



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00BK/BSH/2026/0001**

Property : **Parsons House, 124 Hall Place, London
W2 1NE**

Applicants : **Westminster City Council**

Representative : **Mr Stephen Evans (counsel)**
Instructed by Director of Law, Bi-Borough
Services (Kim Painter)

Respondent : **The Building Safety Regulator**

Representative : **Mr Ian Wright (counsel)**
Instructed by Advisory and Enforcement
(Simon Hussellbee)

Type of application : **Appeal against Compliance Notice**
section 103(1) and 104(2) of the Building
Safety Act 2022
**Appeal against refusal of Building
Assessment Certificate** section 104(2) of
the Building Safety Act 2022

Tribunal members : **Deputy Regional Judge N Carr**
Mr Matthew Williams MRICS

Date of decision : **22 September 2026**

PRELIMINARY ISSUE DECISION

ORDER

1. Time is retrospectively extended for the Compliance Notice appeals, pursuant to rules 8(2) and 6(3)(a) Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013

2. The Compliance Notices, having been given under section 99(2)(a) of the Building Safety Act 2022, are valid.
3. The Respondent's refusal to issue a Building Assessment Certificate is valid.
4. The parties are directed to file with the Tribunal agreed directions for the determination of the substantive issues in the case by 4pm on 9 October 2026.
5. In the event of disagreement between the parties on any element of the directions for the substantive issues:
 - (i) the proposing party must file with the Tribunal and send to the other party a form Order1 identifying the dispute, the order sought, and any arguments in support;
 - (ii) the opposing party must reply, by email to the Tribunal and to the other party, with a word attachment setting out any arguments supporting their position within 5 days of the for Order1 being sent to them;
 - (iii) the dispute will be resolved by the Tribunal on the basis of the written representations before the directions are finalised.

REASONS

Background

- A. By an application accompanied by Grounds of Appeal and various supporting documents, dated 8 January 2026, the Applicant appeals against:
 - (i) a Compliance Notice ('CN') dated 23 October 2025 given under section 103(2)(a) of the Building Safety Act 2022 ('the Act');
 - (ii) a CN dated 23 October 2025 given under section 103(2)(b) of the 2022 Act;
 - (iii) a review decision refusing to issue a Building Assessment Certificate ('BAC'), dated 11 December 2025.
- B. At a case management hearing on 2 April 2026, the Tribunal listed three questions it considered to be proportionate to deal with as preliminary issues. They are:
 - (i) Whether the appeals against the CNs were in time in accordance (in the absence of a statutory time limit) with rule 27 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ('the Rules'); and if not whether there is a "good reason" why the Tribunal should extend time for the appeals against the CNs;

- (ii) Whether section 103(2) permits the Respondent to give CNs under both subsection (a) and (b), and if not, whether the CNs are invalid because the 2022 Act does not so permit; and
 - (iii) Whether the refusal to issue a BAC is permitted to include additional grounds not given in the CNs, and (if not) whether the refusal is invalid.
- C. Those questions were identified in consequence of the Applicant’s pleadings, the Respondent’s position statement and indicative response to the grounds of appeal each received on 19 March 2026, and the parties’ submissions at the CMH. The Respondent’s formal statement of case on the preliminary points is dated 28 May 2026. It is agreed that a clerical error has occurred in the directions in which the Tribunal identified question (ii), which should in fact refer to **section 99(2)** of the Act.
- D. The Tribunal received skeleton arguments from both parties. At the preliminary hearing on 15 July 2026, Mr Stephen Evans of counsel appeared for the Applicant, and Mr Ian Wright of counsel appeared for the Respondent, and we thank them for their clear submissions.
- E. Prior to the hearing, Judge N Carr also caused to be sent to the parties the press release given by the Building Safety Regulator dated 9 July 2026 (<https://www.gov.uk/government/news/bsr-to-introduce-more-proportionate-and-targeted-approach-for-higher-risk-building-assessments>), and asked the parties to make submissions on it if relevant.

