FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/HIN/2025/0611**
Property	:	**Gallery Lofts, 69 Hopton Street, London, SE1 9LJ**
Applicant	:	**Manhattan Loft Corporation Limited**
Representative	:	**Charles Russell Speechlys (Sylwia Jatczak)**
Respondent	:	**London Borough of Southwark**
Representative	:	**In house legal team**
Type of application	:	**Appeal in respect of an Improvement Notice: Sections 11 and paragraphs 10-12 of Schedule 1 to the Housing Act 2004.**
Tribunal members	:	**Judge H Carr** **Judge Sinéad Agnew** **Mr John Stead**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**12th December 2025**
Date of decision	:	**8th June 2026**

DECISION

Decisions of the tribunal

(1) The Improvement Notice for Gallery Lofts, 69 Hopton Street London SE1 9LJ is confirmed.

The application

1. This is an appeal by the freeholder of the property, Manhattan Loft Corporation Limited ("the Applicant") in respect of an Improvement Notice dated 2nd December 2024 served by the Respondent, the London Borough of Southwark.

2. By an application dated 23rd December 2024 the Applicant filed an appeal against the Improvement Notice.

3. On 27th February 2025 directions were issued providing for both parties to file their statements and documents in support and thereafter for the matter to be listed for a hearing.

4. The application was listed for hearing on 12th December 2025. The parties agreed, and the Tribunal concurred, that there was no requirement for an inspection of the property.

The Law

5. The Housing Act 2004 ('the Act") provides the framework for the assessment of the condition of residential properties and the remedies that can be used to enforce standards in respect of them.

6. The Housing Health and Safety Rating System (HHSRS) provides a rating system for hazards. The score will determine which category the hazard falls; a score over 1000 will be a Category 1 hazard and those below 1000 will be a Category 2 hazard.

7. Section 5(1) of the Act provides that if a Category 1 hazard exists then a local authority must take the appropriate enforcement action which can be an improvement notice, prohibition order, a hazard awareness notice, emergency remedial action, demolition order or declaring the area in which the premises are situate, a clearance area. The Act further provides that if only one course of action is appropriate, that course must be taken, or if there are two or more courses available, then the local authority must take the one deemed to be most suitable.

8. Section 12(2) requires the person upon whom the improvement notice is served to take remedial action in respect of any of the hazards that are specified.

9. Schedule 1, paragraph 4 of the Act stipulates that where any specified premises in an improvement notice are common parts of a building containing one or more flats, the local housing authority must serve the notice on a person who (a) is an owner of the specified premises concerned, and (b) in the authority's opinion ought to take the action specified in the notice. For these purposes, a person is an owner of any common parts (which, under s 1(5) include the structure and exterior of the building), if he is an owner of the building or part of it, or (in the case of external common parts) of the particular premises in which the common parts are comprised.

10. Section 262(7) of the Act provides as follows:

> In this Act 'owner', in relation to premises –
>
> (a) means a person (other than a mortgagee not in possession) who is for the time being entitled to dispose of the fee simple of the premises whether in possession or in reversion; and
>
> (b) includes also a person holding or entitled to the rents and profits of the premises under a lease of which the unexpired term exceeds 3 years.

11. Schedule 1, paragraph 14 (1) of the Act provides that a person upon whom an improvement notice has been served may appeal to the First-tier Tribunal within 21 days beginning with the day upon which the improvement notice was served. The grounds for the appeal are set out in paragraphs 10, 11 and 12 of the Act.

12. Schedule 1, paragraph 10 of the Act provides that a person on whom an improvement notice is served may appeal against the notice. The generality of this right of appeal is expressly unaffected by the availability of two specific grounds of appeal under paragraphs 11 and 12. Paragraph 11 provides that an appeal may be made by a person under paragraph 10 on the ground that one or more other person/s as owner/s of the specified premises ought to (a) take the action concerned or (b) pay the whole or part of the cost of doing so. Paragraph 12 provides a specific ground of appeal on the basis that the best course of action would be to make a prohibition or demolition order or serve a hazard awareness notice.

13. Schedule 1, paragraph 13 provides an appeal may be made against the decision by a local authority to or revoke an improvement notice.

14. Schedule 1, paragraph 15 provides for the First-tier Tribunal to deal with any appeal by way of re-hearing, thus allowing it to consider the property at the date of the hearing and take into account matters of which the local authority may not have been aware at the date the

notice was served. The Tribunal has the power to confirm, quash or vary the improvement notice.

The hearing

15. The Applicant was represented by Mr Aaron Walder of Counsel at the hearing, and the Respondent was represented by Mr Aaron Kohli of Counsel. Mr Dale-Simmonds from the applicant and Mr Mark Preston from the Respondent both attended the hearing and gave evidence.

16. At the commencement of the hearing the Respondent raised issues with the skeleton argument provided by the Applicant. It submits that the skeleton raises matters which are not foreshadowed by the Grounds of Application and that therefore they should not be considered at the hearing.

17. Those matters are
    a. "legitimate expectation" based on how the Respondent dealt with the Improvement Notice served in respect of Bankside Lofts;
    b. "Irrationality based upon role of Managing Agent". This concerns an argument that Mr Preston has confused the role of Parkgate Aspen, the agent appointed by the RMC with the role of the freeholder;
    c. "Unlawfulness based on failure to consider Article 1 of the First Protocol". The Applicant expressly acknowledges that this is a new argument.
    d. "Unlawfulness based on breach of Housing Act 2004". The allegation made is that there has been a failure to serve notices on the owner pursuant to s. 239 of the 2004 Act.

18. The Applicant argues that the points raised in the skeleton argument are foreshadowed in its Statement of Case and require to be considered by the Tribunal. It requested an adjournment to enable the Respondent to answer the issues it has raised. The Respondent said that if the new points were to be considered then an adjournment was necessary.

19. The Tribunal considered the new matters and the application for an adjournment. It accepted that at least some of the arguments raised in the Applicant's skeleton argument had been foreshadowed, albeit not highlighted, in the Applicant's Statement of Case.

