IN THE FIRST-TIER TRIBUNAL
PROPERTY CHAMBER

Case ref: LON/00BJ/LSC/0286

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

BUNDLE for HEARING of STRIKE-OUT APPLICATIONS

(Listed on 11th and 12th November 2019)

TAB	Document	Date/Citation
1	The Council's Full Statement of Case (exc. Attachments)	18.12.2018
2	Tribunal Directions	5.11.2018
3	Paddy Keane's Strike-Out Application	21.2.2019
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5	Andrew Hirons' Strike-Out Application	11.3.2019
6	James Burgess' Strike-Out Application	20.3.2019
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16	Andrew Hirons' further written submissions	15.10.2019
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18	Lease of Flat 53 Lindsay Court, London SW11 3HZ	16.12.1998
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Tab 1

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

STATEMENT OF CASE ON BEHALF OF THE LONDON BOROUGH OF WANDSWORTH

Introduction

1. This Statement of Case has been prepared by the London Borough of Wandsworth ("the Council") pursuant to the Directions of the First-tier Tribunal ("the Tribunal") dated 5th November 2018 as varied by Supplemental Directions dated 5th December 2018.

2. The general nature and purpose of the Council's Application to the Tribunal was set out in its Case Summary dated 25th July 2018 ("the Case Summary"). The Directions, the Supplemental Directions and Case Summary can all be viewed on the Council's website at: http://www.wandsworth.gov.uk/sprinklers.

3. This Statement of Case explains in detail the basis of the Council's claim in this Application that the terms of the leases: (1) give the Council the right as against the Leaseholders to retro-fit sprinkler systems[1] in the high-rise residential blocks of 10

[1] Sprinkler systems are also referred to as Automated Fire Suppression Systems ("AFSS").

storeys or more ("the Blocks") in which the flats to which those leases relate are situated; and (2) oblige the Leaseholders to pay the Council, as part of their service charge, the relevant proportion of the cost of fitting a sprinkler system in the Block.

4. On 16th October 2018 the Tribunal conducted a Case Management Hearing at the Civic Suite in Wandsworth. At that hearing there was a preliminary discussion about the issues arising on this Application and various concerns were aired by some of the Leaseholders and/or their representatives who were present. Consequently, the Tribunal made the Directions to provide for the structured progress of this Application.

5. To decide whether a service charge would be payable by the Leaseholders in respect of the costs of the Works, the Tribunal must consider whether the express terms (i.e. the words) of the relevant part(s) of the leases:
   5.1 Impose an obligation on, or right for, the Council to install sprinkler systems;
   5.2 Qualify or restrict the Council's obligation or right to install the proposed sprinkler systems;
   5.3 Permit the Council to enter the relevant flat for the purpose of carrying out the works of installing sprinkler systems; and
   5.4 Provide for the recovery of associated costs through the service charge.

Structure of this Statement of Case

6. This Statement of Case is divided into six sections.
   6.1 Section One explains service charges in general terms.
   6.2 Section Two sets out the rules of interpreting the leases.
   6.3 Section Three clarifies an error in the Case Summary as to Type 2A Leases.
   6.3 Section Four contains the Council's position as to the meaning, or 'interpretation', of the relevant terms of the leases; it is subdivided as follows:
      (i) The Council's position on the meaning of "*may decide are necessary*";
      (ii) The Council's position on the meaning of "*ensure the efficient maintenance……of the Block*";
      (iii) The Council's position on the meaning of "*ensure the efficient……security of the Block*";
      (iv) The Councils position on the meaning of "*or to enhance the quality of life within the Block due regards being given to the wishes and aspirations of the majority of the residents in the Block*";
      (v) The Council's right of entry into flats to install sprinkler systems; and
      (vi) The Leaseholder's obligations to pay service charges.

6.4 Section Five provides details of the Council's decisions:

(i) to retro-fit sprinkler systems in all Blocks

(ii) As to the Council's choice of sprinkler systems over mist systems.

6.5 Section Six sets out the Council's estimate of costs for installing the sprinkler systems in the Blocks.

7. This Statement of Case contains references to legal principles and to case law. The authors have tried to present those principles using plain language that can be understood by people who do not have any legal training.

1. Service Charges in general terms

8. For the purposes of this Statement of Case the Council adopts the definition of 'service charge' set out in section 18 of the Landlord and Tenant Act 1985 ("LTA 85"). That is:

> ***18. Meaning of "service charge" and "relevant costs"***
> *(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—*
> *(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and*
> *(b) the whole or part of which varies or may vary according to the relevant costs.*
>
> *(2) The "relevant costs" are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

9. In section 18:

9.1 the word '*tenant*' has the same meaning as the words 'lessee' and 'leaseholder'; and

9.2 the word '*landlord*' has the same meaning as the word 'lessor'.

Where this Statement of Case refers to leaseholders or lessees those people are '*tenant*(s)' for the purposes of the definition of '*service charge*' in LTA 85. The Council is the landlord for the purposes of this definition of '*service charge'*.

10. Although LTA 85, section 18 defines '*service charge*' it does not create any obligation to pay service charges.

11. The obligations on a tenant (if any) to pay service charges are contained with the relevant lease. Different leases may make different provision for which of the landlord's costs are recoverable from the lessee as service charge.

12. A tenant is only obliged to pay service charges in respect of the landlord's costs of those items of work or the provision of those services which the landlord is entitled to recover the costs of under the terms of the lease.

13. The tenant's obligation to pay service charges often corresponds with an obligation or a right in the lease for the landlord to carry out certain works or to provide certain services. For example, under a particular lease the landlord may have an obligation to repair and maintain the structure and exterior of the building in which the relevant flat is situated and the tenant a collateral obligation to pay a proportion of the landlord's costs of repairing and maintaining the structure and exterior of that building.

14. In this Application the main issue for the Tribunal is whether, under each of the Types of lease that the Council has granted to the Respondent Leaseholders, those Leaseholders are obliged to pay as service charge a proportion of Council's costs of the installation of a sprinkler system in the block in which the flat is situated.

2. Interpretation of leases generally

Introduction

15. The process by which a court or tribunal decides what the terms of a lease mean is called 'interpretation'. Interpretation of a lease is a matter of law and the court or tribunal interpreting any lease or leases must follow certain rules.

16. In this section the Council sets out the approach that it considers the Tribunal must take in relation to the interpretation of the rights and obligations of the Council under the Leases and to the interpretation of the Leaseholder's obligation to pay service charges. In this section the Council refers to previously decided legal cases. Where it does so the name of the case will be set out in italics and the citation; i.e. the law report from where a copy of the decision in the case can be obtained, will be given as a foot note. Copies of the cases referred to will be available on the Council's website at Appendix 29.