(i) The CN appeals

- F. The CNs were sent by the Respondent by email on 23 October 2025, and were therefore deemed served on 24 October 2025 by virtue of section 29(2)(d) and 29(9) of the Act. The appeals were received by the Tribunal on 8 January 2026, 52 days after the date on which they ought to have been made pursuant to rule 27 of the Rules (there being no statutory time limit).
- G. It was accepted by the Applicant that the appeals were not in time. It maintained that was an explanation for their lateness and that the Tribunal should exercise its discretion to admit the late appeals. He submitted that *Haziri & Qela v London Borough of Havering* [2019] UKUT 330 (LC) did not import a test of ‘good reason’ into the Tribunal’s exercise of discretion; rather the Tribunal is bound to implement its overriding objective by the proper exercise of its discretionary powers in rules 8 and 6. He cited in support *Deane v London Borough of Newham* [2024] UKUT 0300 (LC), in which, albeit in respect of an application to reinstate, the Deputy President Martin Rodger KC set out the following summary of the approach the Tribunal should take:

45...[as] indicated by Lord Neuberger PSC in BPP Holdings [v Commissioners for HM Revenue and Customs [2017] UKSC 55] ...“There must be a limit to the permissible harshness (or indeed the permissible generosity) of a decision relating to the imposition or confirmation (or discharge) of a debarring order”

and that in an appropriate case an appellate tribunal could interfere where a debarring order has been imposed (BPP Holdings, at [34]).

46. The question is therefore whether the FTT applied the law correctly when it refused to reinstate Mr Deane’s appeal. It would only be right for me to interfere with its decision if I am satisfied that its reasoning was legally flawed and that it did not apply the relevant principles, or that it was so draconian that it exceeded the limit of permissible harshness to which Lord Neuberger referred.

47. There are two respects in which it seems to me that the FTT clearly misdirected itself in law, and a third instance in which its appreciation of the circumstances of the case was incomplete.

48. First, although the FTT referred in its survey of the relevant law to the Civil Procedure Rules, and specifically to rule 3.9 concerning relief from sanctions, it did not refer to its own Rules. In particular, it did not refer to the overriding objective of the FTT Rules, which is not expressed in the same terms as CPR 1.1, nor to the fact that the equivalent in the FTT’s Rules of CPR 3.9, rule 8(2), read together with rule 3, is couched in much more general terms and makes no specific reference to either of the considerations highlighted in CPR 3.9 which the FTT said were of particular importance at stage 3 of its assessment.

49. As the Court of Appeal pointed out in Denton [v T H White Limited [2004] EWCA Civ 906] (at [32]) the two factors to which specific attention is drawn in CPR 3.9(1) as relevant considerations when a court is dealing with an application for relief from sanctions are taken from the definition of the overriding object of the Civil Procedure Rules. Factor (a), the need for litigation to be conducted efficiently and at proportionate cost, is in substance included in the definition of the overriding objective in CPR 1.1(2). Factor (b), the need to enforce compliance with rules, practice directions and orders, is specifically identified in CPR 1.1(2)(f) as a core component of the overriding objective. When the Court of Appeal explained that “particular weight” was to be given to these factors by courts, it did so by reference to their inclusion in CPR 3.9(1):

“If it had been intended that factors (a) and (b) were to be given no particular weight, they would not have been mentioned in rule 3.9(1). In our view, the draftsman of rule 3.9(1) clearly intended to emphasise the particular importance of these two factors.”

