

2 November 2023

Tabriz Court and Shams Court,
Fulton Road,
Wembley Park,
HA9

Dear residents,

Tribunal hearing next week – share your thoughts/concerns by tomorrow

We last wrote to you to say that we were considering taking legal action against the freeholder of your buildings, HEB Assets. Since then, we have issued an application for a Remediation Order, and we have an initial procedural hearing in the First Tier Tribunal (Property Chamber) next week. Our goal in taking this action is to encourage HEB Assets to expedite remediating the external wall issues at your building, as set out in our previous letters which can be found here: www.networkhomes.org.uk/mybuildingdocuments/.

Remediation order

Under the Building Safety Act 2022, the tribunal can issue a Remediation Order, which is a legally binding order for the freeholder to remediate “relevant defects”. We have asked the freeholder many times for confirmation of their plans for the remediation of your buildings but have not received enforceable assurances or sufficiently detailed proposals to enable us to stand down the proceedings. It may be that these assurances are given at the hearing on Tuesday 7 November and in those circumstances, we may pause the proceedings to allow HEB Assets time to remediate.

Share your thoughts/concerns

We have made this application on your behalf as we are your landlord, but we also recognise that you may wish to have involvement in this process. If you would like to raise anything with us in relation to the hearing, please do so by 5pm tomorrow **Friday 3 November**. We appreciate this is short notice; however, we are acting as soon as we can following receipt of information from our legal team. You may wish to cover such things as how the delays and uncertainty have affected you and your family financially and emotionally. We will then endeavour to raise your points during the hearing. Please email your thoughts/concerns to BuildingSafetyTeam@networkhomes.org.uk.

Additionally and/or alternatively, you may wish to join these tribunal proceedings as an ‘Interested Party’, meaning being an active participant in the litigation. You may want to take legal advice about this step. You do not have to take this action by tomorrow. If at a later date you do want to join the proceedings, please let us know and we will provide you with the tribunal’s contact details.

A summary of our position

We have included the full documents below for you to look at, but given the short timeframe for response, we’ve also included a summary of our position.

- **Criteria for Remediation Order:** HEB Assets to agree that the criteria for a Remediation Order is met, and that as the ‘relevant landlord’ they will fix all the ‘relevant defects’ in the external walls at their own cost and that the building will remain insured until March 2024 and then beyond.

The Hive
22 Wembley Park
Boulevard
Wembley
HA9 0HP

www.sng.org.uk
customerservice@networkhomes.org.uk
0300 373 3000

A summary of this letter

Next week, we have an initial tribunal hearing with the building’s owner.

We are applying for a Remediation Order as we want them to make progress in remediating the issues found in your building’s external wall system.

By **5pm tomorrow**, please share any thoughts or concerns you have about this situation.

You can also join the litigation as an interested party at a later date.

If HEB Assets provide us with some requested information and agree to the Remediation Order criteria, we may postpone the hearing until February.

- **Application adjourned:** we will agree to adjourn the application until February if the above conditions are met and HEB Assets provides details of the remedial works it will carry out.
- **Remediation required:** we expect HEB Assets to share the details of its remediation they have stated will begin in January; those details being details of contractors, scope of works and any similar documents.
- **February:** assuming the above is agreed and the matter adjourned, in February 2024, HEB Assets will provide an update on remediation work.

Kind regards
Raj Gandecha
Head of Resident Management (Building Safety)

First-tier Tribunal Property Chamber
(Residential Property)

Ref no. (for office use only)

Application for a Remediation Order Building Safety Act 2022

Section 123(2) of the Building Safety Act

It is important that you read the notes below carefully before you complete this form.

This is the correct form to use if you are an interested person applying for a remediation order requiring a landlord to remedy specified relevant defects to a building by a deadline under section 123(2) of the Building Safety Act 2022.

Please make sure a copy of the application is served on the other party/parties to the application. If you are unable to serve a copy on the other party/parties, please bring this to the tribunal's attention in the covering email or if sending by post in a covering letter.

Please do not send any other documents. When further evidence is needed, you will be asked to send it in separately.

If you have any questions about how to fill in this form or the procedures the Tribunal will use please contact the appropriate regional office.

Once completed please send your form to the Tribunal Office for the geographic location of the property in question as indicated in the Annex.

If you are completing this form by hand please use BLOCK CAPITAL LETTERS.

1. DETAILS OF APPLICANT

Name:

Capacity:

Address (including postcode):

Address for correspondence (if different from above):

Telephone:

Day:

Evening:

Mobile:

Email
address:

Representative name and address, and other contact details: Where details of a representative have been given, all correspondence and communications will be with them until the Tribunal is notified that they are no longer acting for you.