17. The first proposition on which the Council relies is set out in the Court of Appeal's decision in ("CofA") *Universities Superannuation Scheme Ltd. v Marks & Spencer Plc*[2].

[2] [1999] 1 EGLR 13. 'EGLR' is the shorthand used in citations for the 'Estates Gazette Law Reports'.

18. In *Universities Superannuation Scheme Ltd. v Marks & Spencer Plc* the CofA stated that the purpose of service charge provisions is that a landlord who reasonably incurs costs for the benefit of the lessees should be able to recover those costs and that service charge provisions in any lease should be given an effect which fulfilled that purpose so far as the scheme, context and language of those provisions allow.

19. The rules that apply to the interpretation of provisions relating to service charges in leases were set out by the Supreme Court in the case of *Arnold v Britton*[3]. Lord Neuberger, in paragraph 15, stated that the purpose of interpretation of written contracts is to (emphasis in bold added):

> [15]. … **identify the intention of the parties** by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean.

20. Lord Neuberger then stated that the court identifies the intention of the parties by:

> … focussing on the meaning of the relevant words… in their documentary, factual and commercial context.

21. Lord Neuberger set out six matters relevant to the assessment of the meaning of the relevant words; these are:

(1) The natural and ordinary meaning of the clause;

(2) Any other relevant provisions of the lease;

(3) The overall purpose of the clause and the lease;

(4) The facts and circumstances known or assumed by the parties at the time that the document was executed, and

(5) Commercial common sense,

(6) But, disregarding subjective evidence of any party's intentions.

22. Lord Neuberger next identified seven relevant factors (these are set out using his words, the relevant paragraph numbers in the judgment are in square brackets at the beginning of each quote):

(1) [17] First… The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision…;

(2) [18] Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the

[3] [2015] UKSC 36. 'UKSC' is the shorthand used in citations for the 'Supreme Court'.

worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it...;

(3) [19] The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language…;

(4) [20] Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight...;

(5) [21] The fifth point concerns the facts known to the parties. When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties…;

(6) [22] Sixthly, in some cases, an event subsequently occurs which was plainly not intended or contemplated by the parties, judging from the language of their contract. In such a case, if it is clear what the parties would have intended, the court will give effect to that intention….;

(7) [23] Seventhly, reference was made in argument to service charge clauses being construed "restrictively". I am unconvinced by the notion that service charge clauses are to be subject to any special rule of interpretation….

23. It is the Council's position that the principles in *Arnold v Britton* should be applied to this Application in the following way:

23.1 The words of the Leases are paramount;

23.2 Those words should be given their ordinary and natural meaning;

23.3 Those words must be understood by reference to other collateral or associated obligations in the Lease; and

23.4 Service charge provisions are not to be interpreted in a way that limits the leaseholder's obligation to pay service charges.

24. In *Assethold v Watts*[4], a provision entitling the landlord to recover the cost of:

> "*all works installations acts matters and things as in the reasonable discretion of the Landlord may be considered necessary or desirable for the proper maintenance safety amenity and administration of the Development*"

was held to cover the landlord's costs of employing solicitors and counsel in connection

[4] [2015] L.&T.R. 15. 'L.&T.R.' is the shorthand used in citations for 'Landlord and Tenant Reports'.

with a party wall dispute with the owner of neighbouring land. The judge in that case, considered whether a term of a lease which is unspecific should be interpreted restrictively. He held that it should not [58]:

> 58. … It seems … to be wrong in principle to start from the proposition that, with certain types of expenditure, including the cost of legal services, unless specific words are employed no amount of general language will be sufficient to demonstrate an intention to include that expenditure within the scope of a service charge. Language may be clear, even though it is not specific.

25. After the Grenfell disaster Dame Judith Hackitt was commissioned by the Government to carry out a Review of the building regulations and fire safety. Section 3 of her report[5], deals with current regulatory system which she found is not fit for purpose in relation to High Risk Residential Buildings ("HRRBS"). Dame Judith Hackitt made a number of recommendations, including at paragraphs 3.46 and 3.47 as follows (bold added):

> 3.46 Residents will be expected to cooperate with the dutyholder so that they can discharge their duties – for example by allowing access for maintenance and testing of fire safety systems and for inspection where necessary. It is only by working collaboratively with residents and the landlords of individual dwellings in the building that the dutyholder will be able to effectively manage the building safety risks, and so the dutyholder will need to be able to access flats appropriately for inspection and may require action from tenants, leaseholders or landlords where necessary.
>
> 3.47 This is an extension of residents' current obligations. For example, the majority of leases and tenancy agreements allow access for inspection or repairs, subject to prior notification. In addition, landlords, housing associations and local authorities can already gain access to flats for an annual gas safety check. It must be clear that for all residents and for landlords of rented properties in HRRBs, these obligations extend to:
>
> - cooperating with the dutyholder (or building safety manager) to the extent necessary to enable them to fulfil their duties;
> - ensuring that fire compartmentation from the inside of a flat, including the front doors, is maintained to a suitable standard;
> - ensuring that any fire safety systems in the flat that could impact on the fire safety of the building and others are maintained, tested and inspected (or access is permitted to allow maintenance testing and inspection) to a suitable standard; **and, in addition**
> - **there should be an assumption that improvements, where necessary, are permitted by any lease in relation to building safety measures**.

3. Clarification of Lease Types

26. Although the Council is the landlord of all of the Leases to which this Application relates, the Leases do not have identical wording in so far as the Clauses or terms relevant to this Application are concerned.

[5] Building a Safer Future: Independent Review of Building Regulations and Fire Safety, May 2018

27. The reason why the terms of the Leases are not all the same is because the standard form of lease that the Council has granted has been amended from time to time. The leases to which this Application relate date from between 1982 and 2018.

28. For the purposes of this Application the Council has classified the Leases into categories, referred to in the Case Summary as 'Types'. The classification is based on the terms in the lease which relate to:

    28.1 The Council's obligation, or right, to carry out work to the Flat or the Block in which it is situated; and

    28.2 The Tenant's corresponding obligation to pay service charges on account of the Council's cost of carrying out those works.

29. In the course of preparing this Application the Council carried out a review of the Leases and categorised them by reference to the express terms that are relevant to this Application. The Council identified three types of Lease and referred to them in the Case Summary as: (1) Type 1 Leases; (2) Type 2A Leases; and (3) Type 2B Leases.

30. The Case Summary sets out the terms of the Leases which the Council considers are relevant to this Application. These terms relate to the Council's obligations or powers to carry out works to the Blocks or the Flats and the lessee's corresponding obligation to pay service charges in respect of the Council's cost of such works.

