

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

BETWEEN:

Applicant/ Landlord
THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF WANDSWORTH

and

Respondents/ Leaseholders
VARIOUS LEASEHOLDERS OF
100 HIGH-RISE RESIDENTIAL BLOCKS
IN THE LONDON BOROUGH OF WANDS

Abbreviations

AHP – Area Housing Panel

BRF – Borough Residents Forum

CML - Council of Mortgage Lenders

COIROTb - Council's Obligations in Respect of the Block

FAQs - Frequently Asked Questions

FRA – Fire Risk Assessments

FROSC – Finance and Corporate Resources Overview and Scrutiny Committee

FTTPC – First Tier Tribunal Property Chamber

HCGLC – Housing, Communities and Local Government Select Committee

HROSC – Housing and Regeneration and Overview Scrutiny Committee

LAP – London Assembly Paper

LAPC – London Assembly Planning Committee

OCC – Oxford City Council

OTLA - Oxford Tower Block Leaseholder Association

RA – Residents Association

SOC – Statement of Case

WAHP – Western Area Housing Panel

WBC – Wandsworth Borough Council

1.0 Executive Summary

This document seeks to strike out case reference LON/00BJ/LSC/0286. The reasons being based on reasoning detailed under the four Wednesbury principles whereby WBC has fallen short of the standards a leaseholder might reasonably expect when a landlord is seeking a major work, not only retro-fitting water sprinklers.

2.0 Introduction

This document reviews the request to seek strike out via the following sections;

- (a) A requirement to highlight the number of leaseholders involved which provides substance to the scale of the case.
- (b) Application of various WBC failings versus each of the four principles as outlined by the Wednesbury case.

3.0 By the numbers

To highlight the scale of impacted properties it is important to articulate the number of flats impacted which was summarised as *“Wandsworth Council has 99 blocks of ten storeys or more containing 6,401 residential flats and maisonettes – 4,043 tenanted, 1,315 resident leaseholders and 1,043 away leaseholders”*.¹

This text states the number of ‘residential flats and maisonettes’ though not the number of leaseholders. According to this, the total number of leasehold properties impacted is 2,358 with ‘resident leaseholders’ making up 56% of the total and ‘away leaseholders’ making up 44%.

4.0 Wednesbury

This section assesses the SOC based on the Wednesbury principles outlined in paragraph 47².

4.1 Not made in good faith

The following sections highlight that WBC has conducted itself lacking good faith with leaseholders. WBC has attempted to react to the Grenfell tragedy by rushing through a policy of retro-fitting water sprinklers and has been economical with information shared both with leaseholders and Councillors in various HRSOC meetings. By being economical this has presented various challenges for leaseholders in being able to aggregate efforts and form an accurate assessment of the water sprinkler situation. The potential impacts for other leaseholders in lower height buildings and possible other potential works which could be incorporated under a judgement found in favour of WBC should be additionally considered.

4.1.1 Type 2A and Type 2B clauses

WBC did not make it clear from the start that the difference between Type 2A and Type 2B was more than only where the clause was placed within the lease as it may have an impact on this Tribunal.

¹ HRSOC, 14th September 2017, Paper 17-269 -

<https://democracy.wandsworth.gov.uk/documents/s52192/Update%20on%20fire%20safety%20arrangements%20in%20Wandsworth%20Councils%20housing%20stock.pdf> [Accessed 23/2/2019]

² SOC, Appendix 1

In WBC's Case Summary³ which was distributed with WBC's letter to leaseholder's dated 13th August 2018⁴ the three Types of leases were referred to these being Type 1, Type 2A and Type 2B. Paragraphs 32 to 35 set out the background to the leases as follows;

"Type 2A and Type 2B Leases ("Type 2 Leases")

32. In Type 2 Leases the items of expenditure in relation to the Block for which the Council can recover service charges include the following:

'.....to do such things as the Council may decide are necessary to ensure the efficient maintenance and administration of the Block...'

33. In effect the expenditure for which the service charge can be recovered in Type 2 Leases includes items relating to the security of the Block.

The difference between Type 2A and Type 2B Leases

34. In Type 2A Leases the Council's obligations in relation to the Block and the Estate are set out, respectively, in the Fifth and Sixth Schedules.

35. In Type 2B Leases the Council's obligations in relation to the Block and the Estate are set out, respectively, in the Fourth and Fifth Schedules".

As part of the FTTPC directions of 5th November 2018 it stated that;

"4. Furthermore, the statement should:

(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;"

WBC has published the information, in part, as per the direction (though it required two versions as the first was not ordered by property) and it lists the Type 1 and 2 though not the category, i.e. whether it is 2A or 2B. The FTTPC agreed⁵ with the WBC that fulfilling this Direction was not necessary yet it has not been widely highlighted to respondents, i.e. leaseholders.

It was learnt within Appendix 1 Amended Schedule 2A that these clauses are different to 2A in more than only where which schedule it resides. The wording is within the relevant clause which this Appendix document attempts to explain away.

A Type 2A clause is outlined as follows with bold highlighting the difference with Type 2B clauses.

*5. To do such things as the Council may decide are necessary and to ensure the efficient maintenance **and administration and security of the Block or to enhance the quality of life within the Block due regards being given to the wishes or aspirations of the majority of the residents in the Block** including but without prejudice to the generality of the foregoing installing entryphone systems employing caretakers porters and other staff and providing for pensions annuities or retirement or disability benefits for such staff on the termination of their employment or for their dependents and providing accommodation for the use of staff employed by the Council to carry out its obligations under this Schedule and to repair maintain and decorate any such accommodation and to pay any outgoings in respect of thereof"*

³ WBC Case Summary, Appendix 2

⁴ WBC Letter 13th August 2018, Appendix 3

⁵ FTTPC Email, Appendix 4

A Type 2B clause is outlined below;

'5. To do such things as the Council may decide are necessary and to ensure the efficient maintenance administration and security of the Block or including but without prejudice to the generality of the foregoing installing entryphone systems employing caretakers porters and other staff and providing for pensions annuities or retirement or disability benefits for such staff on the termination of their employment or for their dependents and providing accommodation for the use of staff employed by the Council to carry out its obligations under this Schedule and to repair maintain and decorate any such accommodation and to pay any outgoings in respect of thereof'

The importance of this differentiating clause may explain why some of the 100 council blocks do not have 'entryphone' systems which will be covered further in 4.2.2.

4.1.2 'Concerns raised by a small number of leaseholders'

WBC from the early days of raising the prospect of retro-fitting water sprinklers did not take concerns raised by leaseholders seriously enough as was highlighted at the WBC Council meeting of 6th December 2017 whereby in response to the following question;

"(4) Sprinklers: Question raised by Councillor Jane Cooper to the Leader of the Council:

Given some of the needless scare stories often given prominence by otherwise responsible people, will the Leader outline the Council's position in terms of its response to safeguard tenants and leaseholders and explain what action has been taken to seek additional funding to assist with paying for these works?

The response by Councillor Govindia: *".....I have listened to the concerns raised by a small number of leaseholders in connection with these works and I think it is important that their arguments should be carefully considered as a part of any further advice or process undertaken to provide greater clarity on the legal position....."*⁶.

With regards to the case management hearing on 27th September 2018 the venue was to be moved to a larger venue as the FTTPC stated in an email that *"So far, the tribunal has received 364 reply forms to the preliminary directions; and new forms are being received every day. Most indicate that the leaseholders concerned wish to attend the case management hearing on 27 September. Given the very high level of interest in the application, it will not be possible for the tribunal to host the hearing at any tribunal or court hearing centre and, in any event, it would seem preferable for the hearing to take place in the borough, for the convenience of leaseholders"*⁷.