Name:

Winckworth Sherwood LLP

Reference no. (if any)

CRB/08106.00263

Address (including postcode):

Minerva House, 5 Montague Close, London SE1 9BB

Telephone:

Day:

Mobile:

Email address:

cbeverton@wslaw.co.uk

2. ADDRESS (including postcode) of SUBJECT PROPERTY

Tabriz Court, Block C, 5 Olympic Way, Wembley, Middlesex HA9 0NS; and
Shams Court, Block E 5 Olympic Way, Wembley, Middlesex HA9 0NS

3. BRIEF DESCRIPTION OF SUBJECT PROPERTY AND APPLICANT'S CONNECTION WITH PROPERTY

Please see attached

4. DETAILS OF RELEVANT LANDLORD

Name:

Capacity:

Address (including postcode):

Reference no. for correspondence (if any)

Address for correspondence (if different from above):

Telephone: Day: Evening: Mobile:

Email address:

5. DEFECTS TO THE BUILDING FOR WHICH A REMEDIATION ORDER IS SOUGHT

Please specify the defects to the building for which a remediation order is sought.

Please see attached

Please continue on a separate sheet if required.

6. REASONS FOR APPLICATION

Reasons for Application (please continue on a separate sheet if necessary):

Please see attached



7. DETAILS OF ORDER SOUGHT

Following receipt of your application you will be asked to provide a number of documents (referred to as a 'bundle') in support of your case. However, at this stage please provide below **details or a draft of the order sought**.

Please see attached

8. OTHER APPLICATIONS

Are you involved in any other applications(s) or are you aware of any other applications(s) involving the same person(s) or property as in this application? Yes No

If Yes, please give details:

9. CAN WE DEAL WITH YOUR APPLICATION WITHOUT A HEARING?

If the Tribunal thinks it is appropriate, and all the parties and others notified of their right to attend a hearing consent, it is possible for your application to be dealt with entirely on the basis of written representations and documents and without the need for parties to attend and make oral representations. ('A paper determination').

Please let us know if you would be content with a paper determination if the Tribunal thinks it appropriate. Yes No

10. AVAILABILITY

If there are any dates or days we must avoid during the next four months (either for your convenience or the convenience of any witness or expert you may wish to call) please list them here.

Dates on which you will NOT be available:

17 to 31 July (inclusive); 1 to 31 August (inclusive); 1 to 15 September (inclusive); 18 to 29 September (inclusive); 4 to 16 October (inclusive); 20 to 31 October (inclusive); 1 to 3 November (inclusive); 8 to 10 November (inclusive); 15 to 17 November (inclusive); and 27 to 30 November (inclusive).

11. VENUE REQUIREMENTS

Please provide details of any special requirements you or anyone who will be coming with you may have (e.g. the use of a wheelchair and/or the presence of a translator):

N/A

Applications handled by the London regional office are usually heard in Alfred Place, which is fully wheelchair accessible. Elsewhere, hearings are held in local venues which are not all so accessible and the case officers will find it useful to know if you or anyone you want to come to the hearing with you has any special requirements of this kind.

12. CHECKS

Please check that you have completed this form fully. The Tribunal will not process your application until this has been done.

13. STATEMENT OF TRUTH

The statement of truth must be signed and dated.

I believe that the facts stated in this application are true.

Signed:

DocuSigned by:

David Gooch

Name (IN CAPITALS) ASE17C842EFE414 DAVID GOOCH on behalf of Network Homes Limited

Date: 21/7/2023 | 16:28 BST

ANNEX: Addresses of Tribunal Regional Offices**NORTHERN REGION**

HM Courts & Tribunals Service
 First-tier Tribunal (Property Chamber) Residential
 Property, 1st Floor, Piccadilly Exchange, Piccadilly
 Plaza, Manchester M1 4AH

Telephone: 01612 379491

Fax: 01264 785 128

Email address: RPNorthern@justice.gov.uk

This office covers the following Metropolitan districts: Barnsley, Bolton, Bradford, Bury, Calderdale, Doncaster, Gateshead, Kirklees, Knowsley, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne, Oldham, Rochdale, Rotherham, St. Helens, Salford, Sefton, Sheffield, Stockport, Sunderland, Tameside, Trafford, Tyneside (North & South), Wakefield, Wigan and Wirral.

It also covers the following unitary authorities: Hartlepool, Middlesbrough, Redcar and Cleveland, Darlington, Halton, Blackburn with Darwen, Blackpool, Kingston-upon-Hull, East Riding of Yorkshire, Northeast Lincolnshire, North Lincolnshire, Stockton-on-Tees, Warrington and York.

It also covers the following Counties: Cumbria, Durham, East Cheshire, Lancashire, Lincolnshire, Northumberland, North Yorkshire and West Cheshire.