20. It decided that the application would proceed to be heard without considering the arguments outlined above, but that the Applicant would be given an opportunity following the hearing to amend its Statement of Case to make its new arguments clearly, and the Respondent would be given an opportunity to respond.

21. If the Tribunal thought it necessary, a further hearing would be arranged so that any matters that required further evidence/argument to be presented orally could be heard. In the event whilst further submissions were presented, the parties and the Tribunal agreed that a further oral hearing was not necessary.

22. The matter has therefore been determined based on the matters presented at the hearing on 12th December 2025, the hearing bundle provided for that hearing and the further written submissions made by the parties comprising

    a. An amended Statement of Case from the Applicant in which it was made clear that the Applicant was no longer relying on the issue of "legitimate expectation" and "breach of Housing Act 2004" which originally appeared in the skeleton argument.

    b. A response to the amended Statement of Case from the Respondent

    c. Submissions from the Applicant

23. The Respondent declined to make further submissions

24. The Tribunal reconvened to consider the further submissions and make a decision on May 22nd 2026.

The background

25. The property, Gallery Lofts, 69 Hopton Street, London SE1 9LJ, is a residential block built in the 1990s and comprising 8 storeys and 63 privately owned flats. It is over 18 m in height and is part of a wider development known as Bankside.

26. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The history of enforcement

27. The Respondent's account of the history of enforcement is as follows

    a. On 25 November 2021, Mark Preston, Private Sector Housing Officer employed by the Respondent, carried out an inspection of the property under the Housing, Health and Safety Rating System pursuant to the Housing Act 2004. It was concluded that there was a Category 2 (Band F) hazard.

b. An informal Improvement Notice was drafted and shared with the Applicant and its managing agent. Initially, there was cooperation by the managing agent, and some works were undertaken to address the hazards identified. However, this ceased and a further inspection was undertaken on 13 June 2024.

c. Following works a reassessment of the condition of the property was carried out. As he considered that the works were of a poor standard Mr Preston's re-assessment concluded that there was a Category 2 (Band D) hazard. Following the June 2024 inspection, further works were carried out but the managing agent ceased providing updates in August 2024.

d. The Respondent decided that enforcement action was necessary and on 2nd December 2024 served an Improvement Notice on the Applicant. Remedial works were required in respect of the external wall system and internal remedial works.

28. The remedial action stipulated by the Respondent in respect of the external wall system is as follows:
    a. Provide a ventilation/ducting plan for the residential elements of the development showing the location and route of ventilation/ducting to the outside. Where ventilation/ducting penetrations are not fire stopped, those penetrations are to be adequately fire stopped; and
    b. b. Provide documentary evidence to the local authority that electrical lighting penetrations to the External Wall Systems are suitably fire-rated.

29. The internal remedial action stipulated is
    a. compartmentation and enclosure of services;
    b. improvements and repairs to fire doors;
    c. installing a fire alarm system conforming to BS 5839-6-:2019;
    d. works to the smoke management system;
    e. improvements to the means of escape;
    f. installing fire action notices;
    g. inspecting and installing fire safety features to the firefighting lift;
    h. installing wayfinding signage;
    i. adopting a common socket policy which might involve the installation of an isolation switch;
    j. adopting a written management plan for storage and charging of electric bicycles;
    k. providing maintenance certification for fire safety features in the block;
    l. providing an up to date fire risk assessment and cause and effect matrix.

The Applicant's arguments

30. The Applicant appealed against the improvement notice on the following ground:

    The Applicant has no legal rights of entry onto the Building, is not responsible for the common parts, and as such cannot undertake the works set out in the Improvement Notice. As such, the notice is flawed.

31. The Applicant explained that each of the 34 residential leases which demise the individual flats are tri-party. They are demised between the Applicant, the Residential Leaseholder, and Bankside Lofts Management Limited (Bankside).

32. Bankside is controlled by the Residential Tenants each of whom holds one share in that company. Bankside has accepted it is a Principal Accountable Person for the purposes of section 75 of the Building Safety Act 2022 (as it is registered as such). As such, even if the Applicant has the power to interfere with the management of the building (which it does not where not required to do so by a leaseholder) it would be detrimental to the proper estate management of the building to impose obligations on the Applicant, as a third party without any understanding or involvement with the current fire safety plan for the building.

33. The Applicant contends that the Notice should be quashed. It argues that it is therefore neither appropriate nor necessary to consider the content of that Notice, because it cannot survive the taint of impropriety.

34. In the alternative, the Applicant argues that in relation to the external wall system, the notice does not in fact require works of improvement to be undertaken to the Building, but rather further works of investigation; the Respondent not accepting the investigation that has been already undertaken. That type of work is unsuitable and improper to form the basis of an Improvement Notice, as in this case or at all.

35. In its amended Statement of Case the Applicant made it clear it no longer relies upon the issue of "legitimate expectation" and "breach of Housing Act 2004" (in relation to the failure to serve notices pursuant to section 239 only), which originally appeared in the skeleton argument.

36. It summarized its arguments on the grounds it was pursuing as follows:
    a. The decision maker, when arriving at the decision of who to serve the Notice on, has placed great weight on the Building Safety Act 2022. However, it has misunderstood or misapplied

that Act, placing too much weight on Schedule 8 (without obtaining any evidence) and no weight on Part 4 of that Act. This is irrational, and wrong as a matter of law;

b. The Notice itself is flawed. There is a requirement to give reasons, and no reasons are given within the Notice as to why this Applicant was made the subject of it;
c. The decision maker, when arriving at the decision of who to serve the Notice on, has misunderstood the contractual liability and role of the Applicant. This is manifested in its misunderstanding of the role of Parkgate Aspen, who are in fact managing agents for Bankside but who it incorrectly believed were the managing agent of the Applicant (see 24b above).
d. The decision maker, when arriving at the decision about who to serve the Notice on, has failed to consider the Applicant's rights under Article 1 of the First Protocol of the European Convention on Human Rights.