This venue change alone highlights how out of touch WBC has been with the views of leaseholders regarding this enforced imposition retro-fitting of water sprinklers.

⁶ Council, 6th December 2017,

<https://democracy.wandsworth.gov.uk/documents/s54509/Questions%20to%20the%20Leader%20of%20the%20Council.pdf>

⁷ Email from FTTPC, Appendix 5

4.1.3 Leaseholders working together

There is a desire for leaseholders to work together and this was mutually highlighted as the desire by the FTTPC as per the following reference in its Directions of 5th November 2018;

“(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”⁸.

To assist this desire has not been made on good faith by WBC through putting up various barriers to communication with other leaseholders that detract from the core issue of the Tribunal case, and rather time is being misspent on discussing and reviewing other related activities, such as dealing with building insurance and contents insurance related queries.

4.1.4 Aggregation difficulties

Given the scale referred to in section 3.0 it is might be obvious that this could pose difficulties to aggregate as many leaseholders as possible to work together. Such issues have been;

- (i) Creating a legal structure which can cater for a majority of leaseholders – the advantage of as many leaseholders aggregating is the Tribunal deals with fewer entities and legal representation amongst leaseholders is financially less burdensome.
- (ii) However this has proved challenging as leaseholders have been trying to raise funds, reach out to leaseholders, review the statement of case and supporting evidence and try to understand the complexities of the legal structure to work within is a challenge for many in employment or other time consuming activities.
- (iii) Cost concerns as many leaseholders have already paid out substantial service charge fees over the past years.

4.1.5 Accessing ‘away leaseholders’

By being an ‘away leaseholder’ this may pose issues in accessing them for various reasons. One key example, tenants that rent should, as per the terms of the Assured Shorthold Tenancy, be forwarding on relevant information to the leaseholder. This is for the most part wishful thinking and being a joint away leaseholder many communications are not forwarded on. For instance, the Alton Leaseholders Association has been providing information to the 42 blocks in the Roehampton & Putney Heath ward which are impacts by this though very few away leaseholders appear to made aware of this situation.

When renting tenants are spoken with most are unwilling to provide details of the landlord or the estate agent should they think there is an ulterior motive, e.g. reporting them for making too much noise. This is challenge at the best of times for RAs when trying to expand their membership base.

⁸ FTTPC Letter 5th November 2018, Appendix 6

With the addresses of all leaseholders being provided as part of the statement of case this is not a certainty that this 44% will be reachable and will require much more effort to access. For instance, postage costs require to be considered.

The difficulty in accessing away leaseholders was highlighted in the October 2018 summary within the Source: Ministry of Housing, Communities and Local Government (October 2018) document 'Consultation on recognising residents' associations, and their power to request information about tenants'⁹.

This document highlights that the 60% guideline can now be considered to be 50%. Assuming that 50% of the resident leaseholder properties were signed up that would require 1,179 of the resident leaseholder properties to sign up. This is a large ask bearing in mind the number of resident leaseholder properties is 56% of the total leaseholder property population. In other words, for arguments sake, no away leaseholders joined the fray that would mean 90% (1,179 out of 1,315) of resident leaseholder properties would need to sign up.

4.1.6 Misleading photos

WBC has used its media to portray its situation in a favourable light and one obvious example was the photo placed in its Homelife October 2018 magazine which showed a concealed sprinkler though not the various boxing which is also required¹⁰.

4.1.7 Building insurance savings

Buildings insurance was mentioned as a saving benefit for leaseholders and the WBC's pockets in HROSC Paper 17-269 yet there was no mention as to the potential savings whilst the same paper referred to the potential costs to the leaseholder (refer to section 4.1.9). The comment made in Paper 17-269 is;

*"24. It is anticipated that retro-fitting sprinklers in high rise blocks in the Borough will result in a reduction in Buildings Insurance premium costs to the Council and subsequently to leaseholders"*¹¹.

This was reinforced in SOC paragraph 103.9 which states;

*"103.9 It is clear that insurers regard the retrofitting of sprinkler systems as a positive risk management initiative. The Council anticipates that the installation of sprinkler systems in the Blocks will result in a saving in the cost of buildings insurance cover, which will result in a corresponding reduction in the annual insurance contributions from Leaseholders"*¹².

This may be factually correct though it most definitely is not acting in good faith through not highlighting the potential savings. A service charge for a two bedroom flat which is within one of the 100 blocks paid £13.55 for its building insurance in 2017/18. Assuming the saving, for arguments sake, was 20% then the buildings insurance would be £10.84 (a saving of £2.71) which does not

⁹ Ministry of Housing, Communities and Local Government (October 2018) - Consultation on recognising residents' associations, and their power to request information about tenants
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746926/Recognising_residents_associations_-_consultation_response.pdf
[Accessed 24/2/19]

¹⁰ Challenges document, pages 11-15, Appendix 7

¹¹ HROSC, 14th September 2017, Paper 17-269 -
<https://democracy.wandsworth.gov.uk/documents/s52192/Update%20on%20fire%20safety%20arrangements%20in%20Wandsworth%20Councils%20housing%20stock.pdf> [Accessed 23/2/2019]

¹² SOC, Appendix 2

come close to offsetting the potential cost of £3,500 to £5,000 per leaseholder (referring to section 4.1.9)¹³. Further assuming this £2.71 saving was applied across its 6,401 properties then the total savings for the Council and Leaseholders combined would be £17,346.71 which is the equivalent to circa three to six water sprinkler installations.

WBC made part of its decision based on this and a further assessment by Councillors of the WBC should have been made.

4.1.8 Contents insurance

Leading on from Buildings insurance there is contents insurance. The remaining part of paragraph 24 in Paper 17-269 is;

*"24.It is not known at this time whether this will have the same effect on Home Contents Insurance costs, or whether this would make it easier for residents in high rise blocks to obtain Home Contents Insurance cover if the property has sprinklers, as the Council has no involvement in arranging Home Contents Insurance for Council tenants and leaseholders"*¹⁴.

Rather than featuring in the Council's FAQs an article titled 'Why do I need contents insurance?' it was placed in WBC's Homelife December 2018 magazine towards the back of the magazine with a brief mention of anything to do with fire, with the comment "Serious fires are rare....."¹⁵.

4.1.9 Cost awareness - £3-4k to £3.5-5k

In the HROSC September 2017 Paper 17-269 it stated the estimated costs as well as acknowledged the 'short notice' of raising the costs with the leaseholders as outlined in paragraph 17;

*"As these costs (approximately £3,000 to £4,000) will be imposed upon leaseholders with relatively short notice, it is recommended that, with respect to the cost of the sprinkler systems only"*¹⁶

The next time the estimated costs are seen are within the SOC some 15 months later as outlined in sections 107 and 108;

"107. The Council's estimate of the cost to each lessee of the retro-fitting of sprinkler systems into the Blocks is between £3,500 and £5,000. The Council has agreed to extend the standard interest free payment period for Resident Leaseholders from 10 months to 48 months for the payment of any service charges relating to the Council's costs of the installation of sprinklers.