MIDLAND REGION

HM Courts & Tribunals Service
 First-tier Tribunal (Property Chamber) Residential
 Property, Centre City Tower, 5-7 Hill Street,
 Birmingham, B5 4UU

Telephone: 0121 600 7888

Fax: 01264 785 122

Email address: RPMidland@justice.gov.uk

This office covers the following Metropolitan districts: Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton.

It also covers the following unitary authorities: Derby, Leicester, Rutland, Nottingham, Herefordshire, Telford and Wrekin and Stoke-on-Trent.

It also covers the following Counties: Derbyshire, Leicestershire, Nottinghamshire, Shropshire, Staffordshire, Warwickshire and Worcestershire.

EASTERN REGION

HM Courts & Tribunals Service
 First-tier Tribunal (Property Chamber) Residential
 Property, Cambridge County Court, 197 East Road
 Cambridge, CB1 1BA

Telephone: 01223 841 524

Fax: 01264 785 129

Email address: RPEastern@justice.gov.uk

DX 97650 Cambridge 3

This office covers the following unitary authorities: Bracknell Forest, West Berkshire, Reading, Slough, Windsor and Maidenhead, Wokingham, Luton, Peterborough, Milton Keynes, Southend-on-Sea and Thurrock.

It also covers the following Counties: Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Essex, Hertfordshire, Norfolk, Northamptonshire, Oxfordshire and Suffolk.

SOUTHERN REGION

HM Courts & Tribunals Service
 First-tier Tribunal (Property Chamber) Residential
 Property, Havant Justice Centre, The Court House,
 Elmleigh Road, Havant, Hants, PO9 2AL

Telephone: 01243 779 394

Fax: 0870 7395 900

Email address: RPSouthern@justice.gov.uk

This office covers the following unitary authorities: Bath and Northeast Somerset, Bristol, North Somerset, South Gloucestershire, Bournemouth, Plymouth, Torbay, Poole, Swindon, Medway, Brighton and Hove, Portsmouth, Southampton and the Isle of Wight.

It also covers the following Counties: Cornwall and the Isles of Scilly, Devon, Dorset, East Sussex, Gloucestershire, Hampshire, Kent, Somerset, Surrey, West Sussex and Wiltshire.

LONDON REGION

HM Courts & Tribunals Service
First-tier Tribunal (Property Chamber) Residential
Property, 10 Alfred Place, London WC1E 7LR

Telephone: 020 7446 7700

Fax: 01264 785 060

Email address: London.RAP@justice.gov.uk

DX 134205 Tottenham Court Road 2

This office covers all the London boroughs.

The Ministry of Justice and HM Courts and Tribunals Service processes personal information about you in the context of tribunal proceedings.

For details of the standards we follow when processing your data, please visit the following address <https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

To receive a paper copy of this privacy notice, please call 0300 123 1024/ Textphone 18001 0300 123 1024.

Case Ref:.....

IN THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

B E T W E E N:

NETWORK HOMES LTD

Applicant

AND

HEB ASSETS LTD

Respondent

**APPLICATION FOR A REMEDIATION ORDER: DETAILS REQUIRED BY
REGULATION 2 BUILDING SAFETY (LEASEHOLDER PROTECTIONS)
(INFORMATION ETC) (ENGLAND) REGULATIONS 2022**

Introduction

1. This is an application for a remediation order under s.123, Building Safety Act 2022 (as to which, see Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022, reg.2(3)(a)).

About the building

2. This application relates to the Development known as Olympic Way, Wembley, HA9 0NS.

3. The Development includes at least two “relevant Buildings”, known as Tabriz Court and Shams Court (being the Subject Property and simultaneously defined in this application as the “Buildings”) (as to which, see Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022, reg.2(3)(b)).

4. Those Buildings are each a “relevant building” within the meaning of s.117, Building Safety Act 2022 because they are located in England, contain at least two dwellings, are at least 11 meters high and/or has at least five storeys and are not excluded by s.117(3).

The parties

5. The Applicant are the leasehold owners of various flats at the Buildings. At Tabriz Court, the applicant holds 18 residential units under a single lease dated 21 June 2013 (Land Registry Title: AGL287858). At Shams Court, the Applicant holds 9 residential units under a single lease dated 21 June 2013 (Land Registry Title: AGL287859). The individual flats owned by the Applicant are sub-let to occupational tenants (either shorthold assured tenants or shared owners).

6. The aforementioned leases mean that the Applicant has a legal or equitable interest in the Buildings or in any part of them and therefore is an “interested persons” within the meaning of s.123(5), Building Safety Act 2022 and is entitled to seek this order. Its address for service in these proceedings is via its solicitors Winckworth Sherwood LLP, as identified in the application form.

