

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

Case ref: LON/00BJ/LSC/0286

In the Matter of: The Landlord and Tenant Act 1985; Section 27A

B E T W E E N:

**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF WANDSWORTH**

Applicant/ Landlord

and

**VARIOUS LEASEHOLDERS OF
100 HIGH-RISE RESIDENTIAL BLOCKS
IN THE LONDON BOROUGH OF WANDSWORTH**

Respondents/ Leaseholders

**APPENDIX [22 – Paper 18-281 - Report by Director of Housing &
Regeneration dated 12.09.18]**

**TO THE STATEMENT OF CASE
ON BEHALF OF
THE LONDON BROUGH OF WANDSWORTH**

AS PROVIDED FOR UNDER SECTION 100B(4)(b) OF THE LOCAL GOVERNMENT ACT 1972, THE CHAIRMAN IS OF THE OPINION THAT THIS ITEM SHOULD BE CONSIDERED AT THE MEETING AS A MATTER OF URGENCY, BY REASON OF SPECIAL CIRCUMSTANCES. THESE CIRCUMSTANCES ARE THAT THE REPORT FORMS A RESPONSE TO THE REPORT BY COUNCILLORS WHITE AND GRIMSTON (PAPER NO. 18-280) WHICH IS ALREADY ON THE AGENDA, AND, THEREFORE, SHOULD BE CONSIDERED AT THIS MEETING.

PAPER NO. **18-281**

WANDSWORTH BOROUGH COUNCIL

HOUSING AND REGENERATION OVERVIEW AND SCRUTINY COMMITTEE – 13TH
SEPTEMBER 2018

Report by the Director of Housing and Regeneration concerning Paper No. 18-280 by Councillors Paul White and Malcolm Grimston on proposals regarding the installation of sprinklers

SUMMARY

This report provides a response to the report (Paper No. 18-280) on this agenda, submitted by Councillors Paul White and Malcolm Grimston on proposals regarding the installation of sprinklers.

GLOSSARY

APPG - All-Party Parliamentary Group
HRA - Housing Revenue Account
HSE - Health and Safety Executive

RECOMMENDATIONS

1. This report is submitted to the Housing Overview and Scrutiny Committee for information. No decisions are required by the Council, the Executive or the regulatory and other Committees.
2. However, if the Overview and Scrutiny Committee decide that recommendations on the report need to be made, these will be reported to the Executive or the regulatory and other Committees for consideration.

RESPONSE TO PAPER NO. 18-280

Response from residents

3. A report (Paper No. 17-243) was submitted to Finance and Corporate Resources Overview and Scrutiny Committee on 29th June 2017 seeking a budget variation to enable the Council to retro-fit sprinklers to its 100 high rise blocks of 30 meters or more. This was voted through unanimously as was the decision to submit a pre-emptive application to the First Tier Property Tribunal which was subject to a report to Housing and Regeneration Overview and Scrutiny Committee on 18th January 2018

Response to Paper No. 18-280
(Paper No. 18-12).

4. Having submitted an application to the First Tier Property Tribunal to seek a legal decision on the Council's advice that it is able to require the retro-fitting of sprinklers to leasehold properties, the Council was directed to notify all affected leaseholders of the contents of the application. It was also required to provide a copy of the preliminary directions from the Tribunal, which contained a pro forma on which the leaseholder could respond direct to the tribunal. A total of 2,372 letters were dispatched by post to affected leaseholders on 15th August 2018 with a dead line for responses of 7th September. The information was also displayed in all affected blocks, posted on the Council's website and referenced on Twitter. On 11th September, following discussion with the Tribunal over availability of a suitably-sized venue, the Council was directed by the Tribunal to send a further dispatch to affected leaseholders containing the Tribunal's letter about the case management conference hearing, which will be held at 10am on 16th October 2018 in the Council's Civic Suite. The Tribunal also subsequently advised that the date for returning reply forms is extended to Friday 5th October 2018 and directed the Council to display this information on its website. Dispatch of the letters is currently underway and the Council's website has been updated with the required information¹.