The Role of the Building Safety Act 2022

37. The Applicant developed its arguments about the Building Safety Act 2022. It notes that an Improvement Notice under the Housing Act 2004 is properly served on the person who "ought to take the actions specified in the notice". There is no guidance on how the Local Authority is to establish how a person "ought to" take action. There are no reasons in the Notice itself as to why it concluded the Applicant "ought to" take action.

38. The Applicant says that the best explanation of how the decision was arrived at appears in paragraphs 13 – 15 of the Respondent's evidence, given by Mr Mark Preston, and in its Statement of Case. The evidence begins by stating that "local Housing Authorities remain uncertain on how to act in terms of enforcement under the Housing Act 2004 where there is either an RTM or RMC in place".

39. He then goes on to state "it is clear that the Government intend that leaseholders should not be held liable for relevant defects under the Building Act (sic) 2022". He states that therefore a decision has been taken in this case to serve against the freeholder.

40. This shows that at least part of the reasoning for the decision was that "leaseholders should not be held liable for relevant defects". But aside from that reference in the evidence, the Respondent's Statement of Case expressly sets out schedule 8 of the BSA and suggests that "it would not be the better course to serve the Improvement Notice on the individual leaseholders". It goes on to state at paragraph 27 that "the effect of the Schedule 8 leaseholder protections in the BSA would prevent the cost of such works from being recouped from the leaseholders of the block".

41. While it is correct to note that Part 5 and Schedule 8 of the BSA does represent a marked departure from the bare contractual responsibility for repair under a residential lease (in the broadest terms), the Applicant argues that is an overly simplistic view of the Act.

42. The Applicant says that the Act does not, in fact, simply remove liability for leaseholders for repairs. In reality, a number of criteria need to be met before Part 5 and Schedule 8 prevent the cost of such works being recouped. First, as Mr Preston appears to recognise, the works must be relevant works to be a relevant defect. Second, the lease must be a qualifying lease. Third, the landlord must meet one of the criteria set out in Schedule 8.

43. There is absolutely no evidence that the Respondent considered these criteria in relation to this building and these leaseholders. Instead, they appeared to consider a flawed view of the policy behind the BSA, rather than consider how it applies to this situation. As such, the Respondent's consideration of Part 5 and Schedule 8 of the BSA is irrational, without further consideration of how it would apply in this case.

44. Both the Statement of Case and the Witness Statement make it clear that the factual matrix and application of the BSA were not considered here. However, there is significant evidence that in fact, Parkgate-Aspen, as appointed managing agent for and on behalf of Bankside Lofts Management Limited ("Bankside") were progressing matters and undertaking repairs, despite the protection that possibly existed for leaseholders. As such, irrespective of the lack of consideration of the application of Part 5 and Schedule 8, in fact there appears to be no issue with the leaseholders funding the works.

45. Indeed the Articles of Association of Bankside expressly allow for the company to call on the members to meet expenses. At article 16, it states "The Members shall from time to time, and whenever called upon by the Company so to do, contribute equally, or in such proportions as the Directors may determine, to all expenses and losses which the Company shall properly incur on their behalf, and in respect of which they are not otherwise bound to contribute in their capacity as Members."

46. In all the circumstances, the Applicant says, an irrational reliance has been placed on Part 5 and schedule 8 of the BSA. This is especially so, given the Respondent appears to have not considered, or taken no notice of, Part 4 of the BSA.

47. Pursuant to s.73 of the BSA, Bankside, the Management Company named in the lease, is the Principal Accountable Person. The Building Safety Regulator's register of high-rise residential (or higher-risk) buildings sets out the following. a) Bankside is the principal accountable person registered with the Building Safety Regulator, and in fact the only accountable person for the building; b) It is responsible

for maintaining plant and equipment – this includes lifts, firefighting equipment and any other machinery in the building; c) It is responsible for the routes residents can walk through, like corridors, staircases and fire doors; d) It is responsible for facilities that residents share, like laundry rooms or bin rooms.

48. Pursuant to the Lease, Bankside has the following obligations by schedule 5: "to repair maintain replace renew improve clean decorate (or otherwise treat) light drain and otherwise keep in good and substantial repair order and condition (a) the Structure of the Building and in particular the roof foundations and structural and/or load-bearing walls thereof and (b) the Common Parts (including the Windows in the Common Parts".

49. Schedule 6 sets out the services undertaken by Bankside. Paragraph 13 relates to electric lighting. Paragraph 14 relates to fire-fighting equipment. There is also a general discretion for Bankside to do anything which it considers in its sole discretion should be necessary including, expressly, the rectifying or making good of any defect.

50. Furthermore, as Principal Accountable Person and only Accountable Person, Bankside is responsible for under s.84:

> 84 Management of building safety risks (1) An accountable person for an occupied higher-risk building must take all reasonable steps for the following purposes— (a) preventing a building safety risk materialising as regards the part of the building for which they are responsible; (b) reducing the severity of any incident resulting from such a risk materialising. (2) Those steps may in particular involve the accountable person carrying out works to the part of the building for which they are responsible.

51. There are also a number of reporting obligations under Part 4 of the 2022 Act, such as pursuant to s.79, and as part of the so-called Golden Thread of information. In all the circumstances, each and every item within Schedule 2 of the Improvement Notice are matters Bankside is obliged to do either under the lease or under its Building Safety Act obligations.

52. There is absolutely no evidence that the Respondent considered these obligations. In fact, the analysis of "who ought to take the action" does not evaluate the repairing, maintenance and management obligations allocated to Bankside under the tripartite leases, management arrangements, and statutory obligations nor Bankside's practical control over access, contractors, and service charge funding for remedial works. By not assessing those concrete responsibilities and capabilities, the decision overlooks highly material considerations to the "ought to" limb and substitutes them with generalised concerns about policy.

53. Given there is clear reference to the BSA, but not to these crucial issues, the decision is wrong in all the circumstances.

The Lack of Reasons in the Notice

54. S.8(2) of the 2004 Act states "The authority must prepare a statement of the reasons for their decision to take the relevant action".