7. The Respondent is the freehold owner of all of the Development. (Land Registry Title: NGL620953) including the freehold interest in these two Buildings. It is a “relevant landlord” within the meaning of s.123(3) 2022 Act (see further; Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022, reg.2(3)(d)) because it is the landlord under the leases held by the Applicant and is required to repair or maintain the Building. The full terms of the leases will be relied upon at trial and the two relevant headleases are attached.

The relevant defects

8. To the best of the Applicant’s knowledge – and in reliance on the various expert reports referred to below - the whole Development suffers from relevant defects within the meaning of the Building Safety Act 2022. Moreover, and in reliance on the same expert reports, each of the two Buildings in which the Applicant holds a leasehold interest suffers from the following defects, each and all of which is a “relevant defect” for the purposes of the Building Safety Act 2022 and Building Safety (Leaseholder Protections) (Information etc.) (England) Regulations 2022, reg.2(3)(c)¹:

1. Transfer Beam Cladding

- a. Presence of ACM panels (Alucobond polyethylene core panel which is Class D (combustible) to BS-EN 13501-1).
- b. Absence of cavity barriers.

¹ The reports are not limited to these two Buildings. The Applicant has assumed that – since this development was built as one project – a problem identified on one part is equally present at these Buildings.

- c. Presence of an unbranded Phenolic Foam and PIR Insulation behind cladding panels which are combustible and should not have been incorporated into the external walls.

2. ACM Rainscreen Cladding

- a. Presence of ACM panels (Alucobond polyethylene core panel which is Class D(combustible) to BS-EN 13501-1).
- b. Vision Modular System originally certified under BBA14/5125 dated 20 May 2014 was limited when using Class B or Class O External finished to be below 18m in height. The Alucobond panels and Envirowall insulated render systems are not non-combustibles and should not be installed on modular buildings over 18m in accordance to BBA Certificate 14/5125. There was no BBA for Vision Modular in place at time of construction and the BBA issued in 2014 was suspended in February 2019.
- c. No insulation in the cavity between the back wall and the ACM panels.
- d. Absence of cavity barriers.
- e. Where cavity barriers are installed, there are gaps or barriers are short and do not create an effective seal against fire spread.
- f. No cavity barriers around windows.
- g. Loose membranes in cavities which create an unnecessary fire risk.

3. Balconies

- a. Presence of ACM Soffit Panels to Balconies.
- b. Use of Composite Plastic materials to balcony decking.
- c. Gaps in render around Balcony steelwork.

4. Terracotta Rainscreen Cladding

- a. No insulation in the cavity between the back wall and the terracotta tiles.
- b. Absence of cavity barriers.
- c. Where cavity barriers are installed:
 - i. There are gaps or barriers are short and do not create an effective seal against fire spread.
 - ii. Cavity barriers are not properly supported by “spike” mechanical support or any other mechanical support back to the structure as required.
 - iii. Cavity barriers are not compressed against the back face of the terracotta tiles.
- d. Where open state cavity barriers are used, these are installed behind rails and so would not properly deploy in the event of fire.
- e. No cavity barriers around windows.

- f. Loose membranes in cavities which create an unnecessary fire risk.

5. Insulated Render

- a. The render is a polymer modified silicon or acrylic thin coat render with plastic reinforcing mesh, which is combustible, and primer, which is also combustible.
- b. The insulation between the render and the cavity outside the Pod sheathing board is expanded polystyrene, which is combustible, and used on UPVC rails with a 20-30mm cavity behind.
- c. Excessive gaps between the back face of the external wall insulated render system and the modular pod walls behind.
- d. The intumescent seal fixing the intumescent strip to the fire barrier was defective, meaning fire and smoke could bypass the intumescent strip and providing no effective seal against fire spread;
- e. Incorrect installation of intumescent strips with deviations from the test system.
- f. Missing vertical and horizontal fire barriers where located on “as built” drawings.
- g. Significant gap behind the aluminium rail support, leaving a pathway for fire to bypass a fire barrier and pass across compartments in the absence of an effective intumescent strip.
- h. Installation of plastic packers behind plastic and metal vertical rails, promoting fire spread behind the horizontal fire barrier.
- i. Fire barriers are less than the required 200mm in height (e.g. 160mm).
- j. No fire barriers around windows, incorrect fire stopping around window opening, with combustible sheeting and foam.
- k. No cavity barriers around service flue penetrations and incorrect use of PU Foam type material around penetrations.
- l. Ventilation ductwork not connected to internal ductwork and opening not protected with a suitable fire barrier. Ductwork wrapped in combustible tape.
- m. Loose membranes in cavities which create an unnecessary fire risk.