*108. The Council's estimate is based on a report commissioned by the Council and prepared by Design Service in August 2017, which included a budget costing for retrofitting a sprinkler system at Sudbury House in Wandsworth. Inclusive of provisional sums for asbestos removal and a 10% contingency' sum, the average cost per flat was calculated as being £4,622 (at 2017, Q3 prices)."*¹⁷

¹³ Challenges document, pages 16-17, Appendix 7

¹⁴ HROSC, 14th September 2017, Paper 17-269 -

<https://democracy.wandsworth.gov.uk/documents/s52192/Update%20on%20fire%20safety%20arrangements%20in%20Wandsworth%20Councils%20housing%20stock.pdf> [Accessed 23/2/2019]

¹⁵ Challenges document, page 18, Appendix 7

¹⁶ HROSC, 14th September 2017, Paper 17-269 -

<https://democracy.wandsworth.gov.uk/documents/s52192/Update%20on%20fire%20safety%20arrangements%20in%20Wandsworth%20Councils%20housing%20stock.pdf> [Accessed 23/2/2019]

¹⁷ SOC, Appendix 1

Realising that “these costs will be imposed upon leaseholders with relatively short notice” it is in bad faith that WBC only highlights the revised costs within the SOC. Without the SOC then it might be considered that leaseholders may not have seen the this latest estimate.

The revised estimate is based on the August 2017 Design Service and should have been included in the September 2017 Paper 17-269 which has estimated the costs.

4.1.10 Installation days

As sourced from the WBC Homelife October 2018 issue, within the FAQ it states the following question and answer;

“Will the installation works be disruptive?”

Sprinklers can be installed quickly with disruptive work limited to one of two days. Any damage to internal decorations caused will be fixed as part of the works. Sprinkler pipes and heads are contained within ducting which is run through the hallway where possible to minimise the disturbance to your flat¹⁸.”

Many who have experienced major works with the Council would be able to highlight that the quality of the work as well as rectifying snags would be doubtful that this timescale would reflect reality.

One WBC RA sought further clarification regarding this and the reply from WBC indicated this could take up to five days as outlined by the following text;

““The duration of the work will vary from block to block but for a standard two bedroom home on one level the disruptive work involving the drilling of walls will take two days with access required over five. Residents will need to give access as they would over any other major works and as far as is practicably possible the contractor will try and accommodate residents’ wishes with respect to access. These time estimates have been provided by experienced contractors and also drawn from our experience of fitting a system to a large homeless persons hostel”¹⁹.”

It would not be reasonable to expect leaseholders to take more time off work for major works. By more, many leaseholders have had to take time from work to accommodate recent major works such as uPVC installations which took many days. WBC should be highlighting which recent and future major works will require leaseholders to be present and an overall assessment should be considered not the piecemeal approach being suggested.

4.1.11 Leaseholder satisfaction survey

In WBC’s Leaseholder satisfaction survey one of the suggested improvements was to “improve communication” with leaseholders which was at 17% and of the three examples referred to one was “Communicate and consult on this decision to install sprinklers at a cost of £3000” yet when the survey was presented at the WBC’s BRF on 4th September 2018 the referral to the water sprinklers had been omitted²⁰.

¹⁸ Homelife October 2018 - http://www.wandsworth.gov.uk/downloads/file/13697/october_2018 [Accessed 23/2/2019]

¹⁹ Challenges document, pages 20-21, Appendix 7

²⁰ Challenges document, pages 26-27, Appendix 7

4.1.12 Ongoing maintenance

A RA asked about ongoing maintenance of the water sprinklers at the BRF of 4th September 2018 and the response was as follows;

“Whilst it was not clear what the additional maintenance costs of sprinkler systems would be, officers agreed to forward details of the ongoing maintenance costs for sprinklers for systems fitted elsewhere. However, it was understood that these costs were not excessive and in the main would cover tanks and pump maintenance. Officers were confident that any associated fitting costs would be met from reserves without impacting on essential works in the Major Works Programme.”²¹

What was not Minuted was that the RA which asked the question provided an indicative cost taken from a London Assembly Paper and highlighted as follows;

“2.8 Maintenance costs of AFSS are relatively low and do not generally constitute a significant addition to tenants’ or leaseholders’ service charges. The Chief Fire Officers Association estimates that annual maintenance costs for domestic fire sprinklers are between £75 and £150 per annum per house. Costs in flats may be lower due to the shared nature of the system”.²²

The figures of £75 to £150 were later provided in the FAQ section of the WBC Homelife October 2018 magazine²³.

The use of the word “excessive” is a subjective word and using a two bedroom flat from one of the 100 impacted blocks as an example, the average annual service over a three year period was £1,073.33²⁴. Using the LAP estimate the potential annual increase varies from a 7% (£75) to 14% (£150). This annual maintenance cost is likely to be “excessive” to a many leaseholders. Additionally there was no mention of such cost or annual inspection within the HRSOC Paper 17-269 and should have been highlighted that there would be a requirement for this as this has not been included within the WBC budget.

4.1.13 Impact on other leaseholders in buildings of a lesser height

The SOC states which parts of the lease it is basing its case on and these are outlined as follows;

*“Section 4.1 - the meaning of ‘may decide are necessary’ (paragraphs 40-50)
Section 4.2 - the meaning of ‘ensure the efficient maintenance.....of the block’ (paragraphs 51-59)
Section 4.3 - the meaning of ‘ensure the efficient.....security of the block’ (paragraphs 60-63)
Section 4.4 - the meaning of ‘or to enhance the quality of life within the Block due regards given to the wishes and aspirations of the majority of the residents in the Block’ (paragraphs 64-71)”²⁵*

Whilst the SOC is referring to 100 blocks it must be considered that this SOC is about interpreting a part of the lease which WBC has admitted the wording applies to most of the leases in the Borough as highlighted by the following text;

²¹ BRF – 4th September 2018, <https://democracy.wandsworth.gov.uk/documents/s61853/Minutes%20040918.pdf> [Accessed 23/2/2019]

²² Source: London Assembly: Never again: Sprinklers as the next step towards safer homes -

https://www.london.gov.uk/sites/default/files/final_afss_report.pdf [Accessed 23/2/2019]

²³ Source: Homelife October 2018 - http://www.wandsworth.gov.uk/downloads/file/13697/october_2018 [Accessed 23/2/2019]

²⁴ Service charge example over three years period – 2015-2016 = 1,152.44, 2016-2017 = £996.61, 2017-2018 = £1,070.94, Average over three years £1,073.33

Appendix 8

²⁵ SOC, Appendix 1

"You are correct in that the same clause will apply in the majority of the 16,000 leases that the Council manages".²⁶

Therefore any decision made at this SOC could have wider implications for the remaining circa 13,642 leaseholders (i.e. 16,000 minus the 1,315 resident leaseholders and 1,043 away leaseholders as mentioned in section 3.0).

The SOC, paragraph 90, refers to 30 metres height being the standard required by building regulations in all new build accommodation though in paragraph 94 also refers to;

"That Report set out the full wording of a Position Statement issued by LFB26, which promotes the retrofitting of sprinklers in existing residential blocks over 18m in height (i.e. approx. 6 storeys), subject to a risk-based approach that should include consideration of the vulnerability of the residents"²⁷.

If WBC chose to lower the height requirement for retro-fitting water sprinklers could this SOC have deprived those leaseholders in buildings of between 18 metres and 30 metres the opportunity to partake in this case hearing? If so, then another set of leaseholders might then bring this case back to the FTTPC at a future date wasting further WBC funds as well as the FTTPC time.

Having gone through WBC's complaint procedure in an attempt to expand the coverage of leaseholders impacted to all 16,000 leaseholders this is now with the Housing Ombudsman to review and hopefully highlight that this case should be extended to all leaseholders²⁸.

4.1.14 Consultation with leaseholders

WBC has indicated that it will consult with residents as per the Homelife October 2018 FAQ as follows;

"Will residents be consulted?"