50. The same two factors do not appear in the definition of the FTT’s overriding objective in rule 3. Efficiency is not mentioned (although the need to deal with the case in ways which are proportionate to its importance and complexity, and to the anticipated costs and resources of the parties does feature in rule 3(2)(a)). Nor is enforcing compliance identified in rule 3 as a core component of dealing with cases fairly and justly. That does not mean that these considerations are unimportant, as BPP Holdings confirms. In particular, I have not lost sight of the guidance given by the then Senior President of Tribunals, Sir Ernest Ryder, sitting in the Court of Appeal in BPP Holdings ([2014] 1 WLR 3926) when he said this (at [37]):

“... I can detect no justification for a more relaxed approach to compliance with rules and directions in the tribunals and while I might commend the Civil Procedure Rules Committee for setting out the policy in such clear terms, it need hardly be said that the terms of the overriding objective in the tribunal rules likewise incorporate proportionality, cost and timeliness. It should not need to be said that a tribunal's orders, rules and practice directions are to be complied with in like manner to a court's. If it needs to be said, I have now said it.”

51. Notwithstanding this guidance, a complete assimilation of the approach taken in courts and tribunals would fail to recognise the distinctly different terms in which the overriding objectives of their respective procedural rules are expressed. In taking into account the need to enforce compliance that consideration should not be elevated to a status which the FTT Rules do not confer on it. In particular it should not be allowed to short circuit a proper assessment of the overall justice of the situation, as mandated by rule 8(2), when the FTT consider its response to non-compliance or relief from sanctions.

52. Nor should necessary considerations of efficiency and compliance be allowed to overshadow those aspects of the FTT's overriding objective identified in rule 3 which are missing from CPR 1.1. It might fairly be said that these emphasise some of the less muscular features of dealing with a case fairly and justly, including the avoidance of formality, the search for flexibility and the importance of ensuring, so far as practicable, that the parties are able to participate fully in the proceedings.

53. Of course, it cannot be suggested that those same considerations are irrelevant to doing justice in courts, but that is not a reason to diminish or disregard their special significance for tribunals. CPR 1.1 and rule 3 of the FTT Rules lean in subtly different directions in describing how justice is to be achieved. The differences which appear on the face of the rules are not accidental and should not be forgotten.

- H. We would add that, even when applying the *Denton* test in the County Court, whether the reason for non-compliance is a ‘good’ reason or otherwise rarely fully determinative of an application (unless the reason is very compelling); usually one would go on to consider fairness and justice in all circumstances of the case at stage three, even if the reason is a ‘bad’ one.
- I. In this case, we are satisfied that it is fair and just in accordance with the overriding objective to retrospectively extend time for the bringing of the appeals so as to regularise the Applicant’s position, pursuant to the broad discretion available to us under rules 8(2) and 6(3)(a).
- J. We find that, contrary to the Respondent’s position, the format in which the three decisions (the CNs and the BAC refusal) were delivered were confusing, and we accept that the Applicant was confused. One covering letter was used

running to 8 pages. On the first page, the emphatic description of the document is (as duplicated from the document itself):

BUILDING SAFETY ACT 2022
BUILDING ASSESSMENT CERTIFICATE - REFUSAL AND ENFORCEMENT

- K. That heading is followed by a page and a half in which the reasons for the Respondent considering that the Applicant has not carried out a “suitable and sufficient” (undefined by statute) assessment of the risks posed by the spread of fire or structural collapse are absent.
- L. The next section, in pages 3 – 5, is headed (much less prominently):

ENFORCEMENT NOTICES

- M. In that section, the contents address and reference the CNs, including matters of detail not included on those CNs or in the section of reasons in the BAC section on pages 1 and 2. The end of page 4 states that the Applicant will not be invited to reapply for a BAC until there is compliance with the CNs.
- N. The whole of page 5 contains two paragraphs:

OTHER INFORMATION

The following items are not contraventions, however we recommend you take the action advised below for further improvements.

- Update your safety case report to contain all information provided throughout this BAC Application process.

Privacy information

HSE staff will process your data as part of our work primarily for the purpose of inspections and investigations, interventions and assessments in support of law enforcement. Please see <https://www.hse.gov.uk/help/privacy.htm> for more details.