6. Modular Pod External Walls

- a. Insufficient information, including test performance data, relating to the type and fire performance of the MgO board, which would assist in confirming the performance of the modules.
- b. Slab level sheathing board appears to be made of a mix of cement particles and wood chip, which is not of limited combustibility.
- c. Damaged/missing modular wall board, which would be an issue for fire spread.

- d. Joints between sheathing board are up to 20mm and have been filled with combustible expanding foam insulation, with the joints covered with combustible butyl tape.
- e. Open joints between modular wall boards, and also at junction with the floor slab sheathing board.
- f. Misaligned modular wall boards.
- g. Large gaps between sheathing boards which, couple with the combustible material, creates a route for fire to spread from the cavity and into the Pods.
- h. Deflection to northern elevation modular wall.
- i. Breather membrane and polyethylene membrane, both of which are combustible, hang outside the construction of modular construction Pods and pass directly into the large gaps behind the Pod sheathing board (providing a direct route for fire to pass into the Pods).

7. Curtain Wall/Spandrel Panels:

- a. Ineffective firestopping, which does not fill the space and contains gaps.

9. These matters are further particularised in the attached reports: 'Wembley Properties, External Walling System Review' produced by Orsa Projects Limited and dated 4 December 2020; 'Olympic Way, Wembley, London HA9 0NP Façade Fire Safety Inspection Report' produced by Buro Happold and dated 1 July 2021; 'Olympic Way Cladding Fire Safety Review' produced by Marshall Fire Ltd and dated 31 January 2022; and 'Olympic Way – Interim Fire Strategy Review produced by Marshall Fire Ltd and dated 30 September 2022. Those reports will be relied upon at trial.

10. These matters individually or collectively:

- (a) affect the matters for which the Respondent is responsible under the leases held by the Applicant;
- (b) arise as a result of something done (or not done) or used (or not used) in connection with relevant works;
- (c) cause a building safety risk as they relate to a risk to the safety of people in or about the building arising from the spread of fire and/or the collapse of the building or any part of it;
- (d) all such defects are already known to the Respondent.

11. There may be other “relevant defects” of which the Applicant is unaware. The Applicant

(a) seeks an order that the Respondent disclose any further expert reports or similar documents which identify such defects or which might disclose further lines of inquiry for the purposes of identifying further defects; and,

(b) additionally, seeks an order that any further reports which come into existence and which are under the control of (or in the possession of) the Respondent prior to the Tribunal issuing a final decision in this matter are similarly disclosed insofar as they are relevant to the identification or possible remediation of any defects to which the Building Safety Act 2022 applies.

12. Should any further relevant defects be identified then the Applicant reserves the right to seek their inclusion in any remediation order which the Tribunal sees fit to make.

Other matters

13. The Applicant understands that, in October 2022, the Respondent sought planning permission to carry out a remediation scheme for the entire Development, part of which, the Applicant understands, involves the replacement of the render with non-combustible panels. Moreover, the Applicant understands that some remedial works have been commenced as regards ACM cladding remediation and works to the insulated render system, although no such works have commenced at the Buildings. The Applicant has requested – but not been provided with – a copy of the method statement and similar supporting materials. It requests that the same be ordered to be provided as part of the disclosure process. For the avoidance of doubt, the Respondent did not consult the Applicant on the scope of any planning application and/or intended remedial works.

14. The Respondent has previously contended that the Applicant should be responsible for remediating the external walls of each Building. The Applicant denies that the leases have this effect and will elaborate on that argument in a Reply if that is a line which the Respondent develops. It does, however, note that the Department for Levelling Up, Housing and Communities, rejected an attempt by the Applicant to secure funding under the Building Safety Fund because the Applicant is not responsible for the external walls.

15. The Respondent has also suggested that the Applicant should contribute to the costs it incurs in respect of remedial works. Again, if that is a line which the Respondent advances then the Applicant will deal with it in a Reply but, *inter alia*, it will argue that it would be entitled to the benefit of Sch.8, para.2, Building Safety Act 2022 because the Respondent is sufficiently associated with the developer/previous freeholder to engage this provision.

Final remedies sought

16. The Applicant accordingly seeks an order pursuant to s.123 of the 2022 Act requiring the Respondent to undertake the remediation of relevant defects (as defined by s.120) affecting the Buildings including, but not limited to, the defects identified above, within such period as may be specified by the Tribunal.

17. As part of that order, the Applicant may invite the Tribunal to make an order which has implications beyond simply the two Buildings identified above. This is a matter for expert evidence, but the Tribunal will see from the attached expert reports that the defects which are identified extend across the whole Development and not just these two Buildings. It is not possible nor practicable to remediate only these two Buildings without also remediating other parts of the wider Development.²

Justin Bates

I believe that the facts stated in this application for a Remediation Order are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

DocuSigned by:
David Gooch
A5E17C842EFE414.....

