



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

Case Reference	:	LON/00BJ/LSC/2018/0286
Property	:	100 High Rise Blocks within the London Borough of Wandsworth
Applicant	:	London Borough of Wandsworth
Representative	:	Mr B Maltz (counsel) South London Legal Partnership
Respondents	:	Multiple Leaseholders
Representative	:	Various but included Ms A Gourley (counsel) Housing & Property Law Partnership (solicitors)
Type of Application	:	Landlord and Tenant Act 1985, s.27A(3)
Tribunal Members	:	Judge Siobhan McGrath Judge Timothy Powell Mrs Helen Bowers
Date of Directions	:	5th November 2018

DIRECTIONS

- (1) This is an application by the London Borough of Wandsworth. In this application the council seek a determination from the Tribunal that they are entitled to recover certain costs as part of the service charge payable by the leaseholders named as respondents. Those costs relate to the expense of fitting (and maintaining) sprinkler systems within the leaseholders' flats. Altogether 100 blocks of flats and 2,200 leaseholders are affected by the proposal. It is intended that the same works will be carried out to the flats held under secure tenancies.
- (2) The Tribunal held a case management hearing on the 16th October 2018 to consider what further information it would require before proceeding with the case and to decide what actions the parties should be required to take to assist the Tribunal in its task of deciding the application. At the hearing the council were represented by Mr Ben Maltz who is a barrister. About 200 leaseholders also attended and the Tribunal heard from a number of individual leaseholders as well as a number of councillors and chairmen of residents' associations. Eleven leaseholders were represented by Ms Amanda Gourley who is also a barrister.
- (3) On behalf of the council it was said that a decision had been made to proceed with works to retro-fit sprinklers in all of its blocks of flats with ten plus storeys. At the hearing there was some dispute about the actual terms of the council's decision but that did not bear any relevance to the case management of the application.
- (4) Mr Maltz explained that there are three types of lease that the council has entered into with its leaseholders. He said that the council wanted the Tribunal to consider the terms of those three types of lease and to decide whether the costs of the proposed works were recoverable from the leaseholders and whether the council could require the leaseholders to give entry into their flats to allow the work to be done. He said that although it had originally been indicated that the application was urgent, it had now been decided that no further steps would be taken towards implementation of the planned works until after the Chairman of the Grenfell Tower inquiry had issued his report. Mr Maltz suggested that this would not be until at least Autumn 2019.
- (5) On behalf of her leaseholder clients, Ms Gourley said that the council's application was misconceived. She said that any decision to install sprinklers inside flats should have been made on a block by block basis. She submitted the leaseholders needed to understand the council's argument in more detail before the case could proceed. She said that when that detail had been made available, she would consider whether to advise her leaseholder clients that they should apply to have the council's application struck out.
- (6) A number of leaseholders made important observations about the case. These included pointing out that the various blocks of flats were different from each other. They were constructed differently and had

different provision to deal with outbreaks of fire and that this must have an impact on whether the proposed works should be carried out and also who should pay. It was disputed whether the works were necessary at all in some blocks and the question was posed whether other fire precaution measures might be more effective. Councillor Gilbert, who is ward councillor for Roehampton & Putney Heath, which includes nearly half of the affected blocks, said that following the Grenfell Tower fire, some leaseholders in blocks of flats of a similar construction to Grenfell Tower had suffered a great deal of stress brought on by the uncertainty of fire precautions in their homes. She said that this application augmented that stress.

