GATEHOUSE CHAMBERS

Building Safety Remedies

In borderline cases, what factors will tip the balance when arguing for Remediation Contribution Orders and Building Liability Orders under the Building Safety Act?

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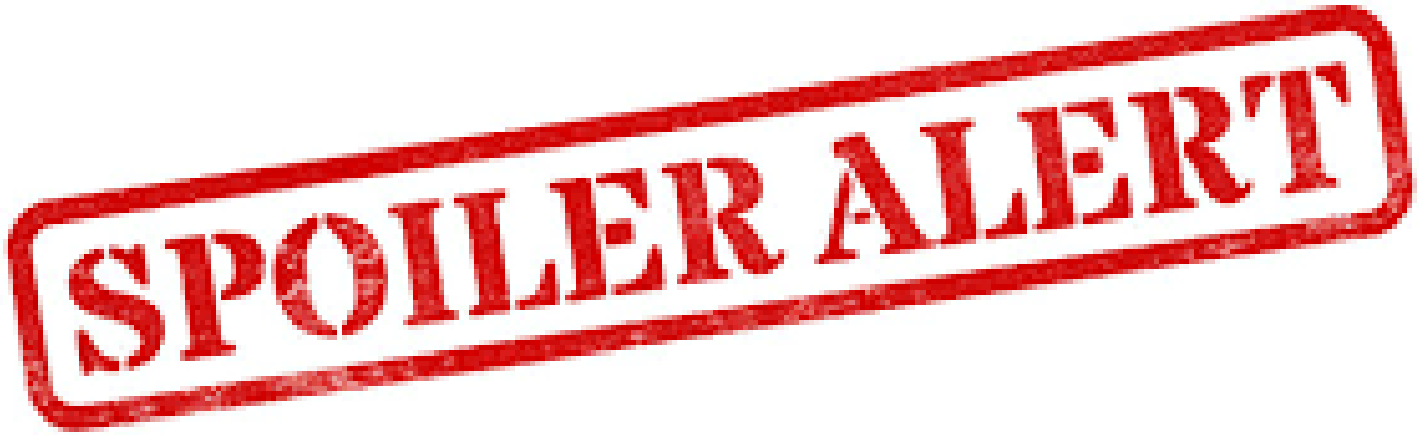
(with most of the hard work done by Philip Marriott)

November 2024


SPOILER ALERT

Remediation Contribution Orders

124 Remediation contribution orders

(1) The First-tier Tribunal may, on the application of an interested person, make a remediation contribution order in relation to a relevant building if it considers it just and equitable to do so.

(2) "Remediation contribution order", in relation to a relevant building, means an order requiring a specified body corporate or partnership to make payments to a specified person, for the purpose of meeting costs incurred or to be incurred in remedying relevant defects (or specified relevant defects) relating to the relevant building.

(3) A body corporate or partnership may be specified only if it is -

(a) a landlord under a lease of the relevant building or any part of it,

(b) a person who was such a landlord at the qualifying time,

(c) a developer in relation to the relevant building, or

(d) a person associated with a person within any of paragraphs (a) to (c).

s.124(5):
Secretary of State, the regulator, local authority, fire and rescue authority, legal or equitable interest in the Property

s.120:
(a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and
(b) causes a building safety risk

s.119(2)(d): 14 February 2022

s.121: Trusts and beneficiaries, partners and partnerships, directors and companies, companies and controlling interests

First Tier Tribunal (4 years ago)

- *"It is far from informal, much more formal and unjust than courts. Judges don't have respect or take litigants in person seriously. They are extremely unfair and unreasonable and rude..."*

"...they are unresponsive, no legal assistance and will not reply to emails or any form of communication. The building since major works were completed made the building and accommodation worse. It is dangerous and non-compliant with many regulations..."

First Tier Tribunal (this year)

- *"Judge [X] horrendous to avoid at all costs…unable to fulfil job role…needs to be struck off…Mrs [X] rude unpleasant horror of a human being extremely sly and treacherous devious horrific experience…one asks where do you find these people?"*

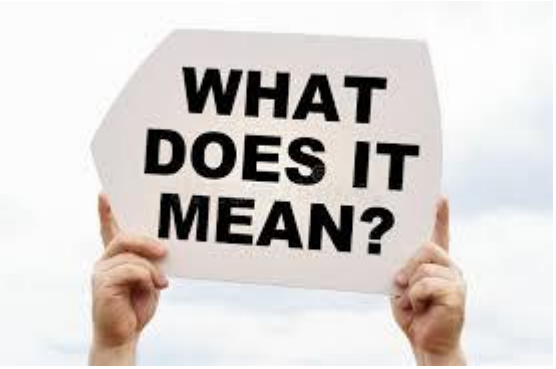
London 2012

Triathlon Homes [2024] UKFTT 26 (PC)

- SVDP was Developer (and subsidiaries still hold freehold on trust for it)
- Get Living Plc (now) owns SVDP and owns the private housing
- Triathlon holds long leases of affordable housing
- EVML owned jointly by Get Living and Triathlon, responsible for repair

Statutory Interpretation?

