAS 9980 Fire Risk Appraisal of External Wall assessments ("PAS Assessments") produced by Design Fire Consultants ("DFC") together with three Form EWS1s, all concerning Hanover House, Eaton House and Circus Apartments **[1409 - 1770]**. In Mr Bates' submission, the PAS assessments carried out show that the majority of identified risks are low or medium risk, the two lowest risk categories possible. He also submits that the EWS1 forms all give a rating of B1, meaning that the risk of fire is sufficiently low that no remedial works are required. Further investigations are, he said, required to complete assessments for Belgrave Court and Berkeley Tower.

14. At the start of the hearing before us, Mr Dutton, with whom Mr Bates agreed, emphasised that when determining the preliminary issue, it was important for the Tribunal to confine itself to the *existence* of fire safety risks rather than their *severity*. This, he said, was necessary because the evidence relevant to the preliminary issue was likely to overlap with the evidence to be given at the main trial, when the Tribunal will be deciding what remedial steps are required to address the building safety risks identified. We concur with that submission and agree that any expression of our views on the size or significance of a risk should be limited to that reasonably necessary to explain why we are satisfied that a defect has causes a building safety risk.

Legal and Regulatory Framework

15. What constitutes a "relevant defect" is defined by section 120(2) BSA 2022 as "a defect … 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".

16. Section 120(5) defines “relevant works” as any of the following:

> “(a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;
>
> (b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;
>
> (c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).”

17. "The relevant period" means the period of 30 years ending with the time the section came into force.

18. Section 120(5) provides that a “building safety risk”, in relation to a building, means “a risk to the safety of people in or about the building arising from - (a) the spread of fire, or (b) the collapse of the building or any part of it”.

19. It is common ground between the parties that the defects identified in the Scott Schedule arise in connection with relevant works. The question for us to determine is, therefore, whether the defects identified by the experts in respect of the four wall types in dispute cause a building safety risk, i.e. a risk to the safety of people in or about the building arising from either the spread of fire or building collapse.

20. Both experts referred to the Building Regulations. Regulation 4 of the Building Regulations 2010 (“the Building Regulations”) provides that, subject to exceptions, building work shall be carried out so that it complies with applicable requirements contained in Schedule 1 of those Regulations. Requirements B1 to B5 of that Schedule address fire safety, with B2 and B3 setting out requirements in respect of internal fire spread and B4 doing so for external fire spread.

21. Requirement B3 provides as follows (our emphasis):

> “ Internal fire spread (structure)
>
> B3. (1)The building shall be designed and constructed so that, in the event of fire, its stability will be maintained for a reasonable period.
>
> (2)<u>A wall common to two or more buildings shall be designed and constructed so that it adequately resists the spread of fire between those buildings</u>. For the purposes of this sub-

paragraph a house in a terrace and a semi-detached house are each to be treated as a separate building.

(3) Where reasonably necessary to inhibit the spread of fire within the building, measures shall be taken, to an extent appropriate to the size and intended use of the building, comprising either or both of the following—

(a) sub-division of the building with fire-resisting construction;
(b) installation of suitable automatic fire suppression systems.

(4) The building shall be designed and constructed so that the unseen spread of fire and smoke within concealed spaces in its structure and fabric is inhibited."

22. Requirement B4 provides as follows (again, our emphasis):

"External Fire Spread

B4.(1) The external walls of the building shall adequately resist the spread of fire over the walls and from one building to another, having regard to the height, use and position of the building.

(2) The roof of the building shall adequately resist the spread of fire over the roof and from one building to another, having regard to the use and position of the building.

23. Regulation 8 provides that certain Parts of Schedule 1, including Part B, "shall not require anything to be done except for the purpose of securing reasonable standards of health and safety for persons in or about buildings (and any others who may be affected by buildings, or matters connected with buildings)".

24. The Secretary of State has issued approved documents to give practical guidance on how to meet the requirements of the Building Regulations, with Approved Document B ("ADB") addressing fire safety. ADB was first issued in 1992 **[613]** and has been amended several times since then. A significant number of changes were made following the Grenfell Tower Tragedy in 2017, and in response to issues raised in the Grenfell Inquiry. The most recent edition of ADB is its 2019 edition (amended in 2022 and 2025 and with forthcoming and 2026 and 2029 changes pending) **[1203]**. The Tribunal asked both experts whether it was the 1992 edition that was used for the design of the Development, but neither could not confirm the position. In their evidence, the experts switched between the 1992 version and the 2019 edition, interchanging between both. In this decision, our references below are to the 2019 edition.

25. ADB outlines a series of measures, such as the provision of cavity barriers, cavity closers, compartmentation, and firestopping, which, if followed,

may be sufficient to comply with the Building Regulations. In the introduction to ADB **[1207]** it is said that "approved documents set out what, in ordinary circumstances, may be accepted as one way to comply with the Building Regulations", but that compliance with the approved documents does not guarantee that building work will comply with the Requirements set out in the Regulations. It states that those responsible for building work must consider whether following the guidance in the approved documents is likely to meet the Requirements in the particular circumstances of their case. It also states that there may be other ways to comply with the Requirements than those described in an approved document **[1207]**.

26. In the current ADB, Section 7 deals with compartmentation, section 8 deals with cavities in flats, and section 9 with the protection of openings and fire-stopping. Paragraph 8.1 of that section **[1313]** reads as follows:

> " Cavities in the construction of a building provide a ready route for the spread of smoke and flame, which can present a greater danger as any spread is concealed. For the purpose of this document, a cavity is considered to be any concealed space.

27. Paragraph 8.2 states that provisions concerning cavity barriers are set out in Diagram 8.1 **[1284]**. It states that to reduce the potential for fire spread, cavity barriers should be provided in several locations, including;

    (a) to divide cavities; and

    (b) to close the edges of cavities.

28. Paragraph 8.3 recommends that cavity barriers should be provided at all the following locations:

    (a) at the edges of cavities, including around openings (such as windows, doors and exit/entry points for services);

    (b) at the junction between an external cavity wall and every compartment floor and compartment wall;

    (c) at the junction between an internal cavity wall and every compartment floor, compartment wall or other wall or door assembly forming a fire resisting barrier

29. However, paragraph 8.3 also contains an exemption to that requirement, namely, where the conditions of Diagram 8.2 are met. Diagram 8.2 **[1286]** is entitled "Cavity walls excluded from provisions for cavity barriers" and specifies that in certain circumstances openings are excluded from the requirement for cavity barriers to be present. Those circumstances are that the wall must be comprised of two leaves of brick or concrete of at least 75mm thick and that: (a) any cavity openings must be closed around the opening; and (b) the cavity must be closed at the top

of the wall (unless the cavity is totally filled with insulation (which is not the case with the wall types we are considering) [4.5] **[964]**).

Identification of relevant defects – what test to apply?