Yes. In addition to the Tribunal application, the council will consult with residents on a block by block basis as the programme of works is rolled out across the borough. Those living in blocks affected will be kept up to date with the progress of works and Residents' Associations will be informed throughout".²⁹

From various discussions with impacted leaseholders and tenants there is an incorrect assumption that residents will be consulted over and above the usual major works consultation. However, one RA has gleamed that this 'consultation' will be as per any major works 'consultation' and will not be an additional 'consultation as the following email correspondence highlights;

Email to the Council - Sat, Nov 24, 2018 at 4:59 PM

"When the article states that residents are to be consulted, this is presumably to usual major works consultation under Section 20 and 20ZA Landlord and Tenant Act 1985 as amended and not a consultation in addition to this?"

²⁶ Complaint lodged with Housing Ombudsman – Appendix 9A, 9B, 9C

²⁷ SOC, Appendix 1

²⁸ Complaint lodged with Housing Ombudsman – Appendix 9A, 9B, 9C

²⁹ Source: Homelife October 2018 - http://www.wandsworth.gov.uk/downloads/file/13697/october_2018 [Accessed 23/2/2019]

Email from Council - Thu, Dec 6, 2018 at 4:55 PM

*"As you suggest, these works will be subject to the statutory two part leasehold consultation process under the Housing Act 1985 (as amended) i.e. Notice of intention and Section 20 consultation"*³⁰.

4.1.15 Lack of respect to those that have provided deputations

In the SOC there is only the one mentioned of a deputation having been provided at the HROSC which understates the efforts that residents have gone to. The following is a list of deputations given at the HROSC and it might be asked what is the reason for neglecting these deputations?;

- 14th September 2017³¹ – Joe Cairns of the Alton Estate provided a deputation and this is outlined in Paper 17-269A³².
- 18th January 2018³³ - Mr Young as referred to in the SOC is the only deputation referred to in the SOC as outlined in paragraph 97 and is also within Paper 18-12A³⁴;

"97. At the HROSC meeting on 18th January 2018, a deputation was given by Mr Young on behalf of Edgcombe Hall Residents' Association, raising various concerns and queries in relation to the proposed retrofitting of sprinklers".

- 20th June 2018³⁵ – Petition³⁶ from various blocks against the installation of water sprinklers.
- 13th September 2018³⁷ – Joe Cairns of the Alton Leaseholders provided a deputation as noted in Paper 18-280A³⁸. Also Bisley House provided a deputation and summarised in Section 21³⁹ along with a Paper 18-286A⁴⁰ and in section 27⁴¹ provided a petition⁴².

4.1.16 OCC v OTLA

Whether coincidence or influential in guiding WBC towards the FTTPC the OCC v OTLA Tribunal Case (reference CAM/38UC/LSC/2016/0064⁴³) resulted in OCC losing this Tribunal case with regards to

³⁰ Challenges document, page 34, Appendix 7

³¹ HROSC, 14th September 2017, Section 6 - <https://democracy.wandsworth.gov.uk/ieListDocuments.aspx?CId=575&MId=5332&Ver=4> [Accessed 13 March 2019]

³² HROSC, 14th September 2017, Paper 17-269A -

<https://democracy.wandsworth.gov.uk/documents/s52478/Request%20for%20a%20deputation%20to%20be%20received%20by%20the%20Committee%20Paper%20No.%2017-269A.pdf> [Accessed 13 March 2019]

³³ HROSC, 18th January, Section 4 - <https://democracy.wandsworth.gov.uk/ieListDocuments.aspx?CId=575&MId=5826&Ver=4> [Accessed 13 March 2019]

³⁴ HROSC, 18th January 2018, Paper 18-12A - <https://democracy.wandsworth.gov.uk/documents/s55283/Deputation%20Request.pdf> [Accessed 13 March 2019]

³⁵ HROSC, 20th June 2018, Section 11 - <https://democracy.wandsworth.gov.uk/ieListDocuments.aspx?CId=575&MId=5999&Ver=4> [Accessed 13 March 2019]

³⁶ HROSC, 20th June 2018, Paper 18-168 -

<https://democracy.wandsworth.gov.uk/documents/s58121/Petition%20regarding%20installation%20of%20sprinklers.pdf> [Accessed 13 March 2019]

³⁷ HROSC, 13th September 2018, Sections 19 and 20 -

<https://democracy.wandsworth.gov.uk/documents/s55283/Deputation%20Request.pdf> [Accessed 13 March 2019]

³⁸ HROSC, 13th September 2018, Paper 18 280A - <https://democracy.wandsworth.gov.uk/documents/s60263/Deputation%20Request.pdf> [Accessed 13 March 2019]

³⁹ HROSC, 13th September 2018, Sections 21 - <https://democracy.wandsworth.gov.uk/documents/s55283/Deputation%20Request.pdf> [Accessed 13 March 2019]

⁴⁰ HROSC, 13th September 2018, Paper 18-286A - <https://democracy.wandsworth.gov.uk/documents/s60214/Deputation%20Request.pdf> [Accessed 13 March 2019]

⁴¹ HROSC, 13th September 2018, Sections 27 - <https://democracy.wandsworth.gov.uk/documents/s55283/Deputation%20Request.pdf> [Accessed 13 March 2019]

⁴² HROSC, 13th September 2018, Paper 18-286 -

<https://democracy.wandsworth.gov.uk/documents/s59988/Petition%20from%20residents%20of%20Bisley%20House%20SW19%20West%20Hill%20regarding%20the%20installation%20of%20sprinklers.pdf> [Accessed 13 March 2019]

seeking to retro-fit water sprinklers. The date of the hearing lasted three days being the 12th, 13th and 14th September 2017 and there was, ironically, a HROSC meeting on the 14th September 2017 which discussed retro-fitting water sprinklers as highlighted in Paper 17-269.

Not long after, at the HROSC of 22nd January 2018⁴⁴ it was stated in Paper 18-12⁴⁵ that *“In recognition of concerns raised by some leaseholders over the proposed works, the report recommends that the Council makes a proactive application to a First Tier Property Tribunal to ensure that the leaseholders’ voice is listened to and to seek a clear decision on the Council’s ability to undertake the works.”*

WBC provided its views on this case in section 5 of the HROSC on 20th June 2018⁴⁶. Also note, again, the underestimate of concerned leaseholders.

4.1.17 Propaganda machine – Wandsworth@6, Brightside, Homelife,

WBC has been using its various media streams to provide its view of the retro-fitting of water sprinklers without providing a sufficient voice for a counter view. Examples sighted are within the Homelife magazine, Brightside weekly email distribution and the daily Wandsworth@6 email.

4.1.18 Little regard to BRF – lack of mention

In the FTTPC Directions of 5th November 2018 section 4 (c) (ii) stated the following;

4. Furthermore, the statement should:

(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;⁴⁷”

There is no mention of the BRF⁴⁸ within the SOC. Yet the BRF is a Council meeting and not once does this appear to have mentioned which challenges the view of the *“leaseholders’ voice”* being heard. It is not clear as to how omitting any mention of the BRF, which is part of the RA participation structure, and has the meeting notes published online is irrelevant. There was some probing dialogue raised by RAs in these meetings. Bear in mind the constitution of the BRF is to;

“1. Purpose

The purpose of the Borough Residents' Forum is to:-

(a) consider those matters upon which the Council is required to consult its residents under the provisions of the Housing Acts;

(b) consider those matters of, or affecting, housing policy and management upon which the Council

⁴³ FTTPC, OCC v OTLA - <https://decisions.lease-advice.org/app/uploads/decisions/act85/12001-13000/12425.pdf> [Accessed 13 March 2019]

⁴⁴ HROSC, 22nd January 2018, Section 5 - <https://democracy.wandsworth.gov.uk/ieListDocuments.aspx?Cid=575&Mid=5826#AI40720> [Accessed 13 March 2019]