- Triathlon argued for a presumption:
  - Leaseholder protections in LPI Regs
  - Ministerial Statements
  - Explanatory Notes



- "This is intended to ensure fairness in proceedings while giving the Tribunal a wide decision making remit which it is expected will allow it to take all appropriate factors into account when determining whether an order should be made, including the wider public interest in securing the safety of buildings, as well as the rights and interests of the individual against whom the order might be made". (para 1019)

Remediation Orders?

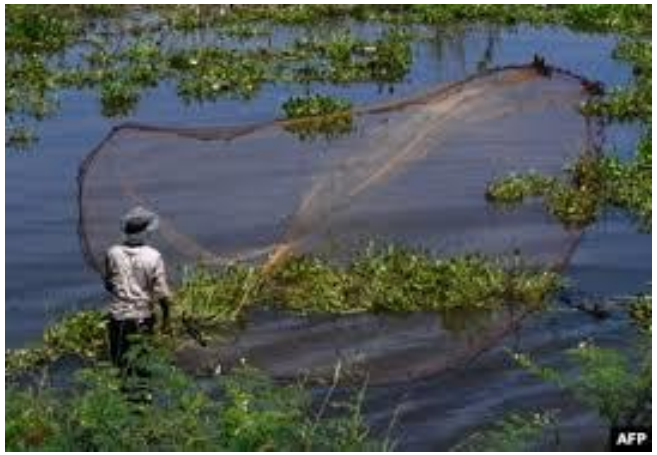
- No ‘just and equitable’ wording
- But in *DLUHC v Grey* (FTT 29.4.24) decided FTT had power *and* discretion
- But RCOs focus on “polluter”
- No mention in Triathlon

Other discretions?

- Costs protection under s.20C Landlord and Tenant Act 1985
- Para 5A(2) of Schedule 11 Commonhold and Leasehold Reform Act 2022
- Section 20ZA(1) CaLRA 'reasonable'; Deajan v Benson [2013] UKSC 14:
  - …would be inappropriate to interpret it as imposing any fetter on the LVT's exercise of the jurisdiction beyond that which can be gathered from the 1985 Act itself and other relevant admissible material. Further, the circumstances in which a section 20ZA(1) application is made could be almost infinitely various, so any principles that can derived should not be regarded as representing rigid rules"

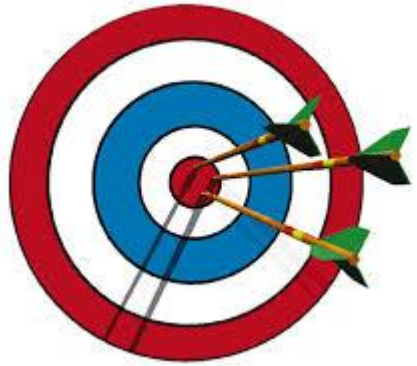
"Context" only

- Role of 'Parties' in the development
- Triathlon's motives
- Relevance of other remedies
- Others could have made applications
- This SVDP is not that SVDP
- Investment value to Get Living
- Relevance of individual leaseholder evidence



"More Important" Stuff

- SVDP was the developer (and relevance of LPI remedy)
- Relevance of work being done and funded regardless
- The "public purse point"
- Cascade of liability:
  - "…it is difficult to see how it could ever be just and equitable for a party falling within the terms of section 124(3) and well able to fund the relevant remediation works to be able to claim that the works should instead be funded by the public purse".



Get Living

- "The obvious purpose behind the association provisions is to ensure that where a development has been carried out by a thinly capitalized or insolvent development company, a wealthy parent company or other wealthy entity which is caught by the association provisions cannot evade responsibility for meeting the cost of remedying the relevant defects by hiding behind the separate personality of the development company. It seems to us that the situation of SVDP, with its relatively precarious financial position and its dependence for financial support upon Get Living, its wealthy parent, constitutes precisely the sort of circumstances at which these association provisions are targeted".

Building Liability Orders

s.130(3)
(a)under the Defective Premises Act 1972 or section 38 of the Building Act 1984, or
(b)as a result of a building safety risk.
Whether arising before or after BSA

130 Building liability orders

(1) The High Court may make a building liability order if it considers it just and equitable to do so.

(2) A "building liability order" is an order providing that any relevant liability (or any relevant liability of a specified description) of a body corporate ("the original body") relating to a specified building is also—

(a) a liability of a specified body corporate, or

(b) a joint and several liability of two or more specified bodies corporate.