55. The Applicant argues that the Respondent may seek to argue a narrow interpretation of s8(2) and suggest that the reasons only need to relate to the type of power to be exercised (ie whether to serve a prohibition 7 notice, or an improvement notice, or some other type of notice). However, such a narrow interpretation should be rejected on a purposive and proper interpretation of those obligations.

56. The statutory requirement for reasons exists for two reasons. First, given these enforcement notices require a party to do works at their cost, on the threat of criminal sanctions, it is necessary to give reasons to satisfy public law requirements of fairness, so that a party subject to such a notice understands that the action against them is not arbitrary.

57. Second, it is necessary should the decision be appealed, as it has been here, to be able to challenge the reasoning. That must be correct, given there is an extremely short period (21 days) within which to lodge an appeal. The sole basis of this appeal is that the wrong party has been made subject to the Notice. If a party is to have any possibility of considering the basis of the decision-making process, it must be furnished with reasons.

58. Furthermore, section 8 requires a statement of reasons "for their decision". It is a pre-requisite of making that decision that the criteria in paragraph 4 of Schedule 1 (ie who is an owner, and who ought to do the work) must be considered. So, those matters must be considered before the decision itself is made, and form part of the decision-making process itself. As such, the reasons for arriving at the decision as to who to serve the Notice on, must be given.

59. In fact, the Statement of Reasons annexed to this Improvement Notice does not give any reason at all as to why the enforcement action is being taken against this party. The Statement of Reasons is totally absent as to why the enforcement is being taken against the freeholder.

60. The previous quashed Improvement Notice in relation to Bankside, Bankside's agents did at least try to give reasons why the freeholder was targeted with enforcement action, see p100 – 102, specifically p.101 the paragraph beginning "In regard to Bankside…".

61. The Applicant avers that the effect of this lack of reasons as to why enforcement action is being taken against it means the Notice is simply

void. It is a mandatory requirement, and it has not been fulfilled. Clearly, the Respondent knew it was a mandatory requirement, that is why it attempted to give reasons for pursuing the freeholder in the previous notice.

62. In the alternative, if it does not void the Notice per se, then as a proper matter of procedure, no weight or deference ought to be given to the Respondent's original decision when considering it on appeal, because the only evidential basis for why the decision has been made is provided with the benefit of both hindsight, and of seeing the Applicant's arguments against it.

63. Either way, it is submitted that the appeal should succeed on that basis alone, and the Notice should be quashed.

The Misunderstanding of the Management Company's Obligations, and the Role of Parkgate Aspen

64. The Applicant argues that upon close examination of Mr Preston's witness statement, it appears clear that he has confused the role of Parkgate-Aspen. For the avoidance of doubt, Parkgate-Aspen are the managers appointed by Bankside, to carry out Bankside's obligations under the lease ("the Managing Agents"). His statement notes: a) At para 6 – Initially there was good communication with Parkgate-Aspen b) At para 7 – Notice of an inspection was given to all relevant parties. In fact, as can be seen, notice was only given to parties addressed via Parkgate-Aspen [300 – 327]; c) At para 9 - following the inspection there was an increase in communication from the Managing Agents, Parkgate-Aspen; d) At para 9 – preparations were being made for serving an Improvement Notice should issues arise again with the performance of the Managing Agents, Parkgate-Aspen e) At para 10 – the Managing Agents Parkgate-Aspen stopped providing updates on works in August 2024. The decision was therefore made to proceed with formal enforcement action.

65. Furthermore, the email communication with Chelsea-Louise Berlin of Parkgate-Aspen makes it clear that Mr Preston considers that Parkgate-Aspen is responsible for the repair, and that in his view, that entity has been lackadaisical in undertaking the works he considers are necessary.

66. It is noteworthy that in his evidence Mr Preston refers to the Government document "Remediation Enforcement: Guidance for Regulators", although he does not print off a copy. Section 9 deals with Buildings such as this one, and section 9.1.2 invites the regulator to consider "who and what is blocking remediation".

67. That section concludes by stating: "To determine whether it is more appropriate to serve a notice on the freeholder or an RMC's or RTM's leaseholders, local authorities will need to decide who they believe ought to carry out the specified work(s). This may include giving

appropriate consideration to which party appears to be delaying or blocking remediation, and to the RMC's or RTM's ability to raise the necessary funds (especially in light of the leaseholder protections)."

68. It appears clear that Mr Preston believed that Parkgate-Aspen was the freeholder's agent, and that led him to the erroneous conclusion that the freeholder was the party "delaying or blocking remediation". Of course, that is simply not the case. Here, Bankside's agent appears well funded, knowledgeable, and willing to cooperate. There is simply no reason, or no valid reason, to serve the Notice on the freeholder in those circumstances. In all of the circumstances of this case therefore, it is wrong to have served the Notice on the Applicant.

69. Mr Preston also raised further points, which are that the freeholder drafted the leases and therefore "ought" to do the works; and the building was not "fit for purpose" and so responsibility should revert to the freeholder until it is. Of course, neither "drafted the leases" nor "fit for purpose" appears in the statutory language. These factors also fail to give any weight to the fact that the Respondent initially engaged with Parkgate-Aspen, which was progressing matters before communications lapsed later.

The Failure to Consider the Applicant's A1P1 rights

70. The Applicant argues that, notwithstanding the lack of reasons in the Notice itself, the Statement of Case and evidence of the Respondent makes it clear that the thought process of the Respondent involved consideration of the liquidity of the Applicant, and its ability to afford to undertake the works over and above other potential parties, in direct opposition to where the burden of funding those works lay in the lease.

71. The Respondent sets out a number of matters in the fourth ground of its Statement of Case at paragraph 27. These matters effectively suggest that the basis for the decision to serve the Notice on the Applicant involved consideration of the fact that it was in a position to afford the works, and the leaseholders and/or Bankside were not.

72. As set out above, no investigation as to the evidential validity of that statement appears to have been undertaken by the Respondent. However, even if it were correct, the Respondent has in effect based its judgment on the Applicant's ability to pay.