31. Schedule 2A to the Case Summary detailed the relevant terms of Type 2A Leases. The Case Summary stated that Type 2A Leases differ from Type 2B Leases only to the extent that the relevant "*Council's Obligations in respect of the Block*" were set out in the Fifth Schedule, rather than the Fourth Schedule (as in Type 2B Leases).

32. In both Type 2A and Type 2B leases the Council's obligations or power to do work includes the following:

> To do such things as the Council may decide are necessary to ensure the efficient maintenance and administration and security of the Block …

33. The Council relies on this term in the Type 2A and Type 2B leases as giving it the right, as against leaseholders who have Type 2A and Type 2B Leases, to retro-fit sprinklers in the Blocks. The Council's position as to why this term gives it the right to retro-fit sprinklers is set out in Section Four of this Statement of Case.

34. The Case Summary did not, however, set out the full wording of the relevant term in Type 2A Leases. Paragraph 5 of the Fifth Schedule in all Type 2A leases provides as follows (the additional words are shown in bold):

> 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...**

35. An amended version of Schedule 2A to the Case Summary is attached to this Statement of Case.[6]

4. Interpretation of the Leases

Introduction

36. This section of the Statement of Case sets out the terms of the Leases which the Council relies on as giving it the right to retro-fit sprinkler systems in the Blocks and sets out the Council's arguments why those terms give it that right.

37. Before setting out the particular terms of the Leases upon which the Council relies as giving it a right to install sprinklers in the Blocks it is important to note that in every lease the Council has an obligation to repair and maintain the structure etc. of the Block in which the flat to which the lease relates is situated. The Council does **not** rely on its obligation to repair and maintain the structure of the Block as giving it the right to install sprinkler systems in the Blocks.

38. The Council relies on terms that give the Council more extensive rights to do works; in effect terms that allow the Council to do more than simply repair and maintain the structure etc. of the Block.

39. It is the Council's position that the terms on which it relies should be interpreted against the background that the Council already has an obligation to repair and maintain the structure etc. of the Blocks: in effect the terms on which the Council relies must add something to the Council's existing obligations.

[6] Amended Schedule 2A – Appendix 1

(i) The Meaning of "*may decide are necessary*"

40. In all of the Leases to which this Application relates; i.e. whether Type 1, Type 2A or Type 2B, the term upon which the Council relies as giving it the right to retro-fit sprinklers is subject to the requirement that the Council must decide that the works are necessary to achieve the specified result; e.g. efficient maintenance of the Block.

41. In Type 1 Leases the relevant Clause provides as follows (emphasis in bold added):

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

42. In Type 2A and Type 2B Leases the relevant Clause provides as follows (emphasis in bold added):

> '… do such things **as the Council may decide are necessary** to ensure the efficient maintenance and administration and security of the Block …'

43. This gives rise to the following interpretation issue: What is required for the Council to be able to decide that any works are necessary? Two alternative interpretations are:

43.1 That the Council reasonably considers that the works are necessary to achieve the specified result, or

43.2 That the works must objectively be a necessity to achieve the specified result.

44. The Council's position is that the clause gives the Council a discretion to decide what works are necessary and that the principles set out by the Supreme Court in *Braganza v BP Shipping Ltd*[7] to such discretionary contractual rights apply. Therefore, provided that the Council reasonably considers that the works are necessary its decision that the works are necessary cannot be challenged.

45. This gives rise to a further consideration; on what basis can it be said that the Council's decision is **not** 'reasonable'?

46. In *Braganza v BP Shipping Ltd* Baroness Hale stated that a decision could only be found to be not reasonable if it was inconsistent with the contractual purpose or was made irrationally, in the public law sense of that word.

[7] [2015] 1 WLR 1661. 'WLR' is the shorthand used in citations for 'Weekly Law Reports'.

47. A decision is irrational in the public law (or *Wednesbury*[8]) sense if it is:

47.1 Not made in good faith;

47.2 One that no reasonable person could have come to;

47.3 Made ignoring obviously relevant factors; or

47.4 Made having regard to irrelevant factors.

48. In *Hounslow LBC v Waaler*[9], the CofA applied the *Braganza* approach to a lease granted by a local housing authority: see Lewison LJ at paragraph 20 of the Judgment. In that case Hounslow had a discretion as to whether or not to carry out improvements.

49. The Council's position is that its decision that the installation of sprinkler systems in all of the Blocks is "necessary" can only be challenged if that decision was irrational in the public law sense of the word or is inconsistent with the contractual purpose.

50. The Council's decision and the information on which it was based are dealt with in Section Five below.

(ii) The Meaning of "*ensure the efficient maintenance…. of the Block*"

51. In all the types of Leases, i.e. Type 1, Type 2A or Type 2B, the term upon which the Council relies as giving it the right to retro-fit sprinklers includes the right to do works to: *ensure the efficient maintenance* of the Block.

52. Maintenance of a building requires more than repairing it after it has fallen into disrepair. The word '*maintain*' involves an element of proactivity in taking measures to prevent any deterioration in the physical structure of the relevant Block. Maintenance means preservation or perpetuation.

53. This interpretation of the meaning of the word 'maintain' is supported by the case law.

54. In *Burnside v Emerson*[10] the CofA held that the duty to 'maintain the highway' in the Highways Act 1959, s. 44(1) is a duty not merely to keep a highway in such a state of repair as it is at any particular time, but to put it in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the

[8] *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 K.B. 223.

[9] [2017] EWCA Civ 45. 'EWCA Civ' is the citation shorthand for Court of Appeal civil decisions.

[10] [1968] 1 W.L.R. 1490. 'WLR' is the citation shorthand for the Weekly Law Reports.

year without danger caused by its physical condition, a duty to achieve an objective standard; i.e. not only to "keep" the highway in repair, but to "put and keep" the highway in repair; see the judgment of Lord Justice Diplock at p.1497.

55. In that case the CofA found that the duty to maintain the highway included a duty to provide an adequate system of drainage for the road.

56. The landlord and tenant (or leasehold) cases that have considered the meaning of the word '*maintain*' have considered that word as a descriptor of some other standard. In *Welsh v Greenwich LBC*[11] the court held that an obligation to '*maintain in good condition and repair*' went beyond an obligation to repair; although that case turned mainly on the difference between the concepts of '*good condition*' and '*repair*'.

57. It is the Council's case that the word '*efficient*' in the clause means well-organised, structured and productive.

58. The word '*ensure*' means to make certain that something will happen.

59. The Council's case is that the sprinkler systems in the Blocks *ensure the efficient maintenance* of the Blocks because they limit the damage caused in the event of a fire.