- (7) The Tribunal explained that the case management hearing on 16th October was not to make decisions about the case but to set a timetable for specific steps to be taken by the parties. Having considered the submissions at the case management hearing it agreed that the first step to be taken should be to require the council to provide a much more detailed statement of case and this is dealt with below in the formal directions order. No further directions (except those provided below) will be made until that statement is available. At the hearing at least one leaseholder said that if the Tribunal was going to deal with the case then an answer should be provided quickly. The Tribunal acknowledges a proper desire to avoid delay but the issue is of such importance and affects such a large number of leaseholders that it considers a staged approach is appropriate.
- (8) A very important consideration for the Tribunal is its ability to ensure that the documentation relating to the application is accessible to all of the respondents and to ensure that all respondents have the opportunity to engage fully in the proceedings. In particular, concern was expressed for those who have difficulty in accessing documentation on-line, for those whose first language is not English and for those who reside elsewhere than the flats they own. Finally, it was submitted that despite the Tribunal having required the council to send documents to all of the affected leaseholders, a number had reported that they had not received them.
- (9) In a case affecting so many different and diverse respondents, it is a real challenge to ensure that everyone has a full opportunity to understand and participate in the proceedings. Therefore, it was agreed at the case management hearing that a leaseholders communications group would be established. The purpose of the group is advisory. In their capacity as members of the group they will assist the Tribunal in seeking to ensure that communications are effective. They will liaise with the council who have agreed also to assist in the task of communication.
- (10) For the avoidance of doubt the Tribunal wishes to make it clear that all respondent leaseholders are entitled to take part in these proceedings whether or not they have already returned a reply form to the Tribunal office. Leaseholders are encouraged to work together in

groups and to appoint suitable representatives (who need not be lawyers) to make representations on their behalf. Where a group of leaseholders have nominated or appointed a representative, their details and the details of that representative should be sent to the Tribunal for its records. Where a representative has been identified, all subsequent documentation in relation to the case will be sent to them and not to the individual leaseholders.

Against that background the Tribunal makes the following directions:

DIRECTIONS

Service of documents

1. On or before 7th November 2018, the council must upload an electronic copy of these directions to its website and on or before 19th November 2018 must send a hard copy of the following documents to all respondents:
 - (a) These directions;
 - (b) Details of the website where all electronic copies can be seen.
2. In the future, copies of all relevant documents generated by or relied upon by the council, and all of the council's correspondence to and from the Tribunal, should be uploaded to the council's website.

What else the council must do

3. On or before the 11th December 2018, the council shall prepare and lodge with the Tribunal, a full statement of its case. The statement should set out the council's case including an explanation of the reasoning it is contended should be applied by the Tribunal in construing the leases for the following purposes:
 - (a) To decide whether or not there is an obligation or right for the council to carry out the specified works in each flat;
 - (b) To decide whether or not there is a right of access to each flat for the purpose of undertaking the specified work;
 - (c) To decide whether or not there is a right to claim a proportion of the cost of the works as a service charge payable by each lessee.
4. Furthermore, the statement should:
 - (a) Give full detail of the decision-making process and decision or decisions by the council to provide the proposed sprinkler systems. The statement should include detail of the matters taken into account by the council in reaching its decision which has been described as being on a "global" basis;
 - (b) Append block by block lists of all long leasehold addresses, the date of the lease for each address and the type/category of lease;

- (c) Append all relevant documents to include, but not limited to:
 - (i) All minutes of council meetings relevant to the decision to install sprinkler systems and all documents relevant to such committee meetings;
 - (ii) All documents relevant to consideration by the council to decide to install sprinkler systems (this may include, for example, fire safety reports/property surveys);
 - (iii) All documents relevant to the particular sprinkler system or systems that the council wishes to install;
 - (iv) All documents relevant to consideration of access to flats in order to install sprinkler systems.
- 5. At the same time as lodging its full statement of case with the Tribunal, the council shall also upload electronic copies of the statement and appended documents in pdf format to the Housing pages of the council's website, to include the leases annexed to the application.

What the leaseholders or their representatives must do

- 6. On or before 5th February 2019, the respondents must have considered the statement provided by the council and have lodged (if they consider it appropriate) a detailed application to strike-out the council's application and/or any request to transfer the case to the Upper Tribunal (Lands Chamber) pursuant to rule 25 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. Any such application must at the same time be served on the council.
- 7. If an application to strike-out or transfer the case to the Upper Tribunal is made then further directions will be given for the determination of such an application.
- 8. If no application to strike-out or transfer the case to the Upper Tribunal is made then the respondents must lodge its statement of case in response to the main application on or before 19th February 2019.