73. Article 1, Protocol 1 of the Convention ('A1P1'), as set out in Schedule 1 Part 2 of the Human Rights Act 1988 provides as follows:

> 10 Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however,

in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

74. The reference to a natural or legal person clearly includes a body corporate such as the Applicant. As such, the Respondent authority are bound by A1P1 when exercising their discretion. However, there is no suggestion that they gave any thought to it.

75. The decision of the Respondent clearly and obviously deprives the Applicant of its possessions. It seeks to cause it to pay for works where it has no contractual obligation to do so.

76. The Respondent may seek to argue some form of justification or proportionality. However, such an argument is bound to fail for two reasons. First, the proportionate and justifiable method for dealing with fire safety issues is the Building Safety Act 2022, not the method of improvement notices in the 2004 Act. Second, the mischief here is the fact that the Respondent did not even consider the Applicant's A1P1 rights. It is not permissible to seek to justify the decision after the event. The decision was taken without any consideration of these rights and is therefore flawed and wrong.

The Respondent's response

77. The Respondent argues as follows:

The role of the Building Safety Act 2022

78. First Mr Preston was clear in his oral and written evidence that the decision to serve the improvement notice on the freeholder was motivated by his assessment that the building was not fit for purpose, from a fire safety perspective, at the time it was developed.

79. He was pressed, in cross examination, on the extent to which the content of the 2022 Act influenced him to serve on the freeholder. His evidence was not that he placed "great weight" on the BSA 2022 and/or on the provisions within Schedule 8. His balanced and nuanced position was that:

(a) he inspected the building and determined it had been built defectively from a fire safety perspective;
(b) the freeholder should, as a consequence, be the party to remediate defects until such time as the building is fire safe and fit for purpose; and
(c) that position reflects the Government's intention when considering how "relevant defects" are dealt with in the BSA 2022.

80. Second, the approach which the Applicant adopts in this appeal in respect of the leaseholder protection provisions reverses the proper approach on improvement notice appeals. In accordance with the ratio of the Court of Appeal's decision in *Hussain v Waltham Forest LBC* [2024] 2 WLR 39 at Paragraph 77 per Andrews LJ, the burden lies on the Applicant to satisfy the Tribunal that the primary decision maker was wrong. It is for the Applicant, if it so chooses, to provide evidence in respect of the relevant criteria to demonstrate that the leaseholder protection provisions would not apply and/or that works were not relevant defects.

81. Third, the fact that some fire safety remediation works have been carried out by the RMC to date does not answer the question of where responsibility should lie for those works to be carried out. Even if the Applicant produced evidence (which they have not) that the leaseholders have funded works which would have otherwise been caught by BSA 2022 leaseholder protection provisions, that does not mean that leaseholders ought to be the responsible party for the works and that the Respondent was wrong for concluding otherwise.

82. Similarly, even if provisions in the RMC's Articles exist for a call to be made upon shareholders to fund works, that does not mean that those works should be funded by leaseholders. Mr Preston's evidence, from which he was not moved in cross examination, was that the responsible party should be the freeholder because the works are required to address unacceptable fire safety risks which have been extant since the building was developed.

83. In order for the appeal to succeed, the Tribunal must be satisfied that Mr Preston was wrong in making that assessment. The burden lies on the Applicant to satisfy the Tribunal that it should take a different view from the decision-maker including proving matters on which it seeks to rely. That is a high hurdle to surmount, and the Applicant cannot surmount it.

84. Fourth, the Applicant's submissions concerning Parts 4 and 5 BSA 2022 are similarly misconceived. The fact that the RMC is the Principal Accountable Person ("PAP") for the purposes of Part 4 BSA 2022 has no bearing on whether the freeholder should be responsible for remedying fire safety defects inherent in its original construction. The purpose of the PAP and Part 4 of the BSA 2022 is to identify the party responsible for managing current fire risk to a building. It is not concerned with identifying the party responsible for base build fire safety defects. Further, it is wrong to submit that the RMC is obliged to perform the steps identified in the Improvement Notice under the terms of the lease or under its BSA 2022 obligations. Even if it could be said that certain works of improvement fall within the RMC's covenant of repair, it does not follow that the RMC should be obliged to undertake the improvement notice 4 works under the terms or the lease

nor has the Applicant established that they are required to do so under the terms of the BSA 2022.

Alleged lack of reasons in the notice

85. The Applicant's assertion that there is a mandatory requirement on the Respondent to provide reasons as to their choice of owner against whom to serve the notice is misconceived. Section 8 of the Housing Act 2004 provides, "(1) This section applies where a local housing authority decides to take one of the kinds of enforcement action mentioned in section 5(2) or 7(2) ("the relevant action").

86. The authority must prepare a statement of the reasons for their decision to take the relevant action.

87. Those reasons must include "the reasons why the authority decided to take the relevant action rather than any other kind (or kinds) of enforcement action available to them under the provisions mentioned in section 5(2) or 7(2)."

88. It follows from the language used in the provision above that there is no statutory requirement to provide reasons as to why a specific owner has been identified as the correct recipient of the notice. The express requirement, pursuant to subsection (3), is to provide reasons for why the specific type of action (i.e. service of an improvement notice) has been taken.

89. It is a long established general public law principle, the extent and substance of reasons depends entirely on the circumstances of the particular case. Where the statute does not specifically direct the decision maker to give reasons for his choice of recipient, the notice should only be impugned if it were irrational, in a public law sense, not to include reasons concerning the choice of owner.

The misunderstanding of the role of Parkgate Aspen

90. Mr Preston provided oral evidence that he was not mistaken as to the party for whom Parkgate Aspen acted. However, even if the Tribunal do not accept his evidence in that regard, his fundamental analysis as to who should be served with the Improvement notice remains unaffected. He has been clear throughout that the freeholder should be the party served with the improvement notice precisely because the freeholder was responsible for the original defects. The force of his analysis remains sound regardless of his understanding as to the identity of Parkgate Aspen.