30. We agree with Mr Bates' submission, at para. [20] of his skeleton argument, that initial case-law from the FTT supports the following propositions:

    (a) whether something is a relevant defect is to be assessed at the date of the FTT hearing: *Waite v Kedai*, LON/00AY/HYI/2022/ 0005 and 0016 (at [75]);

    (b) whether or not works or construction complied with the then extant Building Regulations in force at the time is not the relevant question. Instead, the correct question is whether there is a defect that causes a building safety risk in the light of today's knowledge (see *Waite* at [75], [80], *Vista Tower* CAM/26UH/HYI/2023/0003 at [68]);

    (c) it is for an Applicant to establish a *prima facie* case that there are relevant defects which cause a building safety risk which would entitle an FTT to make an RO (*Waite* at [80]).

31. In Mr Bates' submission, what constitutes a building safety risk under s.120 cannot mean *any* risk arising from the spread of fire or building collapse. That is because all buildings carry some degree of risk of fire spread, and so there must be some defects where the risk is so low that they cannot amount to a Relevant Defect. He argued that a PAS 9980 assessment is helpful evidence when seeking to identify the degree of risk posed by a defect concerning the external walls of a building. In his submission, a PAS 9980 assessment of "low risk" means that the defect cannot, as a matter of law, amount to a relevant defect. Instead, it would be an ordinary unavoidable risk of the sort identified in *Vista Tower* at [72] where the tribunal said:

> "We think the better view is that any risk above "low" risk (understood as the ordinary unavoidable fire risks in residential buildings and/or in relation to PAS9980 as an assessment that fire spread would be within normal expectations) may be a building safety risk. Section 120(5) describes a risk to the safety of people arising from the spread of fire or collapse, not a risk reaching an intolerable or any other particular threshold. We do not think "collapse" indicates the risk must be of catastrophic fire spread, as was suggested. It need only be a risk to the safety of people arising from the spread of fire in a tall residential building."

32. Mr Dutton disagreed. At para. [33] of his skeleton argument he said that the Tribunal's role is not to determine whether an external wall

construction is a "tolerable" risk, but whether it is a "building safety risk", because of risk to the safety of people in or about the building arising from the spread of fire or building collapse. He accepted that a PAS9980 assessment is likely to be relevant, but not conclusive, evidence, for a tribunal to have regard to when considering that question. He pointed out that PAS 9980 expressly states that in terms of approval under the Building Regulations, the test to be applied by a building control body as to whether a particular fire-engineered solution is acceptable is likely to be more stringent than the methodology set out in the PAS. He acknowledged [29-30] that compliance with Building Regulations is relevant to the assessment of whether there is a 'building safety risk' and also that compliance with the guidance in ADB is relevant, but not conclusive, as to whether there has been compliance with the Building Regulations.

33. At [28] in his skeleton argument, Mr Dutton suggested that the recent case of *Zampetti & Ors v Fairhold Athena Limited & Ors* LON/00BE/HYI/2023/0013 and LON/00BE/BSB/2024/0602 ("*Empire Square*") contained a timely reminder of the danger of interpreting a statutorily defined term by reference to terms used in other documents. In *Empire Square,* Self-Remediation Terms (contractual terms referenced within regulation 21 of The Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023) ("SRT's") were contrasted with the definition of a relevant defect in s.120 BSA 2022. The FTT found that the definition of a "life-critical safety risk" in the SRTs was of little assistance when interpreting the definition of a relevant defect in s.120. It said that whilst the requirement to remediate in the SRT's is to the standard of a 'tolerable risk'", the purpose of BSA 2022 was for relevant defects to be cured, where possible, not simply reduced to what is tolerable.

34. At [14], Mr Dutton advances five propositions in relation to the requirement that to be a *relevant defect,* a defect must "cause a risk to the safety of people in or about the building arising from the spread of fire and/or the collapse of the building or any part of it":

    (a) the reference to a "risk" is to any risk however small;

    (b) the reference to the safety of "people in or about the building" refers to anyone who is in or about the building including visitors and firefighters;

    (c) the reference to the "spread of fire" refers to the spread of fire between parts of the building which are (or should be) separated by walls/floors/doors etc which are meant to confer fire resistance: e.g. the spread of fire from the external walls into a flat, or from one flat into another;

    (d) the causal link between the defect and the risk is to be determined by asking the following question: is the risk one which could have been avoided (or minimised) if the building had been constructed in some different way? And;

(e) the combined effect of propositions (a)-(d) above is that the threshold for satisfying this requirement is very low.

35. At [35] Mr Dutton submitted that when the BSA 2022 refers to something which causes a risk, it must be referring to something which changes the risk in some way, by increasing the likelihood that something may go wrong and/or by increasing the harm which may ensue if something does go wrong. He argued that the task for a tribunal is to compare the risk posed by the defect in question with the risks which would have existed if the building had been constructed defect-free. In respect of fire spread, if something has been done (or not done), or something used (or not used), which increases the risk of fire spreading from one compartment to another, which is avoidable, then it would, in his submission, be a 'building safety risk.'

36. In his oral submissions he suggested that the Tribunal should adopt the following approach:

(a) identify the risk profile if the defect was not present (this includes the ordinary unavoidable fire risks in residential buildings referred to in *Vista*);

(b) identify the risk profile with the defect in situ;

(c) identify whether there has there been a shift in the risk profile in wrong direction; and

(d) if the answer to (c) is yes, then it has caused this additional risk and constitutes a building safety defect.

37. We agree with Mr Dutton, that the reference to "building safety risk" in s.120 is to *any* risk, however small, 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. We disagree with Mr Bates that there is a threshold below which a risk should be considered as tolerable, or as an ordinary, unavoidable risk present in residential buildings of this type. There is no threshold test in s.120, and words such as "tolerable," "low," "medium," high" or "ordinarily unavoidable" are noticeably absent. In our view, the adoption of such language as a threshold test is unwarranted and we therefore disagree with the view that Mr Cooper expressed in multiple places in his report that for a defect to be a building safety risk it needs to pose an *unreasonable* risk to people in and around the building (e.g. at 4.42). The statutory wording contains no such gloss.

38. Construing s.120 in the context of Part 5 as a whole, we consider our task to be a straightforward one. It is simply to identify whether, as at the date of the hearing, and in the light of current knowledge, there are defects present at the building that constitute a risk to the safety of people in or about the building arising from the spread of fire, or collapse of the building, or any part of it. When doing so, we do not consider it

appropriate to attempt to assess the degree of that risk, nor whether the risk identified is one that exceeds that ordinarily present in a building of this nature.

39. That approach does not appear to us to be inconsistent with the decision of the tribunal in *Vista Tower*. At para. 72 that tribunal expressly said that s.120(5) "describes a risk to the safety of people arising from the spread of fire or collapse, not a risk reaching an intolerable or any other particular threshold". It suggested that a defect that caused a risk to the safety of people arising from the spread of fire in a tall residential building was sufficient to constitute a building safety risk.

40. It is true that the tribunal in *Vista Tower* said that a risk above "low" may amount to a building safety risk, but it said that in the context of rejecting a submission that a PAS9980 assessment of a 'medium', but 'tolerable', fire risk did not amount to a building safety risk.