- O. Page 6 contains only this:

Building Safety Regulator charging scheme

Under the Building Safety (Regulator’s Charges) Regulations 2023, BSR will charge applicants for the assessment of their BAC application, and any intervention undertaken by the Regulator for non-compliance. Costs include any specialist expertise and assistance used.

Please refer to Schedules 15 and 25 of the Building Safety Regulator charging scheme for further information.

If you do not understand or wish to discuss this letter, then please contact us using the details provided above.

Yours sincerely,
Building Safety Regulator, HSE

- P. Page 7 is a page of rights to request a review of the BAC refusal. Page 8 is titled “Further information regarding compliance notices”, though the section is in fact appeal rights.
- Q. The covering letter then attaches the two CNs (which form the next ten pages, and make separate reference to appeal rights in the body of the notices).
- R. The contents of the email by which the document was served made no mention of appeal rights to the CNs:

Dear PAP

The Building Safety Regulator (BSR) has refused your application for a building assessment certificate (BAC) for Parsons House HRB07645X6S9 'ao [sic] under section 81(3) and 81(4) of the Building Safety Act 2022. Your BAC application was assessed against the attached criteria. 'ao [sic]

Attached is the notification of refusal which outlines the reasons why your building assessment certificate has been refused and your rights to request a review of this decision under section 25 of the act. Please note that the charge for requesting a review of the decision has increased from £288 to £302.

A compliance notice (IOC...) [sic] has been served on you by email under Section 99 of the Building Safety Act 2022 for requiring action to be taken. This is also attached to this email.

Included in the notification of refusal, is information about your Compliance Notice(s) and details of other contraventions that have been observed.

What you need to do

You should read the Compliance Notice, notification of refusal and contravention letter carefully as this explains what is wrong, why it is wrong, what you need to do and provides you with a timescale to put things right. 'ao [sic]

Please acknowledge receipt of this email and that you can open all the attachments.

If you need to discuss the notice or to confirm all actions have been taken, contact us at BSRinoccupation@hse.gov.uk. 'ao [sic]

From the Health and Safety Executive
As the Building Safety Regulator

- S. Mr Thomas Franklin, Head of Compliance and Building Safety for the Applicant, provided a witness statement dated 26 April 2026. His evidence was unchallenged. He set out a series of correspondence with the Respondent in which it is clear to us, and we find, that he had conflated the BAC refusal review and CN appeal processes. His email correspondence (including an email submitted on the day of the hearing, by agreement between the parties) clearly

evidences clearly his confusion over the process, in which the emails show that he has understood that the review process is for the CNs (and he has conflated the CNs with the BAC refusal).

- T. Although the Respondent submits that if he had read the documents properly Mr Franklin would have understood what it was that he needed to do, we disagree. The communication of the decision, and the subsequent email communications, themselves continued the confusion. We find that confusion understandable; the Respondent's notice of BAC refusal conflates the two separate processes (BAC refusal and CNs) itself. We are also satisfied that, in its responses, the Respondent did not have enough regard to its obligations under sections 3 and 4(1) of the Act, in particular transparency, consistency, and assistance and encouragement. In its approach to these appeals it rather demonstrates shades of the behaviour identified in the recent press release, in which the BSR acknowledged an approach too focussed on procedure.
- U. Although the Respondent submits that Mr Franklin had an internal legal department and could have been advised had he so chosen, the fact is that he was not advised. This is a new area of law in which the Respondent has statutory responsibilities to cooperate with parties to provide them with assistance and encouragement to fulfil their duties. The Respondent's role is not just that of an enforcer, rather the statute seems to us to envisage the Respondent being a partner in achieving the Act's aims. The responses to his emails Mr Franklin was given by the Respondent were not clear, consistent, or of real assistance.
- V. We are satisfied that Mr Franklin's confusion was genuine, and a good explanation for failing to bring the appeals in time, in light of those findings. The question does not end there; we must have regard to the overriding objective. We will deal with it briefly.
- W. The proceedings are not far advanced, and the Respondent has had the full opportunity to participate. It concedes it will sustain no prejudice by the Applicant being given permission to continue the appeals. The Respondent must be assumed to have appropriate resources, as a statutory body. The law is new and complex (not least by virtue of the want of definition of "suitable and sufficient"). Even if the CN appeals do not continue, the contents of the letter as regards the CNs are those that will be under consideration in the BAC refusal appeal.
- X. On the other hand, the Applicant will sustain real prejudice if it is not permitted to bring its appeals, which involve difficult questions of law and regulatory practice in this area. A BAC refusal, and CNs, are serious and may have adverse consequences for the Applicant or its tenants, not limited to the potential criminal consequences set out in section 99 of the Act, but including such considerations as the anxiety that may be caused to the occupants of the building over their own safety.
- Y. Mr Wright asserted in argument that the CN as regards the risk of spread of fire had been deemed by the Respondent as 'complied with' on 7 January 2026, the day before the appeal was brought. The Respondent's submission is that