91. The Applicant appears to criticise the Respondent for failing to consider central Government's remediation guidance and to identify the party blocking remediation. However, that guidance was only published on 2 December 2024, which is the same date on which the

Improvement Notice was served. It is unsurprising, in that context, that there is no express reference to the guidance on the face of the notice. Identifying a party who is ”blocking remediation” is but one relevant aspect of the factors should be taken into account. Mr Preston was entitled to place particular weight on the fact that he considered the freeholder should be the party to take the relevant actions because they largely arise from failures in fire safety measures in the original construction of the block.

The applicant's A1P1 rights

92. The Applicant's rights to its "possessions" and "property" are qualified rights. The state can legitimately interfere with those rights if it is in pursuit of a legitimate aim in the general interest and is proportionate. The key test is whether a fair balance is struck between the public interest objective being pursued and the burden placed on the individual or company. The Applicant criticises the Respondent for allegedly failing to undertake a consideration of their A1P1 rights at the time that the Improvement Notice was served but points to no obligation in law which requires such a contemporaneous consideration. Insofar as the ground alleges that there is an obligation to give thought to the Applicant's A1P1 rights, it is bound to fail.

93. The only relevant obligation could be pursuant to s. 6 of the Human Rights Act 1998 which requires public authorities to act compatibly with the Convention rights. Insofar as the ground alleges an unlawful interference with the Applicant's A1P1 rights, it is also bound to fail. The Applicant has failed to identify whether it is alleged that it is being deprived of property or if there is an alleged unlawful control of use of their property. In any event, for the reasons set out by Mr Preston in his witness statement and in oral evidence, it is proportionate to require the Applicant to ensure that the building is fit for purpose from a fire safety perspective. It cannot be denied that it developed the building and, no doubt, profited from that development. The service of an improvement notice is a wholly proportionate to ensure that the building is made fire safe. The Applicant cannot insist that these works are funded by the leaseholders or that proportionality demands that they should be responsible. It is a matter of judgement for the local authority, and the Tribunal is required to place great weight on that judgement.

94. Further, it is noted that despite the burden being on the Applicant in this appeal, they (i) do not deny that the Applicant has the means to fund the work; (ii) produce no evidence concerning the Applicant's means; and (iii) produce no evidence that the leaseholders are in a position to fund the works.

95. In all the circumstances, any interference with the Applicant's A1P1 rights is wholly proportionate and justified in all the circumstances

The decision of the Tribunal

96. The Tribunal determines to confirm the improvement notice.

Reasons for the Tribunal's decision

97. The Tribunal notes that the appeal is brought under the general right of appeal conferred by paragraph 10 of Schedule 1 to the Housing Act 2004.

The proper recipient of the notice

98. The starting point for the Tribunal is the provisions of the Housing Act 2004 which set out on whom an improvement notices may be served. In the case of a building such as the property in this appeal, the improvement notice must be served by the local housing authority on a person who "(a) is an owner of the specified premises concerned, and (b) in the authority's opinion ought to take the action specified in the notice."

99. There is no doubt that the Applicant is an owner of the property within the meaning of s 262(7)(a) of the Housing Act 2004. Moreover, the reasoning of the authority, that it is the freeholder who should take the action specified in the notice, is reasonable and persuasive.

100. The Tribunal does not consider that the lack of a legal right of the Applicant to enter the Building and its lack of legal responsibility for the common parts mean that the local authority's reasoning about who to serve the Improvement Notice on makes the decision to serve it on the Applicant invalid. There is nothing to suggest that the leaseholders will not give the Applicant the licence it requires to carry out the works.

101. Moreover, there is nothing in the legal framework of the Housing Act 2004 that limits responsibility for dealing with a hazard to those who are currently under a repairing obligation and responsible for managing ongoing risk, when the Respondent's decision, not challenged by the Applicant is that the hazards have been caused in large part by historic building defects for which the Applicant, as freeholder/developer, was responsible.

102. The Tribunal has considered the decision of the Upper Tribunal in *Hastings Borough Council v Braear Developments Limited* UT Neutral citation number: [2015] UKUT 0145 (LC), which was referred to by Counsel for the Applicant.

103. The relevant paragraphs are as follows:

56. An improvement notice in respect of the common parts of a building containing one or more flats which is not an HMO is required by paragraph 4(2) to be served on a person who is an owner of the specified premises concerned (i.e. the common parts), and who in the authority's opinion ought to take the actions specified in the notice. It is not necessary that the notice should be served on all owners.

57. The expression "owner" in relation to premises means the freeholder (referred to in s. 262(7)(a) as "a person (other than a mortgagee not in possession) who is for the time being entitled to dispose of the fee simple of the premises whether in possession or in reversion") and also includes both the lessor and the lessee under a lease which the unexpired term exceeds three years. By paragraph 4(3) the "owner" of common parts also includes any owner of the building or part of the building or (in the case of external common parts) of the particular premises in which the common parts are comprised.

58. Applying these provisions to a self contained building which is not a section 257 HMO, but which is under the management of an RTM company, I suggest that the following persons might properly be the recipients of an improvement notice given under paragraph 4. First, the freeholder, who satisfies the description of "owner" in s. 262(7)(a), as being entitled to dispose of the fee simple of the premises in reversion. Secondly, some or all of the lessees of individual flats with leases for unexpired terms exceeding 3 years, each of whom is "an owner of … part of the Building" in accordance with s. 262(7)(b). Every such lessee is also within the extended definition of owner in paragraph 4(3) in relation to common parts. The RTM company itself is not an owner and cannot be the recipient of an improvement notice.

59. There may therefore be circumstances in which it would be open to a local housing authority to serve an improvement notice in relation to the common parts of a building either on the freeholder or on some or all of the lessees of flats in the building. It will be a matter for consideration in each case which of these owners "ought to take the actions specified in the notice". In reaching a conclusion on that question a local housing authority will wish to have regard to the practicality of compliance with the notice. Where an RTM company has the management of the building the freeholder will have no power to undertake works and no entitlement to recoup the costs of works from lessees. The cumbersome mechanisms suggested in paragraph 38 above by which the freeholder who receives such a notice may comply with it are all indirect and time-consuming means of procuring improvements. In circumstances where the freeholder is precluded from undertaking work except by one of those methods, because an RTM company manages the building, the

> better course would seem to be to direct any improvement notice at those lessees who are members of the company and who are therefore collectively in a position to exercise control over its decisions. In the ordinary case the RTM company will be in a position both to carry out the necessary works and to recoup the expense of doing so from those who, by the terms of their leases, have agreed to bear that expense.