41. If, however, our understanding is incorrect and the tribunal in *Vista Tower* found that a "low" risk assessment in a PAS9980 means that a defect is incapable of amounting to a building safety risk, then we respectfully disagree. Such an assessment is clearly relevant evidence, but it is not determinative. A tribunal will need to weigh up all the relevant evidence before it. In this case, that includes the evidence of the parties' expert witnesses, the Building Regulations and the PAS9980 assessments obtained by the Landlords.

42. We therefore agree with Mr Dutton that the threshold for establishing the presence of a relevant defect is a low one. However, this does not necessarily mean that steps will need to be taken to remediate a defect identified as a building safety risk. It is at that point, once the risks have been identified, that an assessment of those risks, such as in a PAS9980 assessment will be relevant. As expressed in the PAS Code of practice, for example in the commentary to clause 6 **[1033]**, circumstances may exist in which, "notwithstanding the presence of combustible material in the external walls and cladding, there is no need to take remedial action as the risk is low".

43. Whilst the identification of a relevant defect opens up the possibility of an application for a RO, the making of such an order by the tribunal is a matter of discretion. A tribunal may decide that it is inappropriate to order remediation if it considers that the level of risk posed by a relevant defect does not warrant it. Similarly, on an application for a Remediation Contribution Order, a tribunal may decide that it is not just and equitable to make such an order in respect of costs incurred in remedying a relevant defect where it considers those costs were unnecessarily incurred.

44. As the tribunal said at para. 75 of *Vista Tower*

> "Disagreement about whether a risk is tolerable, alone or with other factors, seems more likely (or logically) to be

about whether or what action should be taken from time to time, not whether this is a relevant risk (*sic*) at all."

45. Arguments as to whether the relevant defects identified in respect of the Development constitute tolerable risks are, therefore, matters to be decided at the final trial of these applications, when we will be considering whether to make a RCO and/or a RCO.

46. It follows that we reject Mr Dutton's submission that our task, at this stage, is to assess whether the presence of a defect increases the risk profile of the building above that of a hypothetical defect-free building. To conduct such an exercise would be unnecessarily speculative when our role is to simply assess the evidence before us in order to identify whether the statutory definition in s.120(5) is met.

47. In *Vista Tower,* the tribunal approached that task by first considering whether a *defect* was present and then whether that defect constituted a *building safety risk*. We do not agree with that approach and consider it unnecessary to first identify whether a defect is present. This is because we agree with Mr Dutton that in s.120, the word "defect" refers to a thing which is defective *because* it causes a 'building safety risk.' To start with identifying whether a matter amounts to a defect can lead to the unnecessary distraction of how to determine what constitutes a defect. Compliance with building regulations at the time of construction cannot, for example, cannot be definitive, because regulations have changed over time.

48. The better approach, in our view, is to focus on whether an asserted defect causes a building safety risk. If something was done (or not done), or if something was used (or not used) in connection with relevant works to a building, which has caused a building safety risk, it will be a relevant defect for the purposes of s.120. Given that there is no dispute that the defects asserted by the Applicant are issues that concern relevant works, it follows that our focus should be on whether the matters complained about cause building safety risks. If they do, they will constitute relevant defects. If they do not, they will not be relevant defects.

Expert Evidence

49. In deciding whether relevant defects are present at the Development, both experts have placed particular emphasis on the extent to which there has been compliance with ADB.

50. Mr Brown states at para. 4.1.1 of his report that he has proceeded on the assumption that works that do not satisfy the provisions of ADB applicable at the time of design and construction would be amount to a fire safety defect. This could be due to defective workmanship; a failure in design or construction such as the omission of a cavity barrier; or a failure to follow the guidance in ADB in relation to a specific requirement of the Building Regulations. He suggests three different 'approaches' that the Tribunal

may wish to have regard to when identifying the presence of a defect that causes a building safety risk:

(a) what he describes as the 'ADB Approach,' which focuses on whether there has been a failure to satisfy the provisions of ADB. He recognises, however, that there is a wide range of acceptable design and construction solutions available to a designer or developer of a building, who may be able to demonstrate, through a fire engineering assessment, that the level of risk associated with a building is acceptable or tolerable, even though the provisions of ADB have not strictly been complied with [4.4.5];

(b) the 'PAS 9980 Approach' by which a PAS 9980 assessment can be used to assess the risk of fire spread in respect of external walls; and

(c) the 'Cautious Approach' whereby any risk above "low" may result in the Tribunal determining that a relevant defect exists [4.7.2]. Referring to para. 72 of *Vista Tower* he suggests that this approach could mean that something assessed as low risk in a PAS 9980 assessment would nevertheless constitute a relevant defect.

51. Mr Cooper's approach [2.13] **[955]** was to first consider each of the alleged defects against the relevant provisions of ADB, and whether the relevant Requirements of Part B to Schedule 1 of the Regulations had been met. Secondly, he considered whether each alleged defect was a relevant defect that resulted in a building safety risk, pursuant to s.120 of the Building Safety Act 2022. He did not, however, consider compliance with Building Regulations to be determinative as to whether a relevant defect is present.

52. In Mr Cooper's view, it is appropriate to assume that the level of risk implied by s.120 equates to any risk above 'low risk' and this approach forms the basis for the opinions expressed in his report [3.25]. He states that if one were to take the view that *all* risk was covered, then the provisions become unworkable, as all buildings and all building work will present some residual risk to the occupants of the building [3.24]. For the reasons given above, we reject that analysis.

53. As Mr Bates' points out in his skeleton argument [23] both experts agree, and we concur, that building safety risks exist in respect of the following wall types **[1005-6]**:

(a) **EWT 02 Zinc Cladding** - it is agreed that the omission of vertical cavity barriers from some cavities in this wall system was contrary to the provisions of ADB, and that in combination with the use of combustible thermal insulation, a building safety risk exists to the occupiers of penthouse apartments;

(b) **EWT 03 EPS Render of Blockwork -** both agree that horizontal cavity barriers have been omitted at floor levels, starting at second floor level, resulting in a relevant defect as there are no barriers to

prevent upwards fire spread via combustible expanded polystyrene ("EPS") thermal insulation; and

(c) **EWT 04 EPS Render on Plywood Substrate** - both agree that the use of combustible thermal insulation without fire barriers at floor levels (starting at second floor), which is fixed to plywood sheathing board with no cavity barriers provided between the board and the underlying building substrate results in a building safety risk.

54. That leaves four remaining wall types.

(a) **EWT 01 Masonry Cavity Wall**;

(b) **EWT 05 Curtain Wall and Spandrel Panels**;

(c) **EWT 06 EPS Render on Blockwork on Balconies**; and

(d) **EWT 07 Reconstituted Stone Cladding**.

Wall Type 1 – Masonry cavity wall

55. This wall type includes most of the external walls on the Estate. Details of its construction are shown in the diagram at **[244]**. Mr Brown describes it as consisting of a traditional masonry cavity wall with combustible phenolic insulation in the cavity between the inner and outer leaf [8.1.1]. He considers it to be a building safety risk under either his ADB Approach [8.8.6 b)], or his Cautious Approach [8.8.6 d)], but not if using the PAS 9980 Approach [8.8.6 c)]. In Mr Cooper's opinion it does not constitute a relevant defect [4.19], **[971]**.