compliance deprives the Applicant of the ability to appeal against the CN. That should weigh against the Tribunal exercising its discretion to extend time.

Z. This was a new point not raised at the CMH, and there has not been the opportunity for the Applicant to fully argue it. If it is to be pursued, the Tribunal prefers to leave resolution of that question to the full hearing for a full consideration of the argument. It seems to us to be inextricably linked with the Applicant's submissions as regards the 'boilerplate' steps specified in each of the schedules in the CNs.

AA. We are satisfied that it is in accordance with the overriding objective to exercise our discretion under rules 8(2) and 6(3)(a) to retrospectively extend time for the CN appeals to be brought, regularising the appeals that have been made

(ii) Whether section 99(2) of the Act permits the Respondent to give CNs under both subsection (a) and (b)

BB. Section 99 of the Act sets out the Respondent's powers on giving a CN, as follows:

99 Compliance notices

- (1) The regulator may give a compliance notice to an accountable person for a higher-risk building who appears to the regulator to have contravened, be contravening or be likely to contravene a relevant requirement.
- (2) A "compliance notice" is—
 - (a) a notice requiring the accountable person to take specified steps within a specified period, or
 - (b) a notice requiring the accountable person to remedy the contravention or the matters giving rise to it within a specified period.
- (3) A notice of a kind mentioned in [subsection \(2\)\(a\)](#) may specify any steps relating to—
 - (a) the remedying of the contravention, or
 - (b) avoiding the contravention occurring.

CC. It is the Respondent's position now that, as a matter of construction of the CNs, they are given only under section 99(2)(a) of the Act. That is a significant change in position since the CMH, at which (by its initial Response to the Applicant's grounds of appeal) the Respondent asserted in terms that "[b]oth Notices fall within s99(2)(b) BSA" (para 14 of that document).

DD. That change in position significantly changes the context and potential impact of the preliminary issue identified with the parties' assistance at the CMH in April; nor did the directions for the preliminary hearing permit the Applicant to provide a response to that change of tack.