(iii) The Meaning of "*ensure the efficient……security of the Block*"

60. In Type 2A and Type 2B Leases the term on which the Council relies as giving it the right to retro-fit sprinklers includes the right to do works to '*ensure the efficient … security*' of the Block.

61. The Council's position as to the meaning of the words '*ensure*' and '*efficient*' are set out above in Section 4(ii).

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.

[11] [2000] 3 EGLR 41.

(iv) The Meaning of "*or to enhance the quality of life within the Block due regards being given to the wishes and aspirations of the majority of the residents in the Block*"

64. Type 2A Leases have the following relevant clause (emphasis in bold added):

> 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 ...**

65. The issue of interpretation that arises in relation to this clause is whether the requirement that the Council give due regard to the wishes and aspirations of the residents in the Block ("the Duty to Consult") applies to any works that the Council decides to do under the power in the clause or only to those works that '*enhance the quality of life within the Block'*.

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.

67. The word '*or*' has the effect that the two bases on which the Council has the right to carry out works are separate, or disjunctive.

68. This interpretation of the clause is supported by the fact that it would be inconsistent with the apportionment of the obligations under the Lease if the Council had an obligation or power to carry out those works it '*decides are necessary*' for the '*maintenanc*e' and in some cases '*security*' of the Block but had to have '*due regard*' to the majority of the residents' wishes before deciding what works were necessary.

69. Rather the Council's obligation to have '*due regard*' to the '*wishes or aspirations of the residents of the Block*' more naturally applies to any works that the Council proposes to carry out on the basis that they would '*enhance* (the residents) *quality of life*'.

70. An interpretation of the clause that the provisos and conditions before and after the '*or*' apply to both bases on which the Council has a right or power to carry out works would mean that the Council could only carry out works which enhanced the occupiers '*quality of life*' if it had decided that such works were '*necessary*' to have that effect.

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.

(v) The Council's right of entry to Flats to do the Works

72. The Council did not deal with this question in its Case Summary because the authors were of the view that if, under the terms of the Leases the Council has a right to retro-fit the proposed sprinkler systems, it clearly has a right under the terms of the Leases to enter the Leaseholders' flats to carry out the works necessary for the installation of sprinkler systems.

73. However, the issue was raised as an issue by some of the Leaseholders at the Case Management Hearing on 16th October 2018. Accordingly, the Council deals with this issue in this Statement of Case.

74. All of the Leases granted by the Council include a right in favour of the Council to enter into the flat demised by that Lease. That term is either in the Second Schedule or the Third Schedule depending on the Lease. The right of entry is in one of the following three forms[12] (emphasis in bold added)

(1) **Power for the Council** its lessees and their surveyors or agents with or without workmen and others at all reasonable times **on written notice** (except in the case of emergency) **to enter** upon **the Flat for the purposes of carrying out all their covenants conditions and obligations** under the terms of the leases of their respective flats.

(2) **Power for the Council** the lessees and their surveyors or agents with or without workmen and others at all reasonable times **on notice** (except in the case of emergency) **to enter** upon **the Flat for the purposes of carrying out all their covenants conditions and obligations** under the terms of the leases of their respective flats.

(3) **Full right and liberty for the Council** their lessees and their surveyors or agents with or without workmen and others at all reasonable times and on reasonable **written notice** (except in the case of emergency) **to enter** upon **the Flat for the purposes of carrying out all their covenants conditions and obligations** under the terms hereof or of the terms of the leases of their respective flats.

75. These terms clearly give the Council the right (on written notice) to enter the Flats of for the purposes of carrying out those works that the Council has a right or obligation

[12] The form of the right of entry to do works varies independently of whether or not the lease is a Type1, Type 2A or Type 2B Lease.

to carry out under the Leases.

76. It would be surprising if the Council, as landlord, had a right or an obligation to carry out works but no ancillary right to enter into the flats to execute those works.

77. In any event, where a landlord has an obligation to repair or maintain the building in which demised premises are situated a term that the landlord shall have a right of entry to the demised premises to carry out those repairs or maintenance will be implied in to the lease. Such an implied right of entry applied where the tenant had agreed to pay the landlord the cost of repainting the premises once every three years (i.e. not to repair): See *Edmonton Corporation v Knowles (W. M.) & Son*[13].

(vi) The Leaseholders obligation to pay service charges

78. In all of the Leases the Leaseholder has an obligation to pay, as service charges, a proportion of the Council's costs of performing its obligations and rights under the Lease.

79. It follows that if the costs of installing a sprinkler system are within the Council's obligations or rights under the terms of the Leases the Leaseholders have a corresponding obligation to pay the relevant proportion of the Council's costs of installing the sprinkler systems.

80 It is important that the Leaseholders understand that this contractual right of the Council to recover service charges for the costs of installing sprinkler systems (if the Council has the right to do so) does not prevent the Leaseholders from challenging the amount of any service charges they are subsequently charged under the limitations in the LTA 85.

81. Those limitations are:

81.1 That the Council's costs are reasonable in amount and are reasonably incurred;

81.2 That the Council has carried out the appropriate consultation (in this case the Council recognises that consultation will be required); and

82.3 That the demand for the payment of service charge is made within 18 months of the date on which the costs giving rise to the service charge were incurred.

[13] [1962] LGR 124. LGR is the citation shorthand for the Local Government Reports.

5. The Council's Decisions

Introduction

82. This section of this Statement of Case sets out the chronology of and reasons for the Council's decisions to retro-fit sprinkler systems in all Blocks and to opt for a sprinkler system rather than a mist system.

(i) The Decision to retro-fit sprinklers to all the Blocks

83. Following the Grenfell Tower fire on 14th June 2017, the Council immediately began a review of fire safety standards within its tower blocks. Across the 100 Blocks relevant to this Application there are 6,486 residential units, of which 2,367 are currently owned by leaseholders on a long leasehold basis. Of these leaseholders, 1,313 are owner occupiers (Resident Leaseholders) and 1,054 are investment landlords who sub-let their flats or who are otherwise absent (Non-Resident Leaseholders).

84. At a meeting of the Council's Housing & Regeneration Overview and Scrutiny Committee (HROSC) on 20th June 2017 the Borough Fire Commander stated that the reason for so many fatalities at Grenfell Tower was because of the unprecedented way the fire had reacted – spreading externally very quickly; and because the communal areas had filled up quickly with smoke. He stressed that the spread of the fire was unique in the UK and that the general advice continued to be to stay within a home if there was a fire elsewhere in a tower block given the compartmentation and safety from the fire this provided. However, he confirmed that sprinklers do save lives and that the London Fire Brigade ("LFB") recommended fitting sprinklers[14].