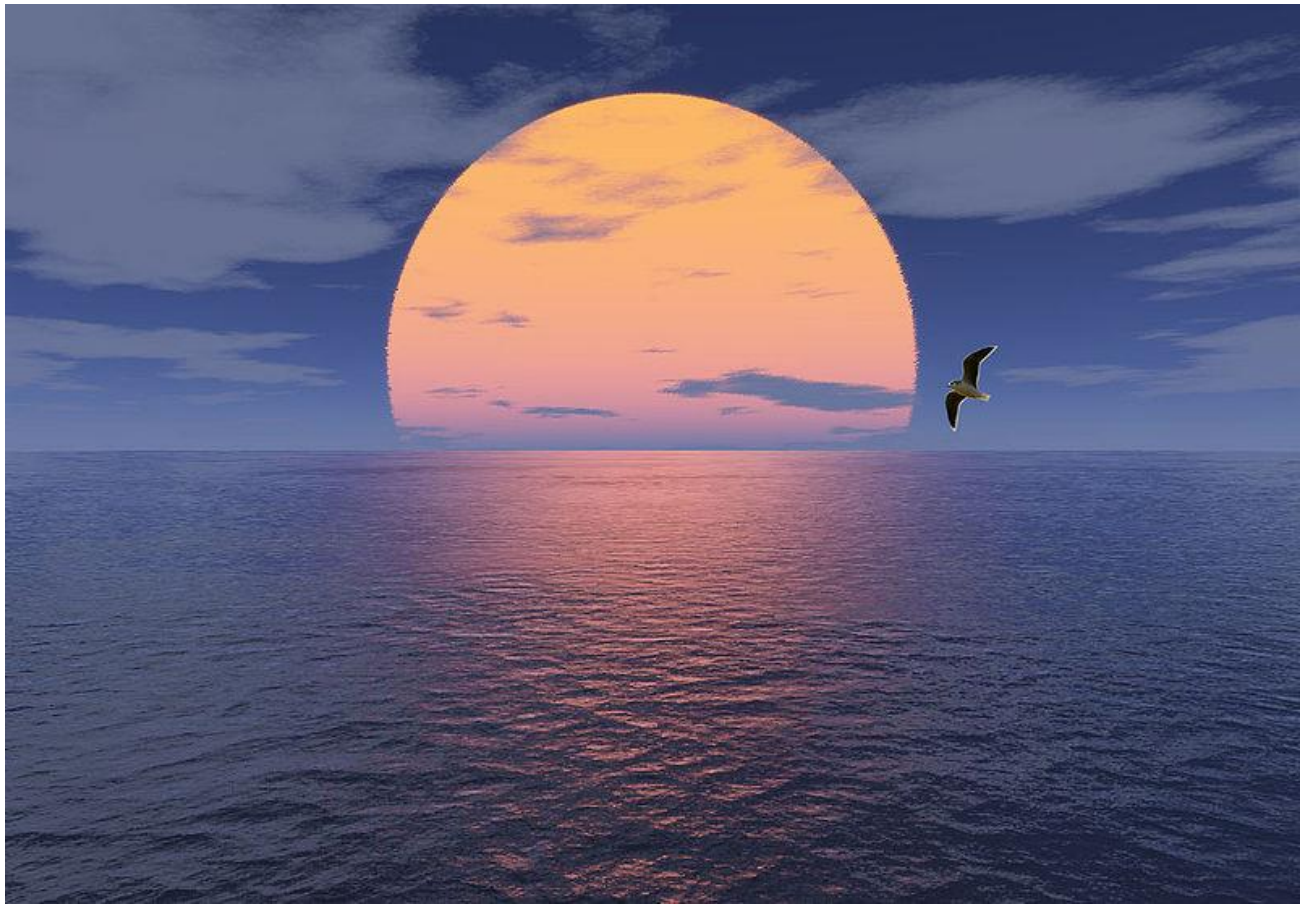
...(4) A body corporate may be specified only if it is, or has at any time in the relevant period been, associated with the original body.

s.130(6)
"Specified" in the BLO

s.130(6)
(a) beginning with the beginning of the carrying out of the works in relation to which the relevant liability was incurred, and
(b) ending with the making of the order

s.131
(a) one of them controls the other, or
(b) a third body corporate controls both of them.
"Control" is essentially majority shareholder or "power, directly or indirectly, to ensure controlled's affairs are conducted in accordance with controller's wishes

Coming to a Court near you soon...



Wilmott Dixon v Prater [2024] EWHC 1190

- Claim made by Defendant
- All about process – Court refused the application to Stay
- Would it have to be deliberate asset stripping?
- Relevance of insurance for 'primary' defendant?

Explanatory Notes

- "A practice used in property development is where a subsidiary company (which may be thinly capitalised) is set up to own and manage a development on the behalf of the corporate group it is a part of. The subsidiary company is often would up once the development has been completed. A consequence of this practice is that the corporate group has no long-term liability for its developments"

- "BLOs have been designed to address the consequences described above"

- "…whether the parent company can receive a fair trial"

I told you I didn't know

GATEHOUSE CHAMBERS

Thank you!

Any questions?

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