56. Mr Brown identified four specific defects in relation to EWT 01 which, in his opinion, breached: (a) Requirement B3(4) that buildings be designed and constructed so that the unseen spread of fire and smoke within concealed spaces in its structure and fabric is inhibited; and (b) ADB 9.1 **[674]** which, at para. 9.1 says as follows:

> "Concealed spaces or cavities in the construction of a building provide a ready route for smoke and flame spread. This is particularly so in the case of voids above other spaces in a building, eg above a suspended ceiling or in a roof space. As any spread is concealed, it presents a greater danger than would a more obvious weakness in the fabric of the building. Provisions are made to restrict this by interrupting cavities which could form a pathway around a barrier to fire, and by subdividing extensive cavities."

57. The defects Mr Brown identified are:

(a) missing or inadequate vertical cavity barriers;

(b) missing or inadequate horizontal cavity barriers;

(c) missing cavity barriers from the top of window openings and from around window openings;

(d) the presence of combustible insulation in the wall cavity.

58. He recognised that ADB suggests that horizontal and vertical fire barriers can be omitted from this wall type provided that the cavity wall complied with the provisions of Diagram 28. However, as explained below, in his opinion EWT 01 did not comply with Diagram 28 and, therefore, barriers were required.

Vertical and Horizontal Cavity Barriers

59. In Mr Brown's opinion, cavity barriers were absent at the junction of some of the external masonry walls and compartment walls of flats. This, he said was a breach of the requirement in Table 13 ADB **[676]**, item 4. At [8.2] **[245]**, he referred to an intrusive external wall inspection previously carried out by International Fire Consultants Limited ("IFC") on 11 February 2021 **[462A]**. IFC identified that cavity barriers were often, but not always, present in locations where EWT 01 was present. IFC said that ideally, cavity barriers would be present in all locations but as remedial works to correct this would be extremely expensive, and as the risk was low (given that brick is a very robust material and cavity barriers were present in most inspected locations), remediation was not required.

60. Mr Brown considered that vertical fire barrier installation was variable across the development [8.76 a)]. He observed that some were present at compartment and party wall junctions with the external wall. However, in four locations they were missing or inadequately installed [8.76 b)] which, in his opinion, would allow fire and smoke to spread horizontally, bypassing the compartment walls and fire resisting partitions. The four locations were:

(a) Location 5, Circus Apartments, where the vertical cavity barrier was not fitted using sufficient compression and there was a gap between the cavity barrier and the brickwork of approximately 2-5mm **[462E)**;

(b) Location 1, Eaton House, where a vertical cavity barrier had inadequate compression and there was a gap of approximately 2-5mm between the cavity barrier and the brick face **[462G]**;

(c) Location 4, Berkely Tower, where there was no vertical fire barrier **[462J]**; and

(d) Location 6, Berkley Tower, where no vertical fire barrier was present **[462K]**.

61. As to horizontal fire barriers, Mr Brown identified that the wall cavities had generally well-sealed horizontal fire barriers, which would limit fire

spread vertically [8.76]. However, he considers that it is evident from the IFC report, and his own observations that in at least two locations horizontal fire barriers are missing [8.2, 8.4.6]. The locations are:

(a) Location 6, Belgrave Court, **[462F]**); and

(b) Location 4, Circus Apartments, **[462H**].

62. Mr Cooper, however, considers that wall type EWT 01 complies fully with Diagram 28 and that this type of masonry cavity wall is inherently resistant to fire spread and fire penetration. As such, items 3 and 4 of Table 13 had no relevance because the wall type is excluded from the provisions specified in the Table regarding cavity barriers. This meant that there was no requirement, or recommendation, to provide cavity barriers in line with compartment (or fire resisting) walls or floors, or around openings or at the top and edges of the cavities in the masonry cavity walls across the Development **[101]**. As to Item 1 of Table 13, he states that the experts did not inspect any areas where two buildings on the Development were connected, so this Item is not relevant.

63. He said that despite this, as noted by the experts on their joint inspection, and referenced in the previous IFC report, mineral fibre cavity barriers have in fact been provided in most locations, despite there being no obligation to do so. He accepts that in some locations, these have not been adequately compressed within the cavity but, nonetheless opines that the existing provision exceeds the requirements of ADB **[102]**.

Openings in the cavity wall

64. Diagram 28 states that cavities should be closed at the top of openings in the wall, and at the top of the wall (unless the cavity is totally filled with insulation, which both experts agree is not the case with the buildings under consideration).

65. Mr Cooper agrees with Mr Brown that the recommendation in Diagram 28 is for wall cavities to be closed at the top of an opening, such as a window ([4.5] in Mr Cooper's report **[964]**). In Mr Brown's opinion, cavity barriers are missing from the top of window openings [8.81 b i] **[256]**. He also suggests that cavity barriers are required *around* windows, but that none are provided. Instead Thermabate cavity closers have been used which he considers to be inadequate. He also noted gaps between some of the cavity closers and the masonry wall, meaning that the closers did not completely close the cavity [8.7.4] **[254]**. He further identified that the cavity closers are combustible, meaning they would not prevent the passage of fire and smoke from either into, or out of, apartments through window openings and through the cavity wall [8.41 a)] **[247]**.

66. In Mr Brown's opinion a window in wall type EWT 01 fitted with a Thermabate closure, combined with the variable provision of horizontal and vertical fire barriers and the absence of cavity barriers at the top of window openings and around window openings is a fire safety defect

[8.8.6] **[257]**, [8.10.2] **[259]**. He considers this to be a building safety risk under his ADB and Cautious Approaches but not under his PAS9980 Approach.

67. As to the requirement in Diagram 28 that the wall cavity be closed at the top of the wall, Mr Brown's records that no investigations were carried out by the experts, but he nevertheless considers that cavity barriers needed to be installed at the top of masonry walls [5.4.15 **[221]**]

68. In Mr Cooper's opinion, the requirements of Diagram 28 for cavity closers to be fitted to the tops of windows is met by the presence of steel shelf angles at the top of windows [4.7]. He states that he observed such a shelf angle during the joint inspection of Berkley Tower (photograph 1 **[965]**. This was located at the top of the window opening in the brick masonry cavity wall. Its purpose is to support the window but Mr Cooper points out that paragraph 9.6(a) of ADB recognises that steel at least 0.5mm thick can function as a cavity barrier. He also points out that paragraph 9.7 ADB provides that a cavity barrier can be formed by any construction provided it meets the provisions for cavity barriers. He was confident that this same arrangement will be found to the tops of all windows in EWT01.

69. There is, in his opinion, no need for cavity barriers around window openings. He states that diagram 28 does not require cavity closers to be provided other than at the tops of openings, which includes window openings [4.8] **[966]**. In any event, he considers that the cavity closers present were well fitted and free from any installation defects. He agreed however, that they would provide little in terms of fire resistance.