David Gooch on behalf of Network Homes Limited

Date: 21/7/2023 | 16:28 BST

² If necessary, the Applicant will contend that the whole Development is a “relevant Building” in which it has an interest in a part.



Case reference: LON/00AE/HYI/2023/0018

IN THE PROPERTY CHAMBER LONDON RESIDENTIAL PROPERTY FIRST-TIER TRIBUNAL

BETWEEN

NETWORK HOMES LIMITED

Applicant

-and-

HEB ASSETS LIMITED

Respondent

RESPONDENT'S POSITION STATEMENT

1. Introduction

1.1 HEB Assets Limited (company registration number 11842142) (the "**Respondent**") is the freehold owner of the residential buildings at:

(a) Tabriz Court, Blocks C, 5 Olympic Way, Wembley, London, HA9 0NS; and

(b) Shams Court, Blocks E, 5 Olympic Way, Wembley, London, HA9 0NS

(together the "**Premises**").

1.2 The Respondent entered two leases for the Premises with Network Homes Limited (Community Benefit Society with registration number 7326) (the "**Applicant**"), who is the leasehold owner.

1.3 The Applicant has made an application for a remediation order under section 123(2) of the Building Safety Act 2022 dated 21 July 2023 relating to the Premises (the "**RO Application**"). In the RO Application, the Applicant has set out seven defects that fall within the definition of "*relevant defect*" pursuant to the Building Safety Act 2022.

1.4 A hearing has been arranged by the First-Tier Tribunal for 7 November 2023.

1.5 The Respondent therefore submits this position statement in advance of that hearing setting out its position. It is hoped that the parties can agree a means of resolving the dispute without the need for the upcoming scheduled hearing and/or any other further/final hearing.

2. Respondent's Position

RO Application

2.1 The RO Application sets out the following defects identified in the Premises by experts appointed by the Applicant:

- (a) Transfer Beam Cladding;
- (b) ACM Rainscreen Cladding;
- (c) Balconies;
- (d) Terracotta Rainscreen Cladding;
- (e) Insulated Render;
- (f) Modular Pod External Walls; and
- (g) Curtain Wall/Spandrel Panels,

(together the "**Defects**").

2.2 The Respondent has reviewed the Defects and confirms that these will be remediated so as to achieve a EWS1 B1 or A1 rated façade (the "**Remedial Works**"). In order to facilitate for such Remedial Works, the Respondent provides the appended method statements and drawings for carrying out the Remedial Works¹. The works are currently planned to start in January 2024 and expected to take 18 months to complete².

2.3 The Respondent will use all reasonable endeavours to provide any other information reasonably requested by the Applicant. However, for the avoidance of doubt, the Respondent confirms that there are no further reports in existence to share with the Applicant pursuant to paragraph 11 of the RO Application.

2.4 The Respondent also offers to provide the Applicant with an undertaking for carrying out the Remedial Works (without any admission as to liability for the Defects) to avoid the unnecessary and irrecoverable costs arising out of the upcoming and final hearings. Should the Applicant agree to accept such undertaking, it is hoped that the hearing will be promptly vacated.

Insurance

2.5 In the letter dated 23 October 2023³, the Respondent's representatives, Winckworth Sherwood have suggested "*that due to lack of progress in remediating the façade of the Premises it is likely that your client [the Respondent] will not be able to insure the Premises from December.*"

¹ Method Statements and drawings for the Remedial Works [**Appendix 1**]

² Subject to third party issues such as building control.

³ Letter from Winckworth Sherwood LLP to DWF Law LLP dated 23 October 2023. [**Appendix 2**]

2.6 However, in a telephone conversation between Fetrat Naser, acting on behalf of the Respondent and Paul Franics the Head of Insurance and Operations Risk of the Applicant, Ms Naser explained⁴ the following in respect of the renewal:

- (a) The building insurance renewal has been brought forward from March 2024 to 31 December 2023 due to the insurance providers wanting to assess and see latest progress update on Remedial Works for the Premises;
- (b) The insurance providers have requested for up to date reinvestment valuation to identify current reinstatement cost for each building that includes the Premises;
- (c) The renewal insurance cover will be split per building to reflect current progress and to provide better cover for each block individually; and
- (d) The insurance providers have requested an update on the planned work for the Premises.

2.7 For the avoidance of any doubt, the Respondent has not refused to insure the Premises nor has the Respondent implied that it is not going to provide/obtain insurance cover for the Premises. To the contrary, the insurance premiums will be split in the renewal to provide better individual premium cover for each building according to the progress achieved with the Remedial Works.