85. On 29th June 2017 the Council's Finance and Corporate Resources Overview and Scrutiny Committee (FCROSC) considered a Report prepared by the Director of Housing & Regeneration, dated 28th June 2017, (Paper No. 17-243). That Report explained the Borough Fire Commander's view that the most certain way of preventing fatalities in high rise blocks was the installation of water sprinklers, and that the installation of sprinklers is standard practice for any new block with a height exceeding 30 metres - in effect any block which is ten storeys high or higher[15].

86. The Report, dated 28th June 2017 also stated that:

> 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

[14] Minutes of HROSC meeting on 20/06/17 - Appendix 2

[15] Approved Document B (Vol.2) to the Building Regulations 2010, p.72, para.8.14 – Appendix 3

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.[16]

87. The FCROSC unanimously supported the recommendations contained in paragraph 3 of the Report, dated 28th June 2017, including a recommendation to:

> "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 water sprinkler systems to tenanted and leasehold units in all the Council's residential blocks that are ten or more storeys high…".[17]

88. On 13th September 2017, Dany Cotton, LFB commissioner, was quoted as saying:

> "Sprinklers are the only fire safety system that detects a fire, suppresses a fire and raises the alarm. They save lives and protect property and they are especially important where there are vulnerable residents who would find it difficult to escape, like those with mobility problems…. I support retrofitting - for me where you can save one life then it's worth doing. This can't be optional, it can't be a nice to have, this is something that must happen".[18]

89. On 14th September 2017 the HROSC considered a further report prepared by the Director of Housing & Regeneration, dated 6th September 2017 (Paper No. 17-269) stating that the view of the Leader of the Council, Councillor Govindia, was that:

> "After the dreadful tragedy in Kensington and Chelsea it is vital that we move decisively to do all we can to provide additional reassurance and enhance the safety for all of the residents in our high rise blocks whether they be council tenants, leaseholders or private renters by bringing the blocks up to the new build standards now required across the public and private sector and these proposals will do just that".[19]

90. The Report, dated 6th September 2017, also stated that:

> 14. National, London and local fire services have identified the benefits of sprinkler systems in dwellings. The Building Regulations 2010 (as amended) state "sprinkler systems installed in dwelling houses can reduce the risk to life and significantly reduce the degree of damage caused by fire". The LFB also supports the use of sprinkler systems stating that they can be effective in supressing fires quickly and can reduce death and injury from fire. The LFB has produced comprehensive advice on the benefits of sprinkler systems in residential units.

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[16] Paper No. 17-243 – Report by Director of Housing & Regeneration 28/06/17 – Appendix 4

[17] Minutes of FCROSC meeting on 29/06/17 – Appendix 5

[18] "Grenfell fire chief calls for sprinklers in tower blocks", BBC website 13/09/17 – Appendix 6

[19] Paper No. 17-269 – Report by Director of Housing & Regeneration dated 06/09/17 – Appendix 7

> 15. It is clear that the installation of water sprinklers would give a level of re-assurance to tenants and leaseholders. Work has begun on a feasibility study on the options for sprinkler systems so that a programme of works can be drawn up and prioritised to individual properties in blocks of ten storeys and over and meetings will be taking place with relevant organisations including the LFB and the relevant trade association. This will effectively bring these blocks up to the standard required by building regulations in all new build accommodation over 30 metres high."[20]

91. Councillor Heaster addressed a meeting of the HROSC on 14th September 2017 in his capacity as the Council's 'Member-level Fire and Emergency Planning Champion'. He advised the HROSC that there have been no known fire-related deaths in any housing unit in this country where a sprinkler system has been installed. Councillor Heaster further advised the HROSC that coroners have recommended the retrospective fitting of sprinklers in tower blocks following fires in Harrow in 2005[21], at Lakanal House, Camberwell in 2009[22] and Southampton in 2010[23].

92. The Director of Housing & Regeneration told the HROSC that following the fires at Lakanal House, where 6 residents died, and more recently in Shepherds Court[24], it is apparent that compartmentation can fail and even concrete blocks may have materials in their construction or subsequently installed which can cause fire to spread. The Director also stated that it is important that all the flats in any block are fitted with sprinklers to ensure the integrity of the sprinkler system.[25]

93. The meeting resolved that the Council's Executive be informed that the HROSC supported the recommendations in paragraph 3 of Paper No.17-269; i.e. the Report dated 6th September 2017, including a recommendation that the Council embark on a programme of retro-fitting sprinkler systems to all residential units within Council housing blocks of ten storeys or more and that the cost of these works be recharged to leaseholders through their service charges.

94. On 18th January 2018 the HROSC considered a further report prepared by the Director of Housing & Regeneration, dated 9th January 2018 (Paper No.18-12), which detailed

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[20] See note 19 above

[21] Harrow Court in Stevenage, 18-storey block where 14th floor fire killed a resident and 2 firefighters

[22] Report by LFEPA Commissioner dated 20/06/13, para.15 – Appendix 9

[23] Letter from HM Coroner to DCLG dated 04/02/13, Recommendation 7 – Appendix 8

[24] Shepherds Court in Hammersmith, 18-storey block where fire on 7th floor started by faulty tumble dryer spread up to 11th floor necessitating full evacuation

[25] Minutes of HROSC meeting on 14/09/17 – Appendix 10

the revised advice from the LFEPA regarding sprinkler systems in high-rise residential blocks. That Report set out the full wording of a Position Statement issued by LFB[26], 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.

95. The Report, dated 9th January 2018, explained that significant objections had been received from five residents' associations and a number of individual leaseholders. These objections were to the effect that the design, construction and configuration of some Blocks meant that sprinklers were not a necessity. Others objected on the grounds of disruption during installation and on aesthetic bases.

96. The Report, dated 9th January 2018, proposed that officers be tasked with making a proactive application to the First-tier Tribunal to seek a clear decision on the Council's ability to undertake the works. The Council would fund this application and leaseholders would be encouraged to submit their views to the Tribunal. This would determine if and how the programme is implemented, would allow time for further innovations in such systems to be progressed and considered and would enable clarification on potential contributions to the cost of such works from the HRA and General Fund to be obtained.[27]

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

98. Two Councillors at the HROSC meeting on 18th January 2018, Councillor Grimston and Councillor White, stated that the issue of retro-fitting sprinklers into Blocks should be approached on a block by block basis:
    98.1 Councillor Grimston stated that the decision should be subject to a technical and risk-based approach and subject to the wishes of individual residents; and
    98.2 Councillor White called for block by block consultation; with sprinklers not being retro-fitted where a majority of residents did not want them.