- EE. The CNs themselves do not identify on their faces which of the subsections they are given under; neither does the letter considered above. Mr Evans did not press us for a decision on whether the CNs were in fact made under section 99(2)(a) or 99(2)(b), although he quite properly highlighted the change in the Respondent's position.
- FF. It is our preliminary view that construction of a notice is not a question of the subjective intention of the person who gives it, but rather the words on the page. However, given the Respondent's change in position, and the want of opportunity for the Applicant properly to respond to it, should the Applicant wish to seek to persuade us otherwise this is a matter we will consider at the full hearing of these applications.
- GG. Although Mr Evans tempted us to seek to resolve the question of validity of the CNs on the basis of the Applicant's position that steps in the CNs are 'boilerplate' and not 'specified' within the meaning of the Act, we are at this stage confined to the preliminary issues that were identified at the CMH. Each party will be entitled to develop their argument on that question.
- HH. It appears to us to be appropriate therefore to limit ourselves in this decision to the first part of the question posed, which is the one of principle. That is a question that can be dealt with briefly.
- II. The Applicant argues that in circumstances in which a contravention has been identified, the Respondent is only permitted to rely on section 99(2)(b). That is because section 99(2)(a) permits specified steps to **prevent** a contravention – e.g. to investigate. In effect it is a preventative or warning notice, giving the recipient the opportunity to take steps before it is required to remedy a contravention. The correlating appeal ground is that in section 103(2)(b) – “it is unreasonable to require a person to do any thing specified to be done in the notice”.
- JJ. Section 99(2)(b) on the other hand, requires remedy of a **current** contravention. There is no ability for the CN to specify steps to be taken to remedy the contravention, it is a matter exclusively for the recipient to decide. The corresponding appeal provision is section 103(2)(a) – the person has not contravened, is not contravening, or is not likely to contravene a relevant requirement.
- KK. The Applicant submits that a recipient of a CN is able to take either or both of the appeal grounds, but the Respondent is **only** permitted to choose to give a CN under section 99(2)(a) **or** 99(2)(b), as is the specific wording of the statute. Section 99(2)(b) is the only provision available to the Respondent where the contravention is established.
- LL. The difficulty with the Applicant's argument is that the terminology of section 99(3) of the Act does not support the difference between section 99(2)(a) and (b) being divisible into potential and actual contraventions. Section 99(3) specifically makes provision for a section 99(2)(a) notice to specify steps to remedy a contravention. On the plain language it echoes the

section 99(2)(b) provision, incorporating the ability to direct specified steps to remedy a current contravention.

MM. We conclude that, as submitted by Mr Wright, the CNs given in these applications were capable of specifying steps even if given pursuant to section 99(2)(a), because of that clarifying provision in section 99(3). In other words, the specification of steps for a **current** contravention is permitted in accordance with the Act – the Respondent is not limited to giving a CN under section 99(2)(b) just because a contravention has already occurred.

NN. When then the purpose of section 99(2)(b) one might wonder, since section 99(2)(a) read together with section 99(3) provides for all scenarios past present and future? It seems to us that the distinction to be made is that there is no obligation on the regulator to identify steps if it elects to use a section 99(2)(b) notice. How that approach might fit with the regulator’s obligations in the first part of the Act, in particular sections 3 and 4 of the Act, is a question for another Tribunal to resolve when seized of such a CN.

OO. In light of that conclusion, we find that it is unnecessary to address the alternative arguments put forward by Mr Wright.

(iii) Whether the refusal to issue a BAC is permitted to include additional grounds not given in the CNs?

PP. A refusal to issue a BAC is a regulatory rather than an enforcement decision. An appeal lies to the Tribunal against the decision of the regulator to refuse a BAC on grounds of an error of law or fact, or that the decision was ‘unreasonable’. A decision, as conveyed in a refusal, might be *ultra vires* if the regulator misconstrues its powers or the decision is tainted by procedural impropriety. It is only the *ultra vires* point that the Tribunal is concerned with in its preliminary issue – in terms that are generally understood, the question is whether the notice is ‘bad on its face’ because it exceeds the powers of the Respondent.