70. Mr Cooper also agreed that Diagram 28 recommends that the top of the masonry cavity walls should be closed. However, he points out [4.6] **[964]** that when he and Mr Brown carried out their joint inspection, it did not include an examination of the top of the masonry cavity walls. In his opinion, there is no evidence to suggest that cavity closers are missing from the tops of the walls because none of the inspections carried out to date inspected the tops of the cavities. If they have, in fact, been omitted, or are inadequate, they would not, in any event, amount to a building safety risk because if fire or smoke were to enter the cavity wall, "the imperforate nature of the outer and inner leaves mean that it is extremely unlikely that the fire will re-enter the building in another location" [4.15] [4.17] **[971]**. Instead, the insulation material present would char and reduce the rate at which the insulation would burn [4.16].

Insulation in the wall cavity

71. Mr Brown considers that as Diagram 28 is not satisfied due to the absence of cavity barriers at the top of, and around window openings and, he assumes, at the top of cavities, it meant that the exclusion provided for by Diagram 28 does not apply, As such, by reason of ADB 12.7 the use of use of combustible insulation in the external wall is prohibited and the combustible (phenolic) insulation present was not permitted by ADB **[106**].

72. In Mr Cooper's opinion [3.21] **[961]**, it is clear from the title to Diagram 28 that masonry cavity walls are excluded from the need for cavity barriers, meaning that there is no restriction on the use of combustible thermal insulation within the wall cavity irrespective of the height of the building or its topmost floor.

Other evidence regarding EWT 01

73. Mr Bates in closing submitted that Mr Cooper's evidence that this wall type is inherently safe is supported by other material in this bundle, namely:

(a) A Façade Remedial Consultants ("FRC") External Façade Report dated 7-9 January 2020/6 May 2020 **[381]** in which it was said at para. 16.3.3.3 **[453]** that the evidence it had seen suggested that it was likely that the construction would meet the requirements of regulation B4(1). FRC made no recommendation regarding remediation of the masonry construction (16.3.5.1);

(b) the IFC Technical Note dated 11 February 2021 **[462A]** in which the author concludes at para. 3.1 that brick is a very robust material that provides good protection and that whilst cavity barriers were often, but not always, present, this posed a low risk. IFC concluded that the masonry system did not require remediation;

(c) a draft desktop FRAEW dated 1 October 2022 by CHPK **[497]** in which it concluded that condition of the wall type is reasonable given that the combustible material is enclosed between 2 leaves of masonry, each at least 100mm thick; and

(d) the guidance in PAS 9980: 2022 in which it is stated that in many cases, including walls of traditional masonry construction, it will be manifestly obvious to a competent fire risk assessor that the risk to life from fire spread over external walls would not warrant an FRAEW; and

(e) a PAS 9980 FRAEW dated 12 May 2025 in respect of the Canary Riverside Development **[2098]** which records a PAS Rating in respect of this wall type (described here as EWS01) as "Low" **[2101]**. The reason for this is explained at **[2118]** namely that the inner leaf of the wall construction is concrete, and the outer leaf is 100mm brickwork. Although protection around openings was missing, suitable horizontal and vertical cavity barriers were found and this, it was considered, would prevent fire spread beyond the flat of origin.

Decision: Wall Type 1

74. Both experts agreed, and we concur, that masonry walls are inherently low risk in terms of fire spread because masonry does not burn. However, there are crucial differences between a masonry or concrete wall without openings and one with openings. The presence of openings introduces the risk of spread of both fire and smoke through gaps or voids that are inadequately closed between floors and walls, thereby enabling fire spread between compartments and via the external wall. This includes fire or smoke spread caused by burning material used to fill the cavity.

75. In addition, as Mr Cooper agreed in cross-examination, the presence of windows in the walls of residential buildings has the potential to increase airflow into a cavity that is not fully closed. Furthermore, as Mr Cooper also agreed in cross-examination, one objective of closing a cavity at the top is to prevent fire and air from getting into the cavity.

76. In determining whether this wall type currently presents a risk to the safety of people in or about the building arising from the spread of fire (and therefore a building safety risk) we have had regard to all the evidence presented to us, including the material referred to us by Mr Bates, as described in para. 73 above. However, what in our assessment carries the greatest weight, and is of the most use in assessing whether the wall types under consideration cause building safety risks, is the degree to which there has been compliance with Building Regulations B3 and B4. We recognise the clear relevance of ADB, because a failure to comply with its recommendations may also indicate non-compliance with Building Regulations. However, ADB is guidance, and as stated in its introduction, there may be other ways to demonstrate compliance with the Requirements of Building Regulations, other than those described in ADB **[1207]** (an example may be compliance with a full engineered fire solution report). Compliance with PAS 9980: 2022 also carries significant weight because it provides guidance regarding fire risk appraisal of external walls.

Vertical and horizontal cavity barriers

77. Both experts agreed that some cavity barriers within the wall cavity were missing and that others had not been correctly installed. Mr Cooper's evidence was that this does not matter because EWT 01 satisfies the requirements of Diagram 28, meaning that no vertical and horizontal cavity barriers are necessary, although in many places they have in fact been provided. Mr Brown's evidence is that the wall type does not comply with Diagram 28, and therefore cavity barriers are required as identified at Items 1, 3 and 4 of Table 13.

78. As described in ADB 9.1 **[674]**, cavities provide a ready route for the spread of smoke and flame spread. In our view, unless a feature of the construction of the building suggests otherwise, the absence of horizontal and/or cavity barriers in this wall type causes a building safety risk. This is because the absence of such barriers will allow the uninhibited spread

of fire and smoke between compartments, and via the external wall, through cavity voids. An example of a feature that renders the need for a horizontal cavity barrier unnecessary is provided by Mr Brown, namely the presence of a floor slab in the middle of a duplex apartment (Location 2 **[462C]**)

79. In our determination, missing or inadequate cavity barriers at the junction of the external cavity wall of EWT 01 and compartment floors and walls separating buildings evidences non-compliance with:

    (a) Requirements B3(2) and B3(3) because the construction of the building will not adequately resist the spread of fire within the building and between buildings;

    (b) Requirement B3(4) because the unseen spread of fire and smoke within concealed spaces in the structure and fabric of the building will not be adequately inhibited;

    (c) Requirement B4(1)) because the external walls of the building will not adequately resist the spread of fire over the walls and from one building to another.

80. Although compliance with Diagram 28 is not conclusive as to whether a building safety risk is present, we do not agree with Mr Cooper that this wall type complies with Diagram 28. This is because of the presence of un-closed openings in the cavity wall on top of and around windows. We address this in more detail below.

81. We recognise that FRC, in its External Façade Report, said at para. 16.3.3.3 **[453]** that the evidence seen suggested that it was likely that this wall type would meet the requirements of regulation B4(1). However, we do not consider that report to carry significant weight because the author has made no attempt to explain what 'evidence' they considered justified reaching such a conclusion. Nor did FRC assess the impact of openings present in the cavity wall when analysing this wall type. In addition, whilst at para, 16.3.5.1 FRC made no recommendation in respect of remediation of the masonry construction, that was caveated by a recommendation that the construction needed to be reviewed " as part of a Holistic Fire Safety review, due to the presence of combustible insulation product".