99. Councillor White proposed the following recommendation at the meeting on 18th

[26] London Fire Brigade AFSS Position Statement – Appendix 11

[27] Paper No.18-12 - Report by Director of Housing & Regeneration dated 09/01/18 – Appendix 12

January 2018 ("Councillor White's Recommendation"):

> "(d) after making a full review of each block's fire vulnerability, the Grenfell enquiry findings and bearing in mind the legality of any move as evidenced by the First Tier Tribunal, to carry out a block by block consultation where the residents' views on the installation of sprinklers in their block should be heeded."

100. The Director of Housing & Regeneration explained to the Committee that the assumption that blocks of a concrete construction are always safe and that fires only spread in cladded blocks is not correct. A video was played to the meeting showing footage of the following fires:

100.1 Manchester on 30th December 2017 where fire had spread to multiple floors of a 12-storey block (the fire had started on the ninth floor and spread to the eighth, tenth and eleventh floors before it was brought under control). The block had no cladding;

100.2 Belfast in November 2017 where the blaze damaged flats on the ninth and tenth floors before it was brought under control. This was a brick-built block where fire spread through retro fitted plastic coated windows (which on a warm night with open windows could have led to significant fire spread); and

100.3 In Shepherds Bush in August 2016 where the fire had spread over six floors. The block was of traditional construction, and had no over-cladding. The fire had spread due to flammability of retro fitted spandrel panels fitted under the windows.

101. By a vote the Committee members rejected Councillor White's Recommendation. The Committee resolved to support the recommendations set out in paragraph 3 of Paper No. 18-12, i.e. the Report dated 9th January 2018, including the proposal to make this Application to the Tribunal.[28]

102. This summary of the relevant reports and committee meetings between June 2017 and January 2018, demonstrates the Council's considerations and deliberations in respect of the decision that the installation of sprinkler systems in the Blocks is necessary.

The Reasonableness of the Council's Decision to retro-fit sprinklers

103. When considering the reasonableness of the Council's decision to retro-fit sprinklers

[28] Minutes of HROSC meeting on 18/01/18 – Appendix 13

in residential blocks of 10 storeys or more the following information is highly relevant:

103.1 There is a much higher rate of fires in relation to the height of a purpose-built residential building with more than double the rate of fires in buildings of 10 or more storeys than those below that height. There is a higher rate of fire-related fatalities in high-rise purpose-built residential accommodation of 10 storeys or more with around three times as many fatalities as compared with purpose-built flats below 10 storeys.[29]

103.2 High rise social housing blocks create a number of specific and unique fire safety and firefighting challenges that may not exist in other properties. Where evacuation is required, the process takes longer from upper floors and sprinklers provide significant benefits in addressing this risk. Furthermore, where a fire occurs in a high-rise block, it can take a significant time before the fire and rescue service can commence firefighting operations, with the potential of greater risk to firefighters. Sprinklers can assist in controlling the fire growth whilst reducing this time between the outbreak of fire and the start of the fire suppression activity, reducing the risk to firefighters.[30]

103.3 Current Building Regulations in England require that "blocks of flats with a floor more than 30m above ground level should be fitted with a sprinkler system"[31]. This requirement applies to all blocks with a height of 30 metres and greater irrespective of design, construction or configuration and followed extensive research and analysis[32].

(1) The Council's decision to retro-fit sprinkler systems in all of the Blocks was predicated on the same reasoning underpinning the current mandatory requirement in respect of all new blocks of 30 metres or more.

(2) The Council is currently planning to develop a number of new tower blocks across its housing estates to increase supply and sprinklers will be a mandatory requirement under current Building Regulations in all of these new blocks. The Council considers it would create patent

[29] Appendix C to Building a Safer Future: Independent Review of Building Regulations and Fire Safety (Final Report), p.130, Dame Judith Hackitt, May 2018, – Appendix 14.

[30] Business Case for Sprinklers, Chief Fire Officers Association, June 2013, p.20 – Appendix 15.

[31] Approved Document B (Vol.2) to the Building Regulations 2010, para.8.14 – Appendix 3.

[32] Effectiveness of sprinklers in residential premises, BRE, February 2004 – Appendix 16 and Final Regulatory Impact Assessment, DCLG, December 2006 – Appendix 17.

difficulties to own and manage neighbouring blocks on the same estate with differing fire safety standards, in terms of any deaths or injuries caused by fires which may occur and also in terms of allocation of its housing stock effectively.

103.4 It is estimated that the provision of a BS 9251 sprinkler system within a dwelling will reduce fire related casualties by around 70%. Whilst it would be desirable to install such systems in all dwellings it was decided in the context of amendments to Approved Document B to the Building Regulations 2010 that it would only be reasonable to impose this on larger buildings.[33]

103.5 The Council's Blocks currently rely upon the robustness of passive fire safety measures, principally compartmentation and fire doors. It is impossible to eliminate the possibility that residents or contractors could undertake unauthorised alterations or unintentionally damage the internal infrastructure of their flats, as well as incidents of vandalism and damage to fire doors. Each of these issues has the potential to compromise compartmentation and pose the risk of fire spread and smoke inhalation. Closer examination of previous fires in high-rise blocks across the UK demonstrates this, highlighting weaknesses in the effectiveness of compartmentation alone. When passive fire safety measures fail, in most cases there is no further safety net from fire until the LFB arrives. According to the LFB, while a fire may remain within a sealed compartment for as long as that compartment is designed to contain the fire, some fires can last longer than this and, as we saw with the fire at Grenfell Tower, compartments are not always perfectly self-contained. This means that fires may affect the utilities of the building or spread beyond the room to other parts of the building, affecting other residents.[34] The Council cannot guarantee effective compartmentation in each of the Blocks but the retrofitting of sprinklers will mitigate the risk of fire spreading in every case.

103.6 In its response to the report from the London Assembly Planning Committee published in March 2018, the LFB's Assistant Commissioner for Fire Safety, Dan Daly, has said:

[33] Approved Document B: Frequently Asked Questions, DCLG, March 2016, p.10 – Appendix 18.

[34] Never again: Sprinklers as the next step towards safer homes, London Assembly Planning Committee, March 2018, para.1.6 – Appendix 19.

> "Even small fires can kill and soon develop into large fires unless they are stopped. We have long campaigned on the importance of sprinklers and we need to ensure sufficient and appropriate protection measures are in place to safeguard people where they live and suppression systems should be part of those considerations. We welcome the London Assembly's report and support the recommendations it makes. Sprinklers are the only system which detects a fire, suppresses a fire and raises the alarm and we believe they are vitally important. Since 2016, sprinklers have been compulsory in all new dwellings in Wales – and it's time we caught up with those standards in England."