⁴⁵ HROSC, 22nd January 2018, Paper 18-12 - <https://democracy.wandsworth.gov.uk/documents/s55013/Fire%20Safety%20Update.pdf> [Accessed 13 March 2019]

⁴⁶ HROSC, 20th June 2018, Section 5 - <https://democracy.wandsworth.gov.uk/ieListDocuments.aspx?Cid=575&Mid=5999&Ver=4> [Accessed 13 March 2019]

⁴⁷ FTTPC, Directions 5th November 2018

⁴⁸ BRF, http://www.wandsworth.gov.uk/info/200561/resident_involvement/246/get_involved_-_housing/3 [Accessed 13 March 2019]

- considers that it should consult its residents;*
- (c) consider the results, findings and recommendations from surveys and activity/performance reports undertaken by the Housing and Regeneration Department including periodic reports from any Residents' Working Groups that are established;*
 - (d) provide a scrutiny role on behalf of Residents' Associations, Area Housing Panels and other forums on all reports with regard to performance, service standards and value for money matters;*
 - (e) ensure that the Housing and Regeneration Department meets current regulatory requirements;*
 - (f) act as a conduit between the various consultative groups within the resident involvement structure and the Housing and Regeneration Overview and Scrutiny Committee and Executive"*

WBC should have to provide all details of the BRF discussions as part of the Direction 4(c)(i).

4.1.19 No mention of AHP

As a continuation of 4.1.18 there is the AHP which is the next layer beneath the BRF in terms of resident participation. Various RAs attend these meetings spread across four areas⁴⁹. Much like the BRF where is the mention of these discussions. The WAHP is chaired by Councillor Jane Cooper, who is the Chair of the HROSC⁵⁰. These documents should also be included as part of the terms of SOC section 4 (c) (ii).

Listening to "leaseholders' voice" seems to me more about listening and ignoring?

4.1.20 Postage time

The latest Tribunal timescales required a timescale of feedback by the 12th March 2019 as per item number 2 stated as follows;

*"Any party who wishes to make any representation in respect of the interim applications should make those representations by sending a copy to the Tribunal and to the above listed parties by 12 March 2019"*⁵¹.

The letter from the WBC which contained this clause is dated 6th March 2019 and was received on 11th March 2019. This would pose a challenge for most leaseholders who are very unlikely to read through interim publications as referred to in section and then reply that same night or the next day.

4.1.21 Let's Talk event

These events occur every two years whereby the ward Councillors and various members of the Council attend to engage with residents regarding their concerns. The last such event whereby Councillor Govindia, the Leader of the Council, attended was on 12th September 2016⁵² and there has been no announcement with regards to the following one which should have due by now.

4.2 One that no reasonable person could have come to

WBC has suggested that the retro-fitting of water sprinklers is permissible under the lease yet it is unlikely a leaseholder or WBC could have envisaged that retro-fitting water sprinklers could feature

⁴⁹ AHP, http://www.wandsworth.gov.uk/info/200561/resident_involvement/246/get_involved_-_housing/3 [Accessed 13 March 2019]

⁵⁰ HROSC Chair, <https://democracy.wandsworth.gov.uk/mgUserInfo.aspx?UID=918> [Accessed 13 March 2019]

⁵¹ WBC letter dated 6th March 2019, Appendix 10

⁵² WBC, Let's Talk, 12th September 2016 -

http://www.wandsworth.gov.uk/downloads/file/12113/roehampton_and_putney_heath_12_september_2016 [Accessed 13 March 2019]

as a major work. It is further questionable what is covered by “security” if controlled entry doors do not, it seems, to be included within the definition.

4.2.1 Leases bought

Using Kimpton House, SW15 4ND, as an example, one of the supporting SOC documents is the Lease date and type per leaseholder property. Unfortunately the Type 2 Leases have not been divided into categories as per the direction of 4(b) of the FTTPC Directions of 5th November 2018.

However, it can be ascertained that of the 29 leases for the block Type 1 leases appear to the norm until at least 1985 with Type 2 being from 1986 onwards. Flat 43 which is one of the newer leases and was referred to and is dated 2/7/1990 is Type 2B⁵³. Table A lists the Kimpton House block lease Types by years.

Table A: Kimpton House leases purchased

Start year of lease	Type 1	Type 2	Grand Total
1984	2		2
1985	2		2
1986		5	5
1987		5	5
1988		4	4
1989		5	5
1990		3	3
1991		1	1
1993		1	1
2003		1	1
Grand Total	4	25	29

It can be seen that the lease start dates for Kimpton House are from years 1984 to 2003. It was clear that the Grenfell tragedy is the genesis for WBC’s decision to retro-fit water sprinklers, though with no new leases for Kimpton House since 2003 it is doubtful any leaseholder who had acquired a lease from WBC would have considered the retro fitting of water sprinklers as a future major work as covered by the lease. Another way of considering this is that the 28 leases acquired between years 1984 and 1993 is that 1993 is 24 years pre-Grenfell and if the Council is only considering retro-fitting water sprinklers now then it is extremely unlikely to have considered this 24 years ago.

4.2.2 Context of the clause

Referring to Type 2B as per section 4.1.1 and added again within this section.

A Type 2B clause is outlined below;

‘5. To do such things as the Council may decide are necessary and to ensure the efficient maintenance administration and security of the Block or including but without prejudice to the generality of the foregoing installing entryphone systems employing caretakers porters and other

⁵³ Kimpton House lease, Appendix 11

staff and providing for pensions annuities or retirement or disability benefits for such staff on the termination of their employment or for their dependents and providing accommodation for the use of staff employed by the Council to carry out its obligations under this Schedule and to repair maintain and decorate any such accommodation and to pay any outgoings in respect of thereof

The 'maintenance', 'administration' and 'security' of the block are with reference to 'entry phone systems', 'employing caretakers porters other staff' and the provisions for the financial welfare of the staff referred to. The clause does not grant carte blanche for all and sundry expenses that WBC wishes to lay off to leaseholders. There is a mention of fire within the Type 2B lease in section which is stated as;

*"To insure and keep insured the Block against loss or damage by fire and such other risks as are usually covered by a comprehensive policy of insurance....."*⁵⁴

The lease explicitly refers to 'fire' safety concerning buildings insurance and not the application of 'security' as deemed by the SOC paragraphs 62 and 63 which state;

"62. The word 'security' means 'safety' or 'freedom from threat or danger'.

63. It is the Council's case that the installation of sprinkler systems in the Block ensure the security of the Blocks. In the absence of a sprinkler system in any Block there is a risk of greater fire damage to that Block in the event of a fire".

4.2.3 Entry doors

Referring to both paragraph 62 of the SOC and Kimpton House if 'security' can be utilised in such a broad approach as indicated by paragraph 63 then a reasonable person could be forgiven for thinking that it would be without doubt that the installation of an controlled entry door (similar to the reference in the Type 2B lease stating "generality of the foregoing installing entryphone systems") would be a certainty to be installed. However, this is not the case for Kimpton House.

In 2010⁵⁵ and 2014⁵⁶ there was survey of tenants and leaseholders and both times the result was that the controlled entry doors did not have enough support. Surely this would count as 'security' under the broad brush definition that WBC proposes?

Of the six blocks in the Fontley Way area it is the only one without controlled door entry, the others being Crondall House, Chilcombe House, Sombourne House, Rushmere House and Farnborough House.