104. Whilst the Tribunal notes that the decision states that in the ordinary case the proper recipient of the notice is the RTM company, there is nothing in that decision that precludes the Respondent from determining that the freeholder is the proper recipient of the notice.

105. The Tribunal also notes that the decision precedes the Building Safety Act 2022, and it distinguishes the facts before it from the facts in *Hastings v Braear*. In *Hastings v Braear* the work required by the improvement notice to address the relevant hazards was the renewal of the external staircase in accordance with the Building Regulations 2000 and the provision of various fire safety measures including emergency lighting on the staircase and the installation of an automatic fire detection and warning system, including interlinked heat detectors in each of the flats. These hazards arose because of dilapidations or updated regulatory requirements.

106. In the application before the Tribunal, the evidence of Mr Preston for the Respondent was that the hazards were largely attributable to fire safety defects that arose at the time of the development and building of the property. These included, for example, penetrations to the external wall systems of the property and breaches in the compartmentation and enclosure of services, which made the spread of fire within the property more likely and compromised the property's 'stay put' fire evacuation policy. The Tribunal noted Mr Preston's expertise in this matter, and his written statement at paragraphs 5-15 which explained his reasoning. It noted that he robustly defended his reasoning at the hearing, making a clear distinction between situations where leaseholders are provided with a building that is not fit for purpose (in his view, this was such a situation), and other situations.

107. The Applicant did not adduce any evidence to challenge the existence of the hazards or the appropriateness of the works required by the Improvement Notice to remediate them. The evidence put forward by the Applicant in response to Mr Preston's conclusion that the hazards were largely due to historic fire safety defects for which the Applicant was responsible was limited. At paragraph 8.4 of Mr Dale-Simmonds' second witness statement, he comments that the Respondent had not specified or provided any evidence of the works resulting from the Applicant's acts or omissions. He adds that the list of works in the Improvement Notice 'suggest the hazards complained of

were caused after the development was completed and the relevant flats were demised to the individual leaseholders'.

108. Mr Preston accepted that Parkgate Aspen (for Bankside) had carried out some remediation works (including initial compartmentation works, which were inadequate), but that by the end of 2024, significant remediation works (including further compartmentation works) remained to be done. Although Mr Preston accepted that there were failures of management and maintenance by Parkgate Aspen which the Improvement Notice identified as needing to be addressed, his evidence was that he was happy to deal with Parkgate Aspen while they were prepared to cooperate in getting the work done, but that did not mean that he believed they were responsible for it.

109. The Tribunal accepts the Respondent's submission that the fact that Parkgate Aspen had carried out some of the remediation works is not determinative of the question as to who should be responsible for carrying out the remaining works as specified in the Improvement Notice.

110. The Tribunal therefore determines to uphold the decision of Respondent to serve the Improvement Notice on the Applicant. It was a rational decision based on Mr Preston's clear and reasoned analysis that the Applicant was largely responsible for the fire safety defects within the building and should be therefore the party required to remediate those defects.

The Building Safety Act 2022

111. The argument that the Respondent gave undue weight to Part 8 of the Building Safety Act and no weight to Part 4 of the Building Safety Act is unpersuasive and does not impact upon the Tribunal's determination.

112. The Tribunal notes that the policy underlying Part 8 of the Building Safety Act includes the protection of leaseholders from the costs of remediating historical fire-safety defects inherent in the construction of certain medium- and high-rise buildings. Part 4 of the Building Safety Act concerns the responsibility of a registered 'principal accountable person' for managing ongoing fire risks in a building.

113. The Tribunal notes Mr Preston's evidence in this regard. In paragraph 11 of his witness statement Mr Preston responded to the Applicant's suggestion (made in paragraph 32 of the first witness statement of Mr Dale- Simmonds for the Applicant) that the Respondent should have considered serving a remediation order on Bankside under Part 5 of the Building Safety Act 2022. He said that 'some of the issues identified at Gallery Lofts could be argued to be relevant defects, such as some of the failures in fire compartmentation', but there were other difficulties caused by subsequent works, and

maintenance and management issues, which would not have been caught by a remediation order, and so, given the extent of the works required, an improvement notice was the preferred option. At paragraph 13 he added that the Housing Act 2004 was ambiguous as to who should be served with an improvement notice where there is both a freeholder and a management company like Bankside, in which the leaseholders hold shares. At paragraph 15 he explained his view that when the leaseholders entered the tripartite lease agreement with the freeholder and the management company, they must have done so 'on the understanding that the building was "fit for purpose"'. In his view, the freeholder should be responsible 'not only for base building defects' but also for 'any maintenance of the fire safety systems until such time as the building is "fit for purpose" and can be "handed over" to the [management company] to fulfil their obligation to maintain and manage the building.'

114. At paragraph 8.1 of Mr Dale-Simmonds' second witness statement, he suggests that the Respondent had failed to identify whether any of the works set out in the Improvement Notice were in fact 'relevant defects' for the purposes of the Building Safety Act.

115. However, at the hearing, Mr Preston was even more emphatic. When asked to what extent the protections available to leaseholders under the Building Safety Act (ie Part 5 and Schedule 8) was relevant to his decision, he stated that the building had relevant defects within the scope of the Building Safety Act 2022, although there had also been some management and maintenance deficiencies that fell outside the scope of that Act. He added that having inspected the building, he decided that it was of defective construction from a fire safety perspective and therefore the freeholder should be responsible. He considered the principles underlying the Building Safety Act, including the policy that developers should pay for remediating premises which were defective due to safety defects from the time of development, along with the interests of the managing agents (for Bankside) and decided that in this case the freeholder should be responsible.