3. **First-Tier Tribunal**

Proposal to vacate the First-Tier Tribunal Hearing

- 3.1 The Defects are not in dispute and pursuant to paragraph 2 of this position statement, the Respondent has confirmed that it will carry out the necessary remediation works as envisaged by the RO Application and will provide an undertaking to that effect. Therefore, the Respondent does not consider a hearing to be necessary.
- 3.2 A hearing appears to be disproportionate given that in light of the above, there is no dispute between the parties. A hearing will incur additional fees to the Tribunal, the Applicant and the Respondent that the Respondent considers unnecessary.
- 3.3 It is therefore and hereby requested by the Respondent that the First-Tier Tribunal hearing scheduled for 7 November 2023, is vacated and no further/final hearing is scheduled.

Inconsistency in court documents

The letter dated 25 October 2023 from the Tribunal refers to the Respondent as *HEB Real Estate Limited* who is registered at Companies House with company registration number: 09221605. For the avoidance of doubt, it is hereby noted that the Respondent is a separate

⁴ Email from Fetrat Naser to Khoshal Azeemi dated 25 October 2023 (timed at 11:09) re Network Home – Cladding dispute – insurance clarification. [**Appendix 3**]



legal entity to HEB Real Estate Limited and we request that all future correspondence refer to the Respondent.

DWF Law LLP

27 October 2023

IN THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

B E T W E E N:

SOVEREIGN NETWORK HOMES

Applicant

AND

HEB ASSETS LTD

Respondent

POSITION STATEMENT ON BEHALF
OF THE APPLICANT

Summary and overview

1. The Applicant:
 - (a) does not consider that this can be resolved by undertakings;
 - (b) considers that the appropriate way forward is for the Respondent to concede that the conditions for a remediation order are made out and, if that is done, then an adjournment/stay on terms relating to the carrying out of works is appropriate.

Where are we today?

2. The Respondent is the freehold owner of a development known as Olympic Way, Wembley, HA9 0NS. That development includes Tabriz Court and Shams Court. Those buildings each contain a number of flats. The Applicant is a housing association which owns the leasehold interest in 18 flats at Tabriz Court and 9 flats at Shams Court. In the usual way, it then underlets those flats on a mixture of assured tenancies and shared ownership terms.
3. It considers that there are – broadly – seven types of fire safety defect at these buildings. These relate to:
 - (a) defects with the transfer beam cladding;

- (b) the presence of ACM Rainscreen cladding;
- (c) fire risks associated with the balconies;
- (d) defects associated with Terracotta Rainscreen cladding;
- (e) defects associated with the EPS Render System;
- (f) fire spread risks associated with the external walls; and,
- (g) ineffective fire stopping associated with the curtain wall and spandrel panels.

4. It bases this on various reports, all of which are already referred to in the original application and can be found in the electronic bundle at tabs 6 (pages 109 – 121) and 7 (pages 122 – 356).

5. By directions dated 31.8.23, Judge Vance directed the Respondent to answer five questions.

- “(a) Whether the building is at least 11 metres high, or has at least 5 storeys (and, if so, whether it is a “relevant building” as defined by section 117 of the Act);
- (b) Whether the leases are qualifying leases and whether the parties are relevant landlords and relevant tenants within the meaning of the Act (sections 119 to 121);
- (c) Whether the works said to be necessary are in respect of relevant measures and/or defects (section 120) and, if so, whether the respondent as relevant landlord is responsible for the works;
- (d) Whether the respondent meets the contribution condition (Schedule 8, paragraph 3); and
- (e) Whether the scope of the order sought is accepted.”

6. That has not been done. Rather, the Respondent has indicated that it wishes to have this hearing vacated so that it can carry out remedial works (which it anticipates starting in January 2024). It also proposes that this case be resolved by way of an undertaking in respect of the relevant works.

7. The Applicant does not consider this a sensible way forward. First, an undertaking is not the answer here because, as the Upper Tribunal has held, the FTT has no power to accept – nor to enforce compliance with – any undertaking: *Nogueira v Westminster CC* [2014] UKUT 327(LC), [29(2)-(3)].

“... ”

- (2) An F-tT has no inherent jurisdiction to grant an injunction e.g. a mandatory injunction that certain works be carried out. I conclude that an

F-tT can equally have no inherent jurisdiction to accept an undertaking (using that expression as an undertaking in the nature of something akin to an injunction) that certain works will be carried out.

(3) The F-tT would have no power to enforce an undertaking, even if such an undertaking were given, that certain works should be carried out – *i.e.* no power to compel the giver of the undertaking actually to carry out the works.
...”

Furthermore, as will be clear from the correspondence provided in the electronic bundle at tab 10 (pages 383 to 457), despite various assurances received over several years regarding remediation, the development (and specifically Tabriz and Shams) remain unremediated and the Applicant remains in the dark about the detailed scope, programme, impact on residents, warranty provision and cost implication of the works. The Applicant has no knowledge of the competency of the design and construction team, or those who the Applicant assumes (without any concrete knowledge) will be signing off the works.