4.3 Made ignoring obviously relevant factors (or)

WBC has made this decision based on treating leaseholder concerns lightly and the reasonableness of such additional costs has been downplayed. Leaseholders do not have a bottomless pocket to pay for major works and for compounding of various increases within the annual service charges. It would also be unreasonable to consider works which are deemed necessary under "security" and "urgent" yet delay such works to assess whether leaseholders should be charged to be works to be in the best interests of leaseholders if, as WBC indicates, its legal advice views this as being covered by the remit of the wording within the lease.

⁵⁴ Kimpton House lease, Appendix 11

⁵⁵ Kimpton House Controlled Entry Door survey – Appendix 12

⁵⁶ Kimpton House Controlled Entry Door survey – Appendix 12

4.3.1 Security – Type 2A leases impact?

Referring back to Kimpton House it can be seen that Type 1 leases may have had their day in 1985 and assuming that Type 2B started in 1990 (this being a proxy and using 43 Kimpton House as the basis for the 1990 reference), then what is left if Type 2A leases. In which case Type 2A leases might be 1986 to 1989 and that would be 19 of the 29 leaseholds.

The reason for referring to this is that Type 2A leases refer to *“to enhance the quality of life within the Block due regards being given to the wishes or aspirations of the majority of the residents in the Block”* (refer to section 4.1.1 for the full clause).

Now could it be the case that controlled survey doors require surveys for Kimpton House as WBC is providing “due regards” to “the majority of the residents in the block”? Unfortunately, for reasons outlined in section 4.1.1 it was highlighted that this information is not available.

4.3.2 Financial burden on leaseholders – major works past and future

Section 4.1.9 refers to estimated costs for retro-fitting water sprinklers and by WBC’s own admission this was “imposed” at “short notice”. However, many leaseholders have been incurring large major works bills in the lead up these proposed works.

Referring back to Kimpton House, a two bedroom flat paid two major works within 13 months of each other. In 2015/16 it was £880.00⁵⁷ and in 2016/17 it was £9,446.00⁵⁸. That is £10,326 paid between October 2016 and October 2017, not including the annual service charge.

Now bear in mind that the HRSOC 14th September 2017 paper 17-269 would have likely produced a different set of figures if the updated figures were provided in the HROSC of 16th November 2017 as it would have taken into account the major works cost of 2016/17 that many leaseholders incurred through installation of uPVC. The text being referred to is;

“17. An extension beyond 48 months may draw criticism from other leaseholders facing relatively substantial bills for major works, for example in 2015/16 1,231 leaseholders were billed for major works charges in excess of £3,000”⁵⁹.

It might be assumed from the previous paragraph that by “substantial” the figure at which this based on is “£3,000”.

A reasonable person may consider that to continually add major works costs to circa £1,073 per annual service charge (refer to section 4.1.12) is a burden that many leaseholders could not sustain financially. Bear in mind that 42 of the 100 blocks are in the Roehampton & Putney Heath ward and the ward is due to have a major regeneration with one of the reasons being that the area is considered deprived. To keep bleeding such leaseholders of financial resources may not be considered reasonable.

⁵⁷ Kimpton House major works – Appendix 13

⁵⁸ Kimpton House major works – Appendix 13

⁵⁹ HROSC, 14th September 2017, Paper 17-269 -

<https://democracy.wandsworth.gov.uk/documents/s52192/Update%20on%20fire%20safety%20arrangements%20in%20Wandsworth%20Councils%20housing%20stock.pdf> [Accessed 23/2/2019]

4.3.3 48 month interest free period

A reasonable person would expect that, especially after “substantial bills for major works” had been paid for that they would be permitted transparency as accurately as possible the future costs of additional costs have been “imposed upon leaseholders with relatively short notice”. However this is not the case.

Paragraph 17 from HROSC 13th September 2017 Paper 17-269 is as follows with the additional text highlighted in bold;

*“17. As these costs (approximately £3,000 to £4,000) will be imposed upon leaseholders with relatively short notice, it is recommended that, with respect to the cost of the sprinkler systems only, **existing repayment arrangements for resident leaseholders be extended from ten months to 48 months. An extension beyond 48 months may draw criticism from other leaseholders facing relatively substantial bills for major works, for example in 2015/16 1,231 leaseholders were billed for major works charges in excess of £3,000**”⁶⁰.*

Away leaseholders receive service charge invoices and pay for the service charges within the same month, this being October⁶¹. Resident leaseholders pay within 10 months.

Unfortunately two questions were outstanding at this time, whether the payment period would be 10 months or 12 months, as the longer the payment period the lesser the monthly amount. The other is whether interest would be payable on this 48 months repayment period. With regards to these queries within one of its letters addressed to leaseholders this was outlined by the following text;

“In the event that sprinklers are fitted to your block. I can confirm that the Council has agreed to extend the interest free period for resident leaseholders from 10 to 48 months”⁶².

Note that this letter is dated 13th August 2018 and is almost a year after being first mentioned in Paper 17-269. A reasonable person would expect that this information is documented within a HROSC paper either at the time of announcing this repayment mechanism or as a minimum having it clarified within a subsequent HROSC as soon as possible. The delayed release of this information highlights that WBC appears to have rushed to this decision without taking this through a full cost-benefit analysis.

A reasonable person would also expect to have a clear line of sight in terms of charges to be paid and whether this is affordable. The estimates within paper 17-269 have been superseded by SOC paragraph 107 which states;

“The Council’s estimate of the cost to each lessee of the retro-fitting of sprinkler systems into the Blocks is between £3,500 and £5,000”⁶³.

⁶⁰ HROSC, 14th September 2017, Paper 17-269 -

<https://democracy.wandsworth.gov.uk/documents/s52192/Update%20on%20fire%20safety%20arrangements%20in%20Wandsworth%20Councils%20housing%20stock.pdf> [Accessed 23/2/2019]

⁶¹ Kimpton House service charge, Appendix 8

⁶² WBC letter 13th August 2018

⁶³ SOC, Appendix 1

This is quite the increase over Paper 17-269's estimates and this would equate to £72.92 to £104.17 per month for 48 months and when annualised this is almost the value of the annual service charge being paid as highlighted in Table B.

Table B: Estimated monthly costs from SOC

Total amount	Per month	Per annum
£3,500	£72.92	£875.00
£5,000	£104.17	£1,250.00

4.3.4 "Enhance quality of life"

There is some clarity which is required regarding WBC's position with regards to SOC paragraph 66;

"66. It is the Council's position that the Duty to Consult applies only to any works that 'enhance the quality of life within the Block' for the reasons set out below"⁶⁴.

Therefore, the installation of entry door systems are not to do with "security" and are to do with the "enhance(ing) the quality of life within the Block"?

Paragraph 71 of the SOC provides spurious examples of what qualifies as works within the "enhance(ing) the quality of life within the Block"?

"71. Examples of works that might be carried out under the second part of the clause, being works to enhance quality of life, could include e.g.:

71.1 The installation of a children's play area for the residents' exclusive use; or

71.2 The provision of additional car parking spaces or a bicycle shelter"⁶⁵.

It is doubtful that WBC would provide Kimpton House its own childrens' play area, additional car parking or bicycle shelters though the use of the text referring to the 'block' within the lease. At best, these would likely be under the estate service charge not the block service charge. In fact, one RA from a four storey building has had additional car parking⁶⁶ and bicycle stands⁶⁷ installed through use of WBC's Small Improvement Budget⁶⁸ which is standalone from service charges.

It seems clear that WBC is unsure of what is defined as "security" or "enhance".

