

Recent decisions from 2023 on fire safety/Building Safety Act

| | Property | Date | Type of case | Tribunal | Key finding |
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| 1. | Grove House | 17/10/22 | Provision of landlord's certificate | Judge McGrath Judge Sheftel | "there is no regulation which enables the Tribunal to make an order determining whether a relevant landlord has failed to comply with the requirement to provide a landlord's certificate." §11 |
| 2. | Sutton Court Road | 13/1/23 | Remediation order | Judge McGrath Judge Powell | "by reference to paragraph 10 of Schedule 8, the costs are not to be regarded as relevant costs to be taken into account in calculating the amount of the service charge...there are no mitigation or other matters to be taken into account in the exercise of its discretion in this case." §50 |
| 3. | Priory Heights | 5/7/23 | Appeal against improvement notices | Judge Wyatt Mr Tomlinson MRICS | "although these works need to be arranged and carried out as soon as possible, it would not be appropriate...to use improvement notices to seek to compel the leaseholders to carry them out...the effect of Part 5 and Schedule 8 to the 2022 Act may well be that the cost of these works would not be recoverable" §§48/50 |
| 4. | St John St | 25/7/23 25/9/23 | Service charge determination | Judge Powell Ms Phillips MRICS | "there has only been one first-instance decision making an RCO...and no full argument...the prospect an RCO...was too remote" §164/5 |
| 5. | BV9 | 3/8/23 | Service charge determination, dispensation and lease variation | Judge McGrath Mrs Bowers MRICS | "an assurance from the Tribunal that if the proceedings were withdrawn this would not prevent the applicant from bringing [a] fresh application....for a remediation contribution order" §10/recital 3 |

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| 6. | Leigham Court Road | 9/8/23 | Remediation order | Judge Powell Mrs Bowers MRICS | <p>“This is an entirely new area of law; there is very little, if any, guidance as to the statutory test to be applied; and there is no previous authority, this being the first substantive hearing of an application for a remediation order” §51</p> <p>“the Act must work and be made to work for leaseholders in a straightforward way. This Part of the Act and section 123 in particular are drafted very broadly indeed and give wide powers to the Tribunal. We do not consider ourselves restricted in the interpretation of section 123 by reference to other statutory provisions or case law” §69</p> <p>“The date for considering whether a relevant defect creates a building safety risk is the date of the hearing...Whether or not work done at the time did or did not comply with extant Building Regulations is not the issue” §75</p> <p>“the Tribunal does not think it is necessary or helpful to assign formal burdens of proof...This is an evidence-based exercise” §81</p> <p>“it is important for any remediation order to be sufficiently precise so that the Respondent can know what it must do...and for enforcement” §82</p> |
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Robert Bowker – 28 September 2023