82. Nor did CHPK assess the impact of openings in the cavity wall report when preparing its FRAEW **[497]** in which it concluded that EWT 01 was of "reasonable" construction. As such, we do not attach significant weight to its report.

83. Both IFC, and DFC in its PAS 9980 FRAEW, may or may not have been correct to conclude that the risk posed by missing cavity barriers was a 'low' risk given the robustness of brick material. Clearly, both agreed that there was some risk, albeit in their view a low one. Our task is to determine whether there is a building safety risk present, not whether the risk is a low or tolerable one, and we consider that a risk is present. Whether or

not IFC were correct to conclude that the costs of remedial works are unjustifiable in light of its low risk assessment is not relevant to the question of whether a buildings safety risk is present in the first place. It may, as we indicate above, be a relevant consideration when it comes to the determination of the current substantive applications for a RO/RCO.

84. We also note that the reason why DFC considered this wall type was low risk, despite protection around openings being missing, was because suitable horizontal and vertical cavity barriers were in place which would, in its view, prevent fire spread beyond the flat of origin **[2118]**. Its conclusion therefore supports our view as to the important role of such barriers in preventing fire spread.

85. Mr Cooper did not dispute Mr Brown's evidence regarding the locations where vertical and horizontal cavity barriers are missing or defective and we therefore find that relevant defects are present at those locations. For vertical barriers, these are at: Location 5, Circus Apartments; Location 1, Eaton House; Locations 4 and 6 Berkely Tower (adopting the nomenclature used by Mr Cooper in his report). For horizontal cavity barriers, these are at Location 6, Belgrave Court and Location 4, Circus Apartments.

86. In light of non-compliance with Requirements B3 and B4, as identified above, we find that the missing or defective cavity barriers in those locations, and in any other locations where EWT 01 is present, amounts to a building safety risk. This is because the lack of properly functioning cavity barriers is a risk to the safety of people in or about the building arising from inadequate resistance to the spread of fire and smoke within the building, between buildings, and over the walls from one building to another. It follows that missing or defective cavity barriers for this wall type constitutes a relevant defect.

Openings in the cavity wall

87. Both experts agreed that the top of window openings needed to be closed, as recommended in Diagram 28. Mr Cooper's evidence was that that the presence of the steel shelf-angle he observed at the top of the window opening at Berkley Tower was sufficient to function as a cavity barrier. We agree with him that a cavity barrier can be formed by any construction provided it is adequate to function as an adequate cavity barrier. We accept, as suggested in para, 9.6 of ADB that a cavity barrier can properly be formed of steel that is at least 0.5mm thick.

88. We also accept Mr Cooper's evidence that the steel shelf angle he observed at Berkley Tower was at least 0.5mm thick. As such, it had the potential to function as a cavity barrier. However, in cross-examination Mr Cooper accepted that there was a 15mm gap between the back of the shelf and the inner wall, which was filled with an unknown substance with unknown fire-resistance characteristics. Given that gap and the uncertainty as to the fire resistance of the material filling it, we cannot be satisfied that the shelf in question meets the provisions for cavity barriers which, in respect of

external cavity walls, should provide at least 30 minutes fire resistance as recommended in ADB 9.6. We find that the shelf did not close the cavity, and is inadequate to function as a cavity barrier.

89. Mr Cooper did not advance any other evidence to counter Mr Brown's evidence that the top of window openings in EWT 01 were not closed. We therefore find that the absence of cavity barriers to the top of the window openings constitutes a risk to the safety of people in or about the building arising from the spread of fire because the openings may facilitate the spread of fire and smoke within the building, between buildings, and over the walls from one building to another. It also amounts to a relevant defect.

90. We also find that adequate cavity barriers are required around window openings in this wall type to ensure that there is no free flow of air through the cavity. Again, in our view, a failure to do so will constitute a building safety risk from the spread of fire because there the gaps between the windows and the cavity wall will facilitate the spread of fire and smoke within the building, between buildings, and over the walls from one building to another. As Mr Brown suggested in oral evidence, a fire inside a compartment can break into a cavity through a window opening and spread along the cavity. This is why cavity closures are important. That importance is supported by the revision made in 2000 to ADB which required the provision of cavity barriers at the edges of cavities, including around windows (section 8.3 **[1284]**). This continues to be the case in the current edition of ADB.

91. It is common ground that the closers present in EWT 01 lack the fire-resisting qualities of cavity barriers. We therefore find that the omission of cavity barriers around the windows in this wall type amounts to a building safety risk and a relevant defect.

92. We agree with both experts that, as suggested by Diagram 28, the top of the masonry cavity walls should be closed. Mr Cooper suggests that this requirement has not been complied with. However, we are not satisfied, on the evidence that this is established. Both experts agree that they did not inspect the tops of the walls when they conducted their joint inspection. We agree with Mr Brown, that there is no evidence before us to suggest that cavity barriers are missing from the tops of the walls. We have not been taken to any previous survey or report that refers to this and therefore find no evidence of non-compliance.

Insulation in the wall cavity

93. We agree with Mr Dutton's submission that the question of whether a building contains a relevant defect is to be assessed as at the date of the hearing rather than at the time the building was constructed. As he pointed out, Building Regulations reg.7(2) now prohibits the use of combustible materials in the construction of external walls of buildings unless the requirements of European Classification A2-s1, d0 or A1 are met. Phenolic insulation is only B rated and does not meet that standard.

The question for us, however, is not whether the Building Regulations have been complied with, but whether there is a risk to the safety of people in or about the buildings containing this insulation, arising from the spread of fire.

94. Mr Brown agreed with Mr Cooper that if fire were to break into a cavity the insulation would "become involved in the fire but is unlikely to spread the fire … due to its ability to char and inhibit fire spread in the absence of a strong fire source" [8.7.3] **[254]**. Mr Brown also said that phenolic insulation tends to self-extinguish and will result in limited fire spread when encapsulated in non-combustible cladding [8.8.1 a) iv)] **[256]**.

95. However, in cross-examination, Mr Brown made clear that his position was that even though the insulation will char, rather than spread fire, this will generate smoke which could then spread along the cavity, thereby constituting a building safety risk. At the start of his cross-examination Mr Cooper confirmed that when assessing whether or not something constitutes a fire safety risk one needs to look at all risks that fire can pose, both fire and smoke. He also agreed that for the purposes of this legislation, when considering the risk of spread of fire, regard needed to be had to both fire and smoke.

96. We agree with both experts in this respect. We interpret the reference in s.120(5)(a) to the risk to the safety of people in or about the building "arising from the spread of fire" to include the risk posed by the spread of smoke. We consider "fire" to include flames, heat, light, gasses, and smoke generated from burning material. These are all the products of burning material and we see no reason to limit the reference to fire in s.120(5)(a) to 'flames'. Mr Bates did not argue to the contrary in his closing submissions.

97. We accept Mr Brown's evidence that if a fire were to enter the cavity the Phenolic insulation would char and generate smoke which, because of the absence of cavity barriers at the top of, and around window openings, would enter the cavity, thereby posing a risk to the safety of people in or about the building arising from the spread of fire, including the occupants of neighbouring flats. Its presence is therefore a building safety defect.