4.3.5 The letter which highlighted how safe the buildings were

A reasonable person would be hard pressed to understand the need for retro fitting water sprinklers if, as WBC has, provided letters to residents which stated;

⁶⁴ SOC, Appendix 1

⁶⁵ SOC, Appendix 1

⁶⁶ Roeregeneration - <https://roeregeneration.wordpress.com/2018/03/16/did-you-see-the-newish-car-parks-in-hersham-close/> [Accessed 15/03/2019]

⁶⁷ Roeregeneration - <https://roeregeneration.wordpress.com/2019/03/03/new-bicycle-hoops-by-holybourne-avenue-2-24/> [Accessed 15/03/2019]

⁶⁸ WBC - http://www.wandsworth.gov.uk/info/200561/resident_involvement/1645/small_improvement_grants_for_ho_using_estates [Accessed 15/03/2019]

“Fire containment systems in Wandsworth blocks

.....However, the Council can confirm that when there have been domestic fires in high-rise blocks in Wandsworth in recent years in every case these fires were contained and did not spread to other parts of the building”

and

“Fire Brigade advice

“At this stage we do not yet know what caused the fire. We do not know where it started and we do not know why it spread in the way it did. This is important to understand for anyone who lives in a high rise property or those advising people living in a similar property.

If you live in a high rise property you are not more at risk of a fire starting, living in a flat is not more dangerous than living in a house⁶⁹”

If there is no additional risk living in a high rise than in a house then there is the question of whether it is reasonable to retro fit water sprinklers. The letter goes on to highlight the measures that are taken such as FRAs though one aspect not covered off or at least not proactively shared is what corrective actions are taken with regards to ongoing fire safety maintenance for the blocks.

4.3.6 Ongoing costs – unaware of how long this would take and % of actual costs

A reasonable person would like to be aware of what the ongoing maintenance and cost of the retro-fitting of water sprinklers would be. A year on from HRSOC Paper 17-269 at the BRF of 4th September 2018 one RA asked the question of WBC and the following answer was noted in WBC Paper 18-278;

“Whilst it was not clear what the additional maintenance costs of sprinkler systems would be, officers agreed to forward details of the ongoing maintenance costs for sprinklers for systems fitted elsewhere. However, it was understood that these costs were not excessive and in the main would cover tanks and pump maintenance. Officers were confident that any associated fitting costs would be met from reserves without impacting on essential works in the Major Works Programme”⁷⁰.

Whilst this action has not been completed, it was noted in section 4.1.12 that the annual ongoing costs would be more than “not excessive” when determined as a percentage annual service charge increase in addition to any potential costs of having to be at home at least one day a year to accommodate the annual inspection water sprinklers checks.

4.3.7 Impact on other leaseholders

Whilst mentioned in section 4.1.11 there is a very real possibility that the outcome of this Tribunal could determine the fate of other leaseholders in future with regards to the interpretation of not just the leases of those in the 100 blocks though all leaseholders.

⁶⁹ WBC, letter 14th June 2017, Appendix 14

⁷⁰ HRSOC, 14th September, Paper 18-278,

<https://democracy.wandsworth.gov.uk/documents/s60472/BRFpt040918FINAL.pdf>

Further, the argument from WBC as to the use of the word “security” is so broad that where would the line be drawn? For instance, if WBC stated that as part of “security” all flats had to have wired to the mains heat detectors and smoke alarms could the interpretation being sought in this Tribunal cover such a demand?

4.3.8 FRA

In many FRAs it is stated within section 2.6.8 the following;

*“2.6.8 Are sprinkler systems present?
Not Required”⁷¹*

The FRA is valid from 24/05/2016 to 24/05/2019 and if a valid FRA states that water sprinklers are “not required” then what is one to think other than they are just that, “not required”, especially when read in conjunction with WBC’s comments in letter of 14th June 2017 as referred to in section 4.3.5

4.3.9 Urgent or not?

In the FROSC of 29th June 2017 in Paper 17-243 it highlighted “urgency” with regards to retro-fitting water sprinklers, outlined as follows;

*“The Executive is recommended to: -
(a) instruct the Director of Housing and Regeneration, in conjunction with the Director of Resources, to prepare an urgent procurement plan for the undertaking of the installation of a water sprinkler systems to tenanted and leasehold units in all the Council’s residential blocks that are ten or more storeys high and that the appointment of any consultants or contractors be authorised as a matter of urgency, including the waiving of relevant provisions of the Council’s Procurement Regulations as may be necessary in the circumstances, under the Standing Order No. 83(A) procedure”⁷²;*

At the HROSC of 13th September 2018 WBC amended this “urgency” as follows;

“In response to a question asked by a Member of the Majority Group about the timescales proposed in the amendment, the Director of Housing and Regeneration confirmed that given the following timescales and those associated with reordering the programme, it would allow time for the tribunal to report and for any lessons to be learned from the findings of the Grenfell enquiry before any works to the high rise stock commenced:

- *the First Tier Tribunal directions hearing deferred to October 2018*
- *the First Tier Tribunal hearing is likely to take place in Spring 2019*
- *decision of the First Tier Tribunal is likely to be announced in Summer 2019*
- *Grenfell report to be available by the end of 2019.*

The Director added, that if the recommendation in the paper is supported it would be sensible to wait for the findings from the Grenfell report given the timings of the various and relevant events take this out as covered by the paragraph above”

⁷¹ Kimpton House FRA, Appendix 15

⁷² FROSC, 29th June 2017, Paper 17-243 - <https://democracy.wandsworth.gov.uk/documents/s51321/17-243%20-%20Fire%20safety%20works.pdf> [Accessed 15/03/2019]

RESOLVED – That the Executive be informed that the Committee supports (by 7 votes and 5 abstentions) the recommendations in paragraph 3 of Paper No. 18-279 and in addition the following recommendations as set out below:

(a) (by 7 votes and 5 abstentions) initially focus the Council’s sprinkler programme on sheltered schemes and homeless hostels to safeguard our most vulnerable residents first;

(b) allow directions from the First Tier Property Tribunal and recommendations made by the Grenfell Tower Inquiry to shape whether, and how, the programme is progressed across the Council’s high-rise stock; and

(c) (by 7 votes and 5 abstentions) continue to seek additional funding from government to pay for fire-safety improvements, particularly retro-fitting sprinklers”⁷³.

Further, highlighting the “urgency” of this is was stated in HRSOC Paper 17-266 that;

“The Director responded by stating that in relation to manufacturers, it would be a crowded market place and therefore, the Council would need to move quickly”⁷⁴.

If “urgent” as proclaimed in Paper 17-243 and WBC has enough confidence in its understanding of the lease, then arguably WBC should have enforced its actions. If not to enforcing the retro-fitting of water sprinklers then this might be suggested as being an “improvement” rather than “security” for delaying any “security” means that the danger posed is not as great as WBC originally suggesting it could be.

4.3.10 Total budget spend

In the FROSC of 29th June 2017 in Paper 17-243 it states the following;

“5. Following discussion with the Leader of the Council and the Cabinet Member for Housing, it is clear that the installation of water sprinklers would give a measure of re-assurance to the 6,400 tenants and leaseholders who live within the 100 affected blocks managed by the Council and, as such, it is proposed that a programme of works be drawn up and prioritised. The cost of this work is estimated at £24 million and a budget variation is sought to cover this work. The position regarding leaseholder owned flats requires clarity and legal advice is being sought on this and will be reported to a future meeting of the Housing and Regeneration Overview and Scrutiny Committee and the Executive”⁷⁵.

Therefore the £24 million at the time was requested without having confirmation that WBC would not be paying for all retro-fitting of water sprinklers. Clearly, at the time it was prepared to install water sprinklers yet what has held up the works is whether leaseholders would be charged. At the time it seems the question of whether to charge leaseholders was acknowledged though not the primary focus. As such how “urgent” are the works?