DETAILED OBJECTIONS

Necessity

5. The Council's view is that sprinklers are the single most effective method of improving fire safety in high rise residential buildings. Those experts responsible for drafting the Building Regulations recognised this fact and, therefore, require any newly built residential block of 30 metres or more to be fitted with sprinklers irrespective of the blocks design, the number of escape routes or any other proposed fire safety measures. This is a mandatory requirement and is not based on individual risk assessments on proposed design or materials or the view of developers or potential owners. It is a simple requirement aimed at improving fire safety.
6. Severe fires have broken out in high rise residential blocks over many years and those Wandsworth managed blocks have stood up well with the fire being contained in the individual compartment before being extinguished. However, there are recent examples of fires in high rise blocks breaching the individual compartment and spreading through the building. The reasons that fire spreads are unique to each incident and may involve, for example, open windows, an accidental breach of internal compartmentation, the presence of combustible building materials or simply flammable material stored on a balcony. The Council, whilst doing everything possible to keep our blocks as safe as possible, cannot guarantee that at a point in time an identified risk or a combination of such factors would not lead to uncontrolled fire spread. To mitigate against this risk, it believes that the retro-fitting of sprinklers in its high rise blocks should be a necessity, a position supported by the Commissioner for the London Fire Brigade.
7. Most recently, in July this year, a full year on from Grenfell, the cross-party parliamentary select committee for Housing Communities and Local Government. considered a range of expert evidence before making a clear recommendation that high rise accommodation should, where technically feasible, be retro fitted with

¹ <http://wandsworth.gov.uk/sprinklers>

sprinklers. Sir David Amess MP, chair of the All-Party Parliamentary Fire Safety and Rescue Group, expressed his strong support for sprinklers identifying them as one of the most important fire safety measures to take “something which the APPG², the National Fire Chiefs Council, the Royal Institute of British Architects, the Fire Brigades Union, the Association of British Insurers, the Fire Protection Association, London Fire Brigade and the Fire Sector Federation also support”.

Cost

8. The Council continues to pressure for central government funding for the retro-fitting of sprinklers but, meanwhile, has identified resources to fund the programme of works although a proportion will be recovered through service charges, subject to the decision of the tribunal. The Housing Revenue Account has been prudently managed over many years to ensure that it has sufficient reserves to be able to fund works of this nature without adversely affecting other planned works.

Damage and disruption

9. Sprinklers are a longstanding and proven technology which rarely fail or are subject to accidental activation. They can be installed quickly with noisy and disruptive work limited to one to two days. Any damage to internal decorations will be made good as part of these works. Sprinkler pipes and heads are contained within high level ducting and where possible ducting is run in hallways with only minimal intrusion into the habitable rooms. Many residential blocks across the country have already been successfully retrofitted with sprinklers without any serious objection from residents or technical difficulty. The Council has already fitted sprinklers to its temporary accommodation at Nightingale Square and since its installation has had no problems or complaints from residents. Recently, a chip pan fire in one of the properties caused a sprinkler head to activate and the fire was extinguished before the Brigade arrived on site. Damage was minimised and there was no injury to the mother and her young child who were home at the time.

The right to choose

10. Wandsworth Council believes that sprinklers are a necessity and should not be optional any more than any other essential building component such as replacement fire doors. This is a view expressly relayed by Dany Cotton, the London Fire Brigade Commissioner, in an interview given some weeks after the Grenfell Tower fire. The Council, as freeholder and landlord, has a legal responsibility to manage and maintain its blocks and to keep its residents as safe as reasonably possible and would be open to legitimate criticism if it failed to do so. Installing sprinklers in every property in a block protects the lives of those residents in the property itself and those in neighbouring dwellings as well as ensuring that damage to property and possessions caused by a fire is minimised. Comparisons cannot be made to privately owned houses where the responsibilities placed on freeholders of large scale multi occupied blocks simply do not apply.

First Tier Property Tribunal

11. The Council's policy on the retro-fitting of sprinklers is clear and was unanimously supported by all members of the Overview and Scrutiny Committee. It would not be appropriate for the Council to provide monies to finance the active opposition to an agreed policy, indeed it would seem bizarre to suggest the Council should be actively funding contrary legal argument. The Property Tribunal regularly hears evidence from

² All-Party Parliamentary Group

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individual leaseholders, and has been set up precisely for this reason, it will give further directions as to how it wishes to receive any representation from affected leaseholders. From past experience, the Tribunal will be aware of issues around representation of the various parties and are adept at ensuring that unrepresented residents receive a fair hearing.

12. The Council as a matter of policy would not share privileged legal advice, but essentially the Council's case is summarised in its application to the tribunal and in various reports to Committee and responses to Council questions and centres around identified specific covenants in the leases.