EWT 05 Curtain Wall and Spandrel Panels;

98. Parts of the residential towers have glazed curtain walling systems present, with spandrel panels containing foam insulation **[292]** which Mr Cooper considered was likely to be extruded polystyrene ("XPS"), a combustible material [4.55] **[978]**. Mr Brown considered it was likely to be either XPS or polyisocyanurate ("PIR") [12.7.1] **[299]**.

99. The IFC Report confirmed that horizontal cavity barriers are missing from behind these spandrel panels in some locations. In its view, the glazed curtain walling system presented "an unacceptable level of risk of fire spread vertically in the event of a fire" [3.5] **[462N]**.

100. Mr Brown agreed with Mr Cooper that given the physical and geometric separation between adjacent spandrel panels, it is extremely unlikely that a fire involving a spandrel panel would spread to involve the spandrel panels on the floors above or below [4.59] **[978]**. However, both experts also agreed that there is a problem of compartmentalisation in relation to this wall type and that the absence of cavity barriers in the void between the spandrel panels would facilitate the spread of fire through the cavity between the spandrels and the wall.

101. The Tribunal asked the experts whether they considered the vertical spandrel panel on the corner of some of the towers amounted to a void that could facilitate fire spread across many stories of the block. Neither expert had investigated or considered that question but, in oral evidence agreed that it could be a route for the spread of fire.

102. In his report, Mr Brown said that the presence of combustible insulation within the spandrel panel will contribute to the spread of fire over the walls and from one apartment to the next and increase the rate at which fire will spread into the apartment above when compared to a building constructed in accordance with the provisions in ADB [12.7.1] **[299]**. He considered that fire will spread to a flat above through the combustible spandrel panels, made easier because of the lack of adequate fire stopping or horizontal cavity barriers [12.8.1] **[299]**. In addition, he considered that lack of adequate vertical fire barriers increases the opportunity for horizontal fire and smoke to spread horizontally between adjacent apartments [12.8.2] **[300]**. He considered the wall type does not comply with Requirements B3(3) or B3(4), and that it causes a building safety risk of spread of fire and smoke from one apartment to another via spandrels [12.7] **[299]**.

103. Mr Cooper, in his report, agreed that horizontal cavity barriers are missing from behind spandrel panels in some locations and that the use of combustible thermal insulation in the walls was contrary to ADB para 12.7. In cross-examination, he accepted that fire stopping or cavity barriers behind spandrels were absent meaning that fire could travel in the manner suggested by Mr Brown. He also agreed that as identified by IFC, in at least one location, a vertical cavity barrier behind a spandrel panel was too short, with no horizontal cavity barrier present **[462D]**.

104. Nevertheless, Mr Bates describes this point as a 'red herring' because in Mr Cooper's opinion before fire will spread in that manner, the curtain walling will already have failed, with fire already spreading along the external walls, entering into other apartments through the broken window. As Mr Cooper explained at [4.53] of his report **[977]** toughened glass is likely to fail at temperatures of approximately 240°C, whilst float glass will fail at temperatures in the range of 150°C to 200°C, these being the two types of glass commonly used in curtain wall systems. As temperatures caused by flames involved in a serious fire will be between 600°C to 800°C, failure of the glazing is, he said, likely to occur soon after the flames come into contact with the glazing. In his view, if fire were to

enter a cavity, it would not result in structural failure or fire spread to the extent that it would pose a threat to people in and around the building.

105. In Mr Bates' submission this means that as the glazing will have failed well before a full fire has taken hold, there is no real risk of fire spread arising from any inadequacies in cavity barriers or compartmentation, and this wall type does not cause a building safety risk. The problems with the wall type are not, he argued a relevant defect but an inherent weakness which common to all buildings with glazed windows.

Decision: Wall Type 5

106. We do not agree with Mr Bates' submission. The likelihood of fire spread occurring through glass failure before it happens as a result of lack of cavity barriers or compartmentation is not, in our view, the relevant question. The question for us is whether the construction of the wall type constitutes a building safety risk. In our view, it clearly does.

107. Both experts agreed that horizontal cavity barriers and/or adequate fire stopping should be present with this wall type but were missing. We agree with Mr Brown that these omissions create a risk of fire spread from one flat to a flat above, through the cavity behind the spandrel panel. We also consider that the combustible insulation that both experts agreed is present is likely to contribute to the rate at which that fire will spread. We also accept Mr Brown's oral evidence that if a fire were to break out in a flat it is possible that flames or smoke may spread from one flat to another through the cavity, behind the spandrel panel, before a catastrophic failure of the glazing occurs. As Mr Dutton pointed out appropriate compartmentalisation and the installation of cavity barriers is designed to inhibit fire spread in such a situation.

108. In our determination, the lack of adequate cavity barriers or firestopping demonstrates non-compliance with:

    (a) Requirement B3(3) because the construction of the building will not adequately inhibit the spread of fire within the building; and

    (b) Requirement B3(4) because the unseen spread of fire and smoke within concealed spaces in the structure and fabric of the building will not be adequately inhibited.

109. For the reasons given, and in light of non-compliance with Requirements B3(3) and (4), we find that the wall type, as constructed, causes a building safety risk because it causes a risk to the safety of people in or about the building arising from inadequate resistance to the spread of fire and smoke within the building.

EWT 06 EPS Render on Blockwork on Balconies

110. Both experts agree that this wall type is constructed in the same way as wall type EWT 03 – EPS Render on Blockwork, the difference being that instead of being applied to a vertical façade, EWT 06 is present in the internal spaces of the two types of balconies present, inset and protruding concrete balconies. Example photographs are at **[273-4]** and **[306]**.

111. In respect of EWT 03, Mr Cooper agreed with Mr Brown that the lack of horizontal fire barriers amounts to a building safety defect because of failure to inhibit fire spread up the walls of buildings by way of the EPS thermal insulation that is fixed to concrete blockwork [4.36] **[974]**. In Mr Brown's opinion, the same considerations apply in respect of EWT 06. The two wall types are identical, the only difference being the location where the EPS render is present. He considered its presence will result in additional fuel for any fire originating inside a flat and will intensify the fire issuing from the balcony opening. In his opinion, where there is adjacent combustible construction such as EWT 03 which is aligned vertically, the risk of fire spread is the same as for EWT 03, and fire may spread upwards or downwards to the full extent of the panels. Where there are adjacent sections of EWT 05 curtain wall with combustible spandrels present, any defects in the spandrels such as combustible insulation or missing cavity barriers creates an increased risk of fire and smoke spread into adjacent apartments or rooms [13.63-4] **[307]**.

112. Mr Cooper states that this wall system was not inspected as part of the joint inspections and is not referred to in the IFC Report [4.64] **[979]**. He suggests that the experts are therefore not in a position to give an opinion on it. He nevertheless proceeds to do so, stating that as confirmed with Mr Brown, the concrete balconies are extensions of floor slabs. In Mr Cooper's opinion, the balcony flooring will act as a fire break in the event of a fire, and no other fire barriers are required [4.68-9] **[979]**.