The LFB also states that it would like existing residential blocks over 18m (equivalent to 6 storeys and more) in height to be retrofitted with sprinklers.[35]

103.7 Losses from fires in buildings protected by sprinklers are estimated to be only one tenth of those in unprotected buildings. Reports of water damage caused by sprinklers are often exaggerated. Firefighters often use 15 times more water from hoses to do the same job as a sprinkler. Sprinklers are very stable and do not operate spuriously. Worldwide records show that only 1 in 16 million sprinklers installed per year will result in failure. Every single sprinkler head is independently tested before leaving the manufacturing plant.[36]

103.8 There are many recent examples of real-life cases where sprinkler systems have been activated and have successfully suppressed and often extinguished fires in high-rise blocks.[37] A sprinkler system the Council has retrofitted to some of its temporary accommodation units in Nightingale Square, SW12, has already proved effective in extinguishing a fire caused by a deep fat fryer.[38]

103.9 It is clear that insurers regard the retrofitting of sprinkler systems as a positive risk management initiative[39]. 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.

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[35] LFB response to London Assembly report on sprinklers, LFB website 22/03/18 – Appendix 20.

[36] Business Case for Sprinklers, Chief Fire Officers Association, June 2013, p.34 – Appendix 15.

[37] "Sprinkler save: high rise flat, London" 19/02/18, BAFSA website; "Sprinkler save: apartment block, London" 12/07/18, BAFSA website; "Sprinkler save: flat, Salisbury" 22/08/18, BAFSA website; "Sprinkler saves duplex apartment, London" 26/09/18, BAFSA website – Appendix 21.

[38] Paper 18-281 – Report by Director of Housing & Regeneration dated 12/09/18, section 9 – Appendix 22.

[39] Risk control: A question of sprinklers; Risk Management Partners 2018 – Appendix 23.

103.10 In July 2018 the Housing, Communities and Local Government Select Committee (HCLGC), comprising of six Labour and five Conservative MPs, held a short inquiry to hear from industry representatives, fire safety experts and building owners and insurers. The inquiry discussed the conclusions and recommendations of the Independent Review carried out by Dame Judith Hackitt, and considered the specific immediate changes needed to improve the safety of residential tower blocks, as well as how improvements could be applied more widely in the construction industry. In its consideration of sprinklers, the Committee paid particular attention to the recommendation made by the Chair of the All-Party Parliamentary Fire Safety and Rescue Group, Sir David Amess, who had expressed his disappointment that Dame Judith did not mirror the views she expressed in a previous Select Committee meeting in her Independent Review, noting that:

> "[she] saw automatic fire sprinkler protection as one of the most important fire safety measures to take (something which the APPG, the National Fire Chiefs Council, the Royal Institute of British Architects, the Fire Brigade Union, the Association of British Insurers, the Fire Protection Association, London Fire Brigade and the Fire Sector Federation also support)."[40]

The Committee also heard from the National Fire Chiefs Council (NFCC) who advised that:

> "sprinklers are the most effective way to ensure that fires are supressed or even extinguished before the fire service can arrive."[41]

The Committee made a clear recommendation in its report that where structurally feasible, sprinklers should be retro-fitted to existing high-rise residential buildings to provide an extra layer of safety for residents. The Committee went further, and recommend that the Government make funding available to fit sprinklers into council and housing association-owned residential buildings above 18 metres and issue guidance to private building owners to allow them to follow suit. Clive Betts MP, chair of the HCLGC, has recently written to Councillor Kim Caddy, the Cabinet Member for Housing at the Council, to express support for the Council's proposal to retrofit sprinklers in all of the Blocks.[42]

[40] Independent review of building regulations and fire safety: next steps, HCLGC 18/07/18, para.66 – Appendix 24.

[41] See: http://www.nationalfirechiefs.org.uk/sprinklers

[42] Letter from Clive Betts MP to Cllr Kim Caddy dated 12/12/18 – Appendix 25.

(ii) The choice of sprinkler system over mist system

104. In July 2017 the Council's Housing and Regeneration Department commissioned a survey report to consider the retrofitting of either sprinkler or mist systems in the Blocks. The report was prepared by Hussein El-Bahrawy RIBA, Head of Design Service, in August 2017.[43]

105. In considering the comparable advantages and disadvantages of sprinkler systems versus mist systems, the report highlighted the following factors:

(1) Sprinkler systems conform to BS 9251 whereas mist type systems are not currently British Standard approved, only the nozzle of certain mist systems;

(2) When activated sprinklers are likely to cause more water damage than mist systems;

(3) Building Control consultants advised that:

(i) sprinklers are a more permanent installation than a mist system but they require greater water supply;

(ii) sprinklers are less susceptible to tampering by occupants;

(iii) mist systems would be easier to fit but are less robust and more susceptible to interference; and

(iv) mist systems potentially have a greater maintenance cost given that they require both water and electrical supply to operate.

(4) Mist systems are "project specific" and require very specific design;

(5) The ability to design and install a British Standard fully compliant system is only available for sprinkler systems but not mist systems;

(6) Mist fire suppression systems are a fairly new addition to the domestic market with the technology constantly evolving;

(7) Mist systems have largely been developed for the maritime industry;

(8) Mist systems do not operate effectively in well ventilated areas such as older flats which make up most of the Council's current housing stock. If a mist system was triggered, any wind entering the flat via an open window could quite easily blow the mist away from the seat of the fire. This is especially relevant in tower blocks;

(9) Mist systems are more suited to new build properties which due to energy saving requirements and current construction techniques are more likely to have mechanical background ventilation allowing windows to remain closed;

[43] Provision of Sprinkler Systems to all High Rise blocks ten storeys in height or greater; Design Service, August 2017 – Appendix 26.

(10) Room layouts are far more critical for mist systems than for sprinkler systems;

(11) Existing water mist standards such as the National Fire Protection Association (NFPA) 750 Standard on Water Mist Fire Protection Systems or International Maritime Organisation (IMO) Standards are not directly applicable to UK land-based applications;

A European water mist technical specification (CEN TS 14972) has been published but has not been adopted in the UK;

Two new Drafts for Development have been issued including DD8458: Fixed fire protection systems – Residential and domestic water mist systems; and

(12) Having been consulted, the LFB expressed a preference for a fully compliant sprinkler system over a mist system.

106. Based on the findings of this report the Council decided that the appropriate choice was to retrofit British Standard compliant sprinkler systems in the Blocks.