116. The Tribunal determines that in the light of Mr Preston's evidence that when he issued the improvement notice he had formed the view that the hazards were due in large part to historic building safety defects for which the Applicant (as the freeholder/developer) was responsible, it was not irrational for him when deciding who ought to take the outstanding actions specified in the Improvement Notice, to take into account the government's policy (underpinning Part 5 and Schedule 8 of the Building Safety Act) that freeholders/developers – as opposed to leaseholders - should bear the costs of remediating such defects. Furthermore, given that Mr Preston was exercising his judgment under the Housing Act 2004 and not the Building Safety Act 2002, the Tribunal rejects the Applicant's argument that Mr Preston should have gone on to consider in detail whether the criteria for

leaseholder protection Part 5 and Schedule 8 of the Building Safety Act in fact applied.

117. The fact that Bankside is the principal accountable person responsible for the purposes of Part 4 of the Building Safety Act is not, in the determination of the Tribunal determinative of the question of who, in the local authority's opinion, is an appropriate person to address fire hazards that have arisen due to historical building defects.

118. The document recording Bankside's registration as 'principal accountable person' under Part 4 of the Building Safety Act 2022 was put to Mr Preston in cross-examination, and he was asked why he thought it was appropriate to compel the Applicant to interfere with Bankside's obligations. Mr Preston pointed out that the document refers to the management of the building, not how it was built, and it requires the principal accountable person to maintain what is already there. He added that if the compartmentation had not been done properly, the obligation of the principal accountable person is merely to maintain what already exists. When asked whether he had reasoned the matter out this way at the time he decided to serve the improvement notice, he confirmed that he had done so. He also said that had he been aware at the time he made the decision, of Bankside's repairing obligations under the lease, it would not have changed his view that the freeholder was responsible.

119. For these reasons the Tribunal rejects the argument that the Respondent placed 'too much weight' on Part 8 or 'no weight' on Part 4 of the Building Safety Act 2022, such as to render its decision irrational.

The role of Parkgate Aspen and the A1 P1 rights argument

120. Nor are the Applicant's arguments that the Respondent misunderstood the role of Parkgate Aspen or failed to give due consideration to the Applicant's A1P1 rights persuasive. The Tribunal accepts the evidence of Mr Preston that he did not misunderstand the role of Parkgate Aspen, and that its role played a very limited role in his decision to issue the notice against the Applicant.

121. The Tribunal agrees with the Respondent that there is no obligation in law which requires a contemporaneous consideration of A1P1 rights at the time of the service of the improvement notice.

The failure to give reasons

122. The failure of the Respondent to give reasons for the choice of the Applicant as the recipient of the Notice gave the Tribunal more pause for thought.

123. It noted, as the Respondent argued, that the statutory obligation to give reasons is set out in s.8 (2) and (3) of the Housing Act 2004 as follows:

> (2) The authority must prepare a statement of the reasons for their decision to take the relevant action.
>
> (3) Those reasons must include the reasons why the authority decided to take the relevant action rather than any other kind (or kinds) of enforcement action available to them under the provisions mentioned in section 5(2) or 7(2).

124. There is therefore no provision requiring explicit reasons for the choice of Applicant. If the Tribunal were to determine that such an obligation existed, then it would have to read that obligation into the statute.

125. The Applicant argues that the Tribunal should read those words in, as it is necessary in order to make its appeal meaningful.

126. The Tribunal can see some merit in that argument, despite the fact that the Applicant is relying on paragraph 10 of the Schedule rather than paragraph 11. Nonetheless it determines to reject the argument and uphold the validity of the improvement notice for the following reasons:

a. It notes the Respondent's reliance on general public law principles. In the light of those principles, the Tribunal determines that in the absence of irrationality it cannot read a requirement to give reasons as to the choice of person on whom a notice is served into the legislation. The Applicant has provided no evidence of irrationality in this instance.

b. The Tribunal notes that in general courts are reluctant to impose unnecessary burdens on authorities in relation to the level of reasons to be provided for its decisions. Providing reasons as to why a notice should be served on one person rather than another is likely to be burdensome for authorities.

c. It notes that the right to appeal under paragraph 10 of Schedule 1 is a general right. It is expressly not constrained to the two grounds set out in paragraphs 11 and 12 of the Schedule. It would therefore be unrealistic and impractical for an authority to be obliged to give reasons to answer any possible appeal. In the absence of any specific requirement to give reasons the Tribunal is not prepared to insert the words into the section.

d. The hearing at the Tribunal operates as a rehearing of the decision to issue the improvement notice on an Applicant. Therefore, in the course of that hearing, as has happened in this application, the reasons for the decision of the local authority to serve the notice on a particular Applicant will be fully canvassed and considered. If the reasons are without merit, then the improvement notice will be quashed and there may be costs consequences.

e. Therefore, the operation of the appeal as a rehearing provides the protections that the Applicant seeks.

127. The Respondent argued that whilst the leaseholders come within the definition of ‘owner’ under s 262(7)(b), ie as ‘a person holding or entitled to the rents and profits under a lease of which the unexpired term exceeds 3 years’, Bankside does not come within this definition of owner. The Applicant argued that Bankside *is* an ‘owner’ as it is entitled to receive the service charge, which is reserved as rent under clause 4b of the lease. It suggested that the reference to rents in s 262(7)(b) must have been intended to capture a third party with no legal or beneficial interest in the property, but who receives service charge by way of rent.

128. The Tribunal rejects the Applicant’s argument on this point. The point of leasehold provisions that stipulate for service charges to be received ‘as rent’ is to ensure that similar remedies are available for service charge arrears as are available for rent arrears. They do not go to the very different question of who counts as an ‘owner’ for the purposes of service of an improvement notice under the Housing Act 2004. For this reason, the fact that Bankside, as the leaseholders’ management company is entitled to pursue them for service charge arrears in the same way that a landlord could pursue a tenant for rent arrears does not mean that it is ‘entitled to the rents’ as such under the lease. For this reason, it was not irrational for the Respondent to reach the view that Bankside is not an ‘owner’ for the purposes of the 2004 Act, and therefore not someone on whom the Improvement Notice could have been appropriately served.

Name: Judge H Carr **Date:** 8th June 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).