113. Mr Bates' submitted that there is supporting evidence for this in CHPK's report where it was said that because the balconies are vertically aligned, there is a potential risk of fire spread across compartment floor lines due to the presence of combustible material, but that the concrete slab forming the structural floor of the balconies forms a considerable barrier to fire spread between balconies **[484-5]**. CHPK said that the EPS is located outside the double leaf masonry construction and is unlikely to be ignited, or to spread fire back into the building. Although, in the event of a balcony fire, the EPS to the soffit may contribute to the heat output of the fire, CHPK considered that the concrete slab structure of the balcony will prevent spread to the balconies above. It considered that the EPS insulation could be left in place.

114. Support, said Mr Bates, can also be found in the general PAS guidance regarding balconies, in which it is said that balconies that project beyond the main building structure on an extension of the floor slab have the ability to deflect fire and smoke plumes away from the from the building **[1151]**. The guidance also suggests that non-combustible open balconies

have the potential to interrupt a cavity and deflect flames away from the façade. It also suggests that management controls such as a prohibition on barbecues is a relevant consideration **[1168]**.

Decision: Wall Type 6

115. In our determination, the presence of combustible EPS in the render to this wall type amounts to a building safety risk due to the risk of fire spread. Both experts agree that EPS is present and it is also referred to in the previous CHPK Technical Note. Both experts have provided an opinion as to whether its presence amounts to a buildings safety risk and the experts had the benefit of inspecting the balconies at the site visit. We see no barrier to us determining the question on the evidence before us.

116. We accept that the concrete floor slabs will act as a fire break and will inhibit fire spread between balconies. Despite that, the evidence suggests that the presence of the EPS render nevertheless causes a building safety risk. As stated in the PAS guidance **[1151]**, regardless of balcony type, the materials used to line balconies (including soffits) need to be assessed in light of their likely contribution to external fire spread Mr Bates pointed us to the section of the guidance that referred to the relevance of management controls, but other potentially relevant factors listed there include the extent to which more than decking is combustible and whether a balcony is in line, or staggered, from others. The balconies at the Development are all in line.

117. We are persuaded by Mr Brown's evidence and Mr Dutton's submissions regarding this wall type. In respect of the protruding balconies **[274]** the balconies do not extend the full width of the rendered wall sections meaning that there is a section of rendered wall immediately to the right of each balcony which does not contain a fire barrier. We accept Mr Brown's oral evidence that if a fire were to spread from a flat to the wall at the rear of the balcony, although the ceiling of the balcony would initially prevent the fire from rising to the floor above, there is a real risk that the fire will spread laterally to the adjacent render, setting alight the EPS present in the rendered wall. As that wall runs the full height of the building without interruption there is then a significant risk of fire spreading vertically up the face of the building, as well as laterally.

118. As to the inset balconies **[273]**. Mr Dutton pointed out that the main wall to one side of these balconies is masonry covered with EPS render and that the render also faces the vertical face of the floor slab which acts as each balcony's ceiling. In oral evidence, both experts confirmed that the wall in question is constructed of WT 03. As identified by Mr Brown [276] **[288]**, in its Technical Note CHPK concluded that in the event of a balcony fire, the EPS to the soffit of the balconies may contribute to the heat output of the fire (albeit that the concrete slab structure of the balcony will prevent spread to the balconies above).

119. As Mr Cooper accepted, if there was a fire within one of these balconies there is a risk that the EPS render on that vertical face may act as a fire

bridge, so that a fire within one of the balconies may spread to the EPS render on the main wall. Support for Mr Brown's evidence that the presence of EPS presents a fire safety risk can also be found in the DFC's PAS 9980 reports where it concluded that the fire performance risk in relation to the inset balconies is "between high and tolerable" **[1542]**.

120. We find that the presence of EPS combustible insulation in the walls, floor and soffit of the balcony areas is a building safety risk in respect of fire spread and therefore a relevant defect. We agree with Mr Brown that Requirement B4(1) is not met because the external walls of the building will not adequately resist the spread of fire over the walls and from one building to another.

EWT 07 Reconstituted Stone Cladding.

121. This wall type is present in a section of the external wall spanning parts of both Berkley Tower and Hanover House. It was not intrusively inspected by either IFC or FRC but a borescope investigation was carried out in July 2021 by Elliot Group. CHPK then reviewed the results and carried out a follow-up, non-invasive, inspection before preparing a Note dated 1 December 2021 **[474]**. CHPK recorded that its inspection method had not allowed cavity barriers to be identified, but that the wall design comprised two leaves of masonry more than 75mm thick, meaning that cavity barriers are not required in any event. It said that although combustible insulation is located in the cavity, it is fully enclosed between two leaves of masonry, so that the risk of fire spread into or through the cavity is very low **[475]**.

122. The wall type was also considered in DFC's generic PAS dated 12 May 2025 **[2102]** in which, as Mr Bates pointed out, it was given a PAS Rating of 'low' on the basis that it was ADB compliant because the encapsulation method was reconstituted stonework, with an inner leaf and an 80mm outer leaf **[2119]**.

123. The parties' experts did not inspect this wall type, but both assumed its construction was the same as EWT 01 - masonry cavity wall and repeated their opinions for EWT 01 for this wall type. However, Mr Brown in his report said that further investigation is needed to confirm if a building safety risk is, in fact, present [14.64] **[312]**. He said he was unable to reach a concluded opinion on the wall type due to the limited intrusive inspections conducted [14.8.1] **[313]**.

124. Mr Bates' submission was that the wall type was not a building risk for the same reasons as EWT 01. We have rejected that submission above. Despite that, we are not satisfied on the evidence available that EWT 06 amounts to a building safety risk. During the course of the hearing Mr Thomas referred counsel to Table L9 in the PAS guidance **[1153]** which reads as follows:

> "Engineered/reconstituted stone cannot be assumed to be non-combustible (as is the case with natural stone) because it contains

combustible polymeric resin binder. Unless combustibility can be confirmed by small-scale testing, the likely fire performance of these materials needs to be considered by reference to appropriate large-scale fire tests."

125. Both experts said that additional testing would be needed to know whether the reference in the PAS guidance was relevant.

Decision: Wall Type 7

126. We are not satisfied, on the evidence before us, that this reconstituted stone wall type has precisely the same characteristics as EWT 01. On Mr Brown's own evidence further investigation is needed to confirm whether it constitutes a building safety risk. Mr Cooper agreed and their view is supported by the recommendations made at Table L9 of the PAS guidance that testing be carried out to identify combustibility of reconstituted stone materials.

127. No such investigations have been undertaken. We have not seen the results of the borescope investigation carried out by Elliot Group, only CHPK's subsequent Note. However, in our assessment a borescope investigation, being very limited in scope, is clearly insufficient to establish the provision (or lack of) cavity barriers or cavity closers, as CHPK itself identified. Given the uncertainty surrounding the composition of this material, and Mr Brown's own evidence that further investigations were needed before he could confirm if a building safety risk is present, we determine that there is insufficient evidence for us to conclude that this wall type causes a building safety risk.

Amran Vance
6 January 2026

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 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).