8. The appropriate position is, rather, for the Respondent to:
 - (a) concede that both Tabriz Court and Shams Court are “relevant buildings” within the meaning of the Building Safety Act 2022;
 - (b) concede that the applicant is an “interested person”, within the meaning of the Act;
 - (c) concede that the Respondent is a “relevant landlord”, within the meaning of the Act and is responsible for repair and maintenance of the area within which the relevant defects are located;
 - (d) concede that all of the matters identified in the application amount to “relevant defects”, within the meaning of the Act.
9. That would follow from the questions posed by Judge Vance in his directions. Given that the Respondent is prepared to do remedial works, one imagines that there should be no problem making all these concessions (indeed, it might be that para.3.1 is intended to be such an admission).
10. If those concessions are made (and recorded by the FTT) then, at that stage, the power to make a remediation order has arisen.

11. What the Respondent is really saying is that, although the Tribunal has power to make an order, it should instead adjourn/stay the proceedings so as to enable it to carry out the planned works. Once it has done so then it will no-doubt contend that no order should be made because (so it will say) its remediation works would remedy all relevant defects.

12. The Applicant is not so confident that the remediation works will resolve all the relevant defects:

(a) the Respondent plans to ensure that the remedial works meet the EWS1 B1 or A1 standard. But that is not the statutory test; what matters for the purpose of this application is whether the “relevant defect” is remedied, *i.e.* whether there is no longer

“a risk to the safety of people in or about the building arising from (a) the spread of fire, or (b) the collapse of the building or any part of it” (s.120(5)).

(b) whilst (undated) method statements have now been produced, the Applicant cannot see that any detailed specification has been produced nor any designer and / or contactor yet identified; that sort of material is obviously necessary in order to form a meaningful view on the proposed works (and would presumably be developed if works are to start in January 2024 as suggested); and,

(c) as the Applicant understands the current expert evidence, the defects which are identified extend across the whole development and not just these two buildings. It does not appear to be possible nor practicable to remediate only these two buildings without also remediating other parts of the wider development.

13. That said, the Applicant is prepared consent to an adjournment of this application. It should be on terms that:

(a) the admissions identified above are made; and,

(b) the details of contractors, scope of works, details of collateral warranties to be provided to the Applicant *etc* are provided as soon as practicable; and

(c) the Respondent confirms in writing that the building will remain insured by it under the current policy until March 2024 and then insured in accordance with its obligations under the leases.

14. The adjournment should, (at least initially) be until mid-February 2024. The Respondent plans to start the works in January 2024. It has been aware of the

need for these works since *at least* December 2020 (see, *e.g.* pg.385 of CMC bundle, email from Applicant regarding report provided by Respondent the day before). If the works are not started promptly then the Applicant wishes to push on with its remediation order application. It cannot afford to let matters drift given:

- (a) the danger posed by the condition of the buildings;
- (b) the costs that are being incurred by the Applicant as a result of the interim fire strategy that has had to be adopted (currently circa £275,627 and increasing monthly), which the Applicant intends to recovery from the Respondent; and,
- (c) the need to ensure that its own leaseholders are able to sell, secure mortgage finance *etc.*

15. Finally, the Respondent should confirm that it will not be raising a service charge in respect of these works. For one, there has been no statutory consultation, so the costs cap under s.20, 20ZA, LTA 1985 would apply. Moreover, the absolute bar in Sch.8, para.2, BSA 2022 will apply here, given the close association between the Respondent and developer.

Proposed directions

16. The Applicant therefore proposes the following.

- 1) The Tribunal records that the Respondent has accepted that both Tabriz Court and Shams Court are “relevant buildings” within the meaning of the Building Safety Act 2022; the Applicant is an “interested person”, within the meaning of the Act; the Respondent is a “relevant landlord”, within the meaning of the Act; and, all of the matters identified in the application amount to “relevant defects”, within the meaning of the Act, that the Respondent will rectify at its costs.
- 2) The application is then adjourned to [date in February 2024] on terms that
 - (a) details of contractors, scope of works and any similar document are provided to the Applicant as soon as practicable once they are produced; and
 - (b) the Respondent confirms that the building will remain insured by it under the current policy until March 2024 and then insured in accordance with its obligations under the leases.
- 3) 14 days before the adjourned hearing, the Respondent is to produce a short statement updating the Tribunal and the parties on the works,

including works already completed and a timeline for any remaining works, and proposals for any further stay.

4) 7 days before the adjourned hearing, the Applicant must file a short statement in response, including its position on any further stay.

Justin Bates

1.11.23

Landmark Chambers

180 Fleet St

London

EC4A