QQ. The Applicant asserts that the BAC refusal is procedurally improper on grounds that the Respondent has included reasons for the BAC refusal that have not been included on the CNs. The offending paragraphs of the letter (paragraph 34 of the Grounds of Appeal) are found in the section entitled “Enforcement”, as follows:

**2. Compliance Notice (IOCo1568X9Co)
Duty to Assess Building Safety Risk (BSA 2022 s83)**

It appears to the BSR that you are contravening the following relevant requirements:

Section 83(1) of the Act:

Reason for opinion:

- *The risk of structural collapse due to fire has not been fully addressed in that:*

- *There is an action for further assessment of the structural fire resistance of the walls and columns which has not been included in the action plan in section 13 of the Frankham March 2025 Report.*
- *The report states the achieved fire resistance of the floors is 60 minutes however it does not set out the structural fire resistance requirements thus conclude whether the floors have sufficient fire resistance and/or provide the relevant evidence.*
- *The risk assessment does not consider unauthorised/inadequately planned alterations.*
- *The risk assessment considers the risk of accidental vehicle impact however it does not provide the relevant evidence to support the assessment as well as demonstrate that the risk has been fully considered i.e. whether all potential locations of vehicle impact have been considered.*
- *The conclusions for each risk are based on observations from an inspection and there is no input in respect of administrative/management mitigation measures.*

RR. The reasons that the CN itself gives in respect of the structural collapse element are as follows:

“Your assessment of building safety risks, in particular the risk of structural failure, is not suitable and sufficient assessment as required by section 83(3) of the Act because the risk of structural collapse due to fire has not being fully addressed in relation to the: structural fire resistance of walls and columns which was not included in the action plan in section 13 of the Frankham March 2025 report; the risk assessment does not consider the adequacy of unauthorised planned alterations the risk assessment does not demonstrate that the risk of accidental damage has been fully considered and the conclusions do not consider what mitigation measures are required to support them.”

SS. It is the Applicant’s position that the Respondent is not permitted to rely on additional reasoning for the BAC refusal, that has not been included in the CNs.

TT. Insofar as the letter relates to the BAC refusal, as we raised with Mr Wright, the wording above does not appear to have been included in that reasoning (the page and a half related to the BAC refusal give no explanation beyond the alleged contravention of section 83 of the Act). If the section entitled enforcement, sub-headed as above regarding the CN related to structure, is to be taken as the reasoning for the BAC refusal, it is clear that reasoning goes further than that that appears in the CN. The CN form has unlimited space, and the question begged is why the specifics above do not appear on it, but that is a matter for another day.

UU. Mr Evans concedes that as a matter of principle a BAC refusal under section 81 of the Act and a CN under section 99 of the Act might conceivably rely on different reasons, but submits this is not such a case as the Respondent

has, by its own letter, irretrievably intermingled the two decisions. Giving additional reasons for the BAC refusal rendered the decision wrong in law and procedurally improper (in an *ultra vires* sense) such that the refusal cannot stand; further it is unreasonable for the Applicant to comply with the requirements in the letter in order to reapply for a BAC. He also submits that the CN for which these purported additional reasons are given must be invalidated. Mr Evans submits that the reasoning for the BAC refusal and the CNs must be required to be identical in this case. Regulation 14(1)(e) of the Higher Risk Buildings (Management of Safety Risks etc) (England) Regulations 2023 (“the Safety Risks regs”) obliges the Respondent to give in its details of the nature of the contravention relied on, for obvious reasons: criminal consequences attach to failure to comply.

VV. The fundamental problem, the Applicant submits, is that the additional reasoning is inconsistent with the CN, and therefore the notice ‘bad’ for its failure to leave the recipient clear as to the steps it is to take to remedy the alleged contravention and obtain its BAC. Mr Evans further relies on sections 3 and 4 of the Act and the principles of transparency and consistency.

WW. In respect of the first part of the question posed by the preliminary issues, Mr Evans’ necessary concession that a CN and BAC refusal can conceivably provide different grounds of contravention/for refusal (respectively) answers the question on the validity question.

XX. Section 81 of the Act sets out the regulator’s obligations as regard a BAC:

81 Building assessment certificates

(1) This section applies where—

- (a) the principal accountable person for an occupied higher-risk building applies under section 79 for a certificate in relation to the building (a “building assessment certificate”),
- (b) the application is made pursuant to a direction of the regulator under that section, and
- (c) the building is registered under section 78.