⁷³ HROSC, 13th September 2018, <https://democracy.wandsworth.gov.uk/mgAi.aspx?ID=43843> [Accessed 15/03/2019]

⁷⁴ HROSC, 14th September 2017, Paper 17-266 -

<https://democracy.wandsworth.gov.uk/documents/s52404/Borough%20Residents%20Forum%20-%20Report%20of%20meeting%20on%206th%20September%202017.pdf>

⁷⁵ FROSC, 29th June 2017, Paper 17-243 - <https://democracy.wandsworth.gov.uk/documents/s51321/17-243%20-%20Fire%20safety%20works.pdf> [Accessed 15/03/2019]

According to HROSC Paper 19-01 the estimated cost per flat is;

“We referred in the capital programme to the installation of sprinklers in high rise blocks and asked how this estimate of costs had been reached. We were advised that this figure was based on consultants’ pre-tender estimates and that, until tenders had been obtained, this figure would remain an estimate. Officers further confirmed that, based on this estimated figure, the cost per property was around £3,500”⁷⁶.

Based on the SOC estimated costs of £3,500 to £5,000 per flat this means that the budget which has been signed off is based on the lowest estimate and that the budget could end up being £34.2m if the higher value estimate becomes a reality, this being a 42.9% increase. A reasonable person would ask whether WBC has agreed this £34.2m figure as the current figure seems to be low balling the projected budget. At the time of the HROSC 14th September 2017 Paper 17-269 the estimates were £3,000 to £4,000 meaning that at the time the £3,500 used as the Budget assessment was a mid-point estimate not a base estimate. A reasonable person would suggest that this is taken back to the HRSOC and FROSC to agree the maximum potential budget which could be spent for WBC might dismiss this project if the sums became too great, an unlikely result, though a consideration all the same.

4.3.11 Cleaning costs

Whilst not immediately relevant, a reasonable person would expect to understand the aggregate impact of service charge amendments so that an assessment of what is reasonable can be best reviewed. For instance, added to recent major works having been undertaken, there is thought of an increase in service charges due to annual maintenance water sprinklers inspections, and there could be a further increase through the new tender for cleaning which WBC estimates in Paper 18-413 to be circa £1 per week;

“We noted that the new contracts were likely to involve an increased cost to leaseholders and tenants. We asked how much this was likely to be. While stressing that there are a range of charges and that this increase would not be the same for everyone, officers advised that they anticipated the increase would amount to an average of around £1 per week. It was highlighted that, until the tender process was completed and the contracts awarded, it was not possible to give a definite figure”⁷⁷.

A reasonable person may consider that this barrage of service charge increases or major works is not sustainable and could force some leaseholders to have to sell their flat or make other hard decisions regarding opportunity costs.

4.4 Made having regard to irrelevant factors

As part of being economical with the truth, WBC has provided information to Councillors at the HROSC which provides insufficient detail and forms part of the justification for progressing the retro-fitting of water sprinklers.

⁷⁶ HRSOC, 17th January 2019, Paper 19-01 - <https://democracy.wandsworth.gov.uk/documents/s63703/19-01%20BRF%20report%20to%20HROSC%20-%20final.pdf> [Accessed 15/03/2019]

⁷⁷ HRSOC, 15th November 2018, Paper 18-413 - <https://democracy.wandsworth.gov.uk/documents/s62142/18-413%20BRF%20report.pdf> [Accessed 15/03/2019]

4.4.1 Building insurance savings – minimal savings and misplaced

In Section 4.1.7 it highlights that WBC has been commenting on possible cost savings through building insurance and this may have been a factor that contributed to retro-fitting water sprinklers having progressed as far as it has. This factor given the negligible savings on offer is an irrelevant factor. If it was considered relevant, then WBC could have provided some figures to highlight the potential savings though this has not been the case.

4.4.2 Mortgager not lending on building without water sprinklers

WBC has attempted to utilise information regarding one mortgage lender with very small market share not lending on buildings with water sprinklers as support for its case to retro-fit water sprinklers. In HRSOC 18th January 2018 Paper 18-11 stated;

“The Director also advised of a lender now declining mortgage applications for properties not fitted with sprinklers which may raise further concerns for the Council’s leaseholders. Clearly, by retro-fitting sprinklers, the Director advised that the Council would also be seeking to protect leaseholder’s interests in their property”⁷⁸.

This, like the reference to buildings insurance, lacked context. At the BRF of 7th June 2018 on RA challenged this reference stating and it was Minuted as;

“References to “a mortgage lender declining mortgage applications for properties without sprinklers” was out of context and could be misleading (page 9).⁷⁹”

The reason for stating this as “misleading” was that this referred to Leeds Building Society which has less than 1% of the mortgage market according to the CML⁸⁰.

This was further followed in HRSOC Paper 18-11 with the following comment;

“The Director of Housing and Regeneration confirmed that Leeds Building Society had refused to lend on one new-build block that had not been fitted with sprinklers”.⁸¹

Note that some of the Councillors which attend the BRF also attend the HRSOC and this challenge should have been openly debated at the HRSOC.

4.4.3 Councillors decision based on incomplete information

The retro-fitting of water sprinklers has been taken forward by WBC based on approvals through the WBC Committee structure without having all of the transparent information in front of them. Examples such as building insurance savings and a mortgage lender have grossly overplayed the supporting materials that WBC has used to progress this.

4.4.4 Information post-Tribunal initiation

⁷⁸ HRSOC, 18th January 2018, Paper 18-11 -

<https://democracy.wandsworth.gov.uk/documents/s55284/Borough%20Residents%20Forum%20-%20Report%20of%20meeting%20on%2011th%20January%202018.pdf> [Accessed 15/03/2019]

⁷⁹ BRF, 4th September 2018, Appendix 16, page 5

⁸⁰ CML market share, Appendix 17

⁸¹ HRSOC, 13th September 2018, <https://democracy.wandsworth.gov.uk/ieListDocuments.aspx?CId=575&MId=5828&Ver=4> [Accessed 15/03/2019]

To support the SOC it contains various information post the initiation of the Tribunal which seems to indicate that WBC is seeking to strengthen its case as it did not have sufficient material to work in the initial stages. One example is referred to in SOC Appendix 42 referring to Letter from MP Clive Betts MP dated 12/12/18⁸².

5.0 Conclusion

WBC has rushed through the requirement to retro-fit water sprinklers in the 100 blocks and has given a light touch review of whether the leases cover payment for these works. By being economical with the information provided and using its propaganda through various media distributions, WBC has utilised this position to create additional barriers for leaseholders working together to challenge these prospective works. However, many leaseholders have come together to do what they can to challenge these works.

The leases do not cover the retro-fitting of water sprinklers and when read in context with the clauses in full there is an indication of what is being referred to when words such as “security” is mentioned. There is no feasible manner that I could have considered retro-fitting of water sprinklers when purchasing my lease in 2000 and am dubious that WBC would have thought this would have front and centre of its “security” works for the blocks.

Furthermore, leaseholders are not a cash point whereby constant requests for funds to pay for major works and/or increases to service charges are paid for without question for this is unreasonable especially in an area which has what WBC considers high levels of deprivation.

WBC has reverted to the FTTPC due to the concerns of many leaseholders and if confident of its interpretation of the leases then WBC would have pursued the urgent installation of these works regardless of whether or not leaseholders could be charged and this has not happened and in three months it will be two years since this first featured in a WBC document and now it is seeking to wait for the outcome of Grenfell to understand implications for water sprinklers.

This Tribunal should expand the scope of leaseholders currently covered for this could impact them in due course either through water sprinklers directly or through the interpretation of the leases that this Tribunal is being requested to assess.

⁸² SOC, Appendix 1