Fire Risk Assessments

13. It should be noted that the Grenfell enquiry has made no findings or comments to date but is simply hearing evidence and will continue to do so over the coming months before reporting possibly in late in 2019. However, it is known that the fire originated in a kitchen and then spread out of the window and into the cladding. A sprinkler head actuating in the kitchen may have extinguished the fire quickly or at least suppressed it sufficiently to buy the attending fire services some time. The proposal to undertake the retro-fitting of sprinklers goes beyond the single example of Grenfell Tower, although this tragic incident certainly crystallised a number of concerns about the management of fire risk in high rise blocks which extended beyond the immediate issue of cladding. The final report may well make specific recommendations on additional fire safety measures and possible funding sources.
14. While the report cites other examples of block fires, the salient point that is worth restating is that all these fires were different and there remains a real risk that a fire may at some point spread within a Wandsworth managed high rise block for whatever reason and a comprehensive sprinkler system is the single most effective method of mitigating this risk. It is sensible to look at comparable examples of residential blocks rather than supervised hotels which would have very different fire safety arrangements in place.
15. The Council is fully aware of the position with respect to its overclad blocks, including the materials used. This information was checked and provided to the ministry in the weeks following the Grenfell Tower fire. At present, a debate continues regarding the use of combustible materials on buildings of varying heights and the Council is well positioned to respond to any guidance or directions issued on this matter.
16. At present, the Council are not undertaking fresh Fire Risk Assessments as those completed in 2016 continue to be considered as fit for purpose pending further clarification from the Government. The 100 blocks over 30 metres were chosen specifically because of the requirement that were any new block to be built of a similar height then the fitting of sprinklers would be mandatory. A number of agencies have views on the height of blocks that should be retro-fitted but none dispute the effectiveness of sprinkler systems in making blocks safer. The Council is already aware that these 100 blocks would have differing levels of risk and, in the event that as the programme proceeds, these would be prioritised accordingly.

Consultation

17. In addition to the application to the First Tier Property Tribunal, statutory consultation with leaseholders would take place on a block by block basis as the programme of works was rolled out across the Borough. Leaseholders would be able to challenge if

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they thought the charges were not reasonable or the works had not been properly procured or undertaken. The purpose of the pre-emptive application to the First Tier Property Tribunal was to draw out all the arguments prior to committing resources to this expensive programme of works and to avoid later individual challenges on the issue of necessity.

18. It may appear initially attractive to suggest this should be a matter of individual choice through a ballot. However, the Council as a responsible freeholder sees the need to adopt a consistent approach to issues of fire safety across its stock. In addition, such an approach is likely to be highly divisive. Over 1,000 properties in the 100 blocks are owned by landlords who are resident elsewhere. Should these absentee landlords be able to influence the levels of fire safety for secure Council tenants who actually live in the block? These properties are privately rented and it would be equally questionable to suggest these absentee landlords should have a vote that concerned the fire safety of their sub-tenants, which could include the Council's own homeless families, who though directly impacted, would not be able to express a view. The scenario of different fire safety arrangements applying in identical blocks as a result of a ballot should be avoided for obvious reasons.

Statistical arguments

19. The report contains a great deal of information around statistical risk from fire. It would seem inevitable that all these matters would have been carefully considered by those responsible for framing the Building Regulations and by the long list of expert organisations who remain fully convinced of the need to retro-fit sprinklers in high rise accommodation. Having reviewed all the available information and having had a reasonable period since the Grenfell fire to consider all the arguments, the unequivocal recommendation of the Housing Communities and Local Government Committee's review of Building Regulations and Fire Safety is that "Where structurally feasible sprinklers should be retro fitted to existing high rise residential buildings to provide an extra layer of safety for residents".
20. Dame Judith Hackitt, former chair of the HSE, made the following telling comment in her interim report on Building Regulations and Fire Safety in December 2017.

"This long trend of falling fire incidents and casualties may mean that building and fire safety regulations have not received the priority that might otherwise have been the case. Yet incident trends tell us little about the likelihood of disasters and catastrophic events occurring. This review will seek to put in place a system that provides assurance that the impact of any future disasters is minimised"

COMMENTS OF THE DIRECTOR OF RESOURCES

21. The Council's costs relating to the tribunal and any associated legal costs will be met from the Housing Revenue Account (HRA). As the Council is (unusually) the applicant in this case it is not considered appropriate to recover these costs from leaseholders. HRA revenue balances have accumulated over the years through income received from rents (tenants, HRA commercial property, garages etc.) and other income such as interest earned on balances, not through leaseholder contributions which, by their very nature, relate solely to the recovery of costs incurred.
22. For the reasons stated above it is not considered to be an appropriate use of HRA resources to fund the legal costs of leaseholders wishing to challenge agreed Council

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policy.

The Town Hall,
Wandsworth,
SW18 2PU.

BRIAN REILLY
Director of Housing and Regeneration

12th September 2018

Background Papers

There are no background papers to this report.

All reports to Overview and Scrutiny Committees, regulatory and other committees, the Executive and the full Council can be viewed on the Council's website (www.wandsworth.gov.uk/moderngov) unless the report was published before May 2001, in which case the committee secretary (Thayyiba Shaah, 020 8871 6039; email thayyiba.shaah@richmondandwandsworth.gov.uk) can supply if required.