(2) The regulator must assess whether the relevant duties are being complied with (and may inspect the building in connection with that assessment).

(3) The regulator—

- (a) must give a building assessment certificate if satisfied that all relevant duties are being complied with;
- (b) if not so satisfied, must (subject to [subsection \(4\)](#)) refuse the application and notify the principal accountable person of the refusal.

(4) If the regulator considers that a contravention of a relevant duty can be remedied promptly—

- (a) the regulator may give a notice under [this subsection](#) to the principal accountable person containing a brief description of the contravention and specifying a period for remedying the contravention, and
 - (b) if it does so, and the contravention is remedied within that period, it may give a building assessment certificate (instead of refusing the application).
- (5) In this section “relevant duty” means a duty of an accountable person for the building under, or under prescribed regulations made under, any of the following—
- (a) section 83 (duty to assess building safety risks);
 - (b) section 84 (management of building safety risks);
 - (c) section 85 (duties relating to safety case report);
 - (d) section 87(5) (duties relating to mandatory occurrence reporting system);
 - (e) section 89 (provision of information to regulator, residents etc);
 - (f) section 91 (duty to produce a residents’ engagement strategy).
- (6) The Secretary of State may by regulations make further provision about building assessment certificates and notices under this section, including in particular provision about—
- (a) the period in relation to which a certificate may be given;
 - (b) the form and content of a certificate or notice;
 - (c) the way in which a certificate or notice is to be given.

YY. Regulation 3 of the Safety Risks regs prescribes the form contents of a BAC notice as follows:

Building assessment certificates

3

...

- (7) A notice under section 81(3)(b) and (4) of the 2022 Act—
- (a) must be copied to any person who is an AP for any part of the building to which the notice relates;
 - (b) must contain the following—
 - (i) the date the decision to which the notice relates was made,
 - (ii) a brief description of the contravention of the duty that gave rise to the decision under section 81(3)(b) of the 2022 Act to refuse to issue a certificate,
 - (iii) if the notice is given under section 81(4) of the 2022 Act, the period within which the PAP may remedy the contravention,
 - (iv) information about the right to request a review of the decision.
- (8) The information prescribed for the purposes of section 82(1)(a) of the 2022 Act is the address, telephone number and email address of the PAP and any other AP for the building.

- (9) The form of a notice prescribed for the purposes of section 82(1)(a) of the 2022 Act is that the notice is in writing and legible when displayed.

ZZ. As set out above, section 99 has its own requirements, as does regulation 14 of the Safety Risks regs.

AAA. We find that there is no requirement in the provisions that, in respect of a Building in which the regulator intends to refuse a BAC and give CNs, even for the same contraventions, the documents are identical in their contents, although it is of course acknowledged that the risk the regulator takes if the contents in the BAC refusal and CN are different despite citing the same contraventions, that one or the other (or both) are found to contain unreasonable requirements or BAC decision found to be unreasonable. Those are questions for the main hearing. The BAC refusal is not 'bad on its face' absent there being a statutory requirement that the CN and BAC must accord.

BBB. That answers the first part of the third preliminary question, so that we need not go on to the second part of the question.

Next steps

CCC. The parties are invited to agree directions for the final hearing, if they are not able to resolve matters between them.

DDD. At the preliminary issue hearing, there were a number of matters of substance that the Tribunal asked the parties, and in particular the Respondent, to address that are relevant to the final determination. The parties are invited to address those issues in any witness statements or statements of case (as appropriate) to assist the Tribunal in its determination.

EEE. The parties are reminded that the final hearing is fixed for 1 – 5 March 2027. It seems to the Tribunal that three days may be sufficient for the final hearing. The parties are asked to consider whether a revision of the 5-day time estimate to three days, to take place between 2 – 4 March 2027 inclusive, might be appropriate.

Name: Deputy Regional Judge Nikki Carr

Date: 22 September 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).