6. Council's estimate of costs for installation of sprinkler systems

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).[44]

109. However, the Council considers that the estimated cost per flat set out in the Report, dated August 2017, referred to in paragraph 108 above, is at the higher end of the scale. The Council takes this view because:

109.1 The Council has recently retrofitted a sprinkler system in a hostel used for the provision of temporary accommodation at Nightingale Square in Balham. Although that building was not high rise the sprinkler system had to cover the

[44] See Report referred to in Note 43 above.

communal parts as well as the dwelling units. The actual cost of installing a sprinkler system at Nightingale Square was £41.73 per m^2. Applying this rate to an average sized 2 or 3 bedroom flat the cost would be approx. £3,500;

109.2 Birmingham City Council and Croydon Council are planning to retro-fit sprinklers in their high-rise blocks. Both councils have estimated costs per unit of approx. £3,500, including all infrastructure costs.

109.3 A nationwide analysis by Inside Housing in November 2018[45], estimated a cost per residential unit of £3,219. This estimate was based on data from 11 sprinkler companies, 92 tower blocks and 16 Councils, ALMOs[46] and housing associations. The report did recognise, however, that costs in London were likely to be higher than in other parts of the country; and

109.4 The Council will be able to benefit from economies of scale if it enters into contracts to retro-fit sprinklers in all of its blocks of 10 storeys or more.

110. The sprinkler systems will need annual inspections/maintenance regime. Annual inspections can be carried out alongside gas safety checks. Evidence available for the cost of an annual maintenance check currently displays variation across the sector. The London Assembly Planning Committee report published in March 2018 states that the maintenance costs of AFSS are relatively low and do not generally constitute a significant addition to tenants' or leaseholders' service charges.[47]

111. The London Assembly report quotes the Chief Fire Officers Association's estimate that the annual maintenance costs for domestic fire sprinklers are between £75 and £150 per annum per house. However, the LFB has suggested a much lower annual rate for flats of between £10 and £20 per flat[48].

18th December 2018

Nicholas Grundy QC
Ben Maltz

five paper

[45] "Sprinklers: what do they cost and how well do they work?", Inside Housing 08/11/18 – Appendix 27

[46] 'Arms' Length Management Organisations'.

[47] Never again: Sprinklers as the next step towards safer homes, para.2.8, London Assembly Planning Committee, March 2018 – Appendix 19.

[48] Think Sprinkler: Automatic Water Fire Suppression System Information Toolkit, LFB, August 2016, p.5 – Appendix 28.

Tab 2

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

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(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 Gourlay 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 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.

Tab 3

To: The First Tier Tribunal – Property Chamber (Residential Property)

Case Reference: LON/00BJ/LSC/2018/0286

Applicant: The London Borough of Wandsworth

Respondents: Various Leaseholders

Introduction

Date Sunday 17th Feb, 2019

1. This is a Submission to
    1.1. "Application for Stay of Proceedings" until after the Grenfell report part 2 is published
    1.2.Failing a Stay to request an Application for Extension of Time
2. It has been prepared by Paddy Keane (Battersea High Street RA) pursuant to the Directions of the First-tier Tribunal ("the Tribunal") dated 5th November 2018 as a response to the Council's full statement of case.
3. This Submission explains in detail the basis as to why the Council's Application to install sprinklers is unreasonable.
4. Cllr Malcolm Grimston has produced a statement which is supplementary/complementary to this statement so I will defer where possible to his. Cllr Claire Gilbert has produced a letter with great support with the same requests.
5. This submission has been made personally. I have no legal training so hopefully some leeway can be made in its format, legal comprehension and spelling.

Structure of this Submission

Background

"A decision could only be found to be not reasonable if it was inconsistent with the contractual purpose or was made irrationally. A decision is irrational in the public law sense if it is:

- *Not made in good faith*
- *One that no reasonable person could have come to*
- *Made ignoring obviously relevant factors; or*
- *Made having regard to irrelevant factors"*

6. This Submission is divided into 6 sections. I will argue that the councils' scheme is:

   (A) ***Inconsistent with contractual purpose***

      i. Of the security clause in the lease.

      ii. Being made irrationally due to what the obligations of the council actually are.

      iii. That WBC has changing its statement of case since the FTT case management hearing.

   (B) ***Not made in good faith***

      i. Due to an incorrect projection of what would give residents reassurances while also completely disregarding those same residents' views.

      ii. In ignoring LFB advice of installing sprinklers in 18m (6+ storeys) rather than 30m (10+ storeys) is nefariously trying to prevent more residents being involved in the case and expressing their objections.

      iii. Intentionally avoiding explaining its stance on insurance issues

      iv. Disparaging views of residents making WBC avoid garnering important information from residents as part of its decision-making process.

      v. That WBC has suffered from a term called "unconscious bias" in its decision-making process.

   (C) ***No reasonable person signing the lease could have assumed these obligations***

      i. That no one signing the lease could assume, at the time it was construed, it could mean the impositions of sprinklers

   (D) ***Made ignoring obviously relevant factors***

      i. That the council has failed to cogitate relevant factors of the Grenfell enquiry and all other factors in Cllrs Grimston statement.

      ii. Has failed to take into consideration the Fire Safety record and engineering of our buildings:
         1. Variations of ability to get a mortgage
         2. Concrete buildings and fire spread
         3. Concrete balconies

(E) *Made having regard to irrelevant factors*

i. That it based it decision on a report (Appendix 26) with contains irrelevant factors, is factually inaccurate and also highly bias.

1. Biased comments on the genesis of misting systems
2. Unvalidated assumptions on sprinkler installations & flat designs
3. Water Supply
4. Incorrect Costings
5. Irrelevant and incorrect statements on Misting Systems
6. Incorrect statements on Ventilation
7. Fudged statements on Project specificity
8. Incorrect statements on Suitability
9. LFB AFSS Position Statement is agnostic
10. Maintenance
11. Sprinkler water is dirty & stinks
12. Failures in Procurement
13. AFSS Conclusion

(F) *Conclusion*

(A) Inconsistent with contractual purpose

Please refer to Cllr Grimston's statement in regard to this. I will add.

i) Comprehension of the term "Security"

'Security'. Point 62 of council's statement of case says; "The word '***security***' means '***safety***' or **'freedom from threat or danger'**".

Safety means safety, security means security. The council can't swap out the single specific word it is relying on to enforce this scheme. The term 'Safety' is the overarching term, 'Security' is a sub aspect or sibling to it. Following through the council's arguments, they may as well shut down the London Fire Brigade and get the Police, who have the security remit, to put out fires. Building security is not all encompassing of fire safety. In fact, there are tensions between the two. Residents are not allowed to install iron gates over their front door, which would add extra security, due to it compromising fire safety and the ability for LFB to access the property in an emergency. Security and fire safety work in balance and need to be in harmony to be mutually beneficial. They are discrete topics with a symbiotic relationship. The terms should not be interchanged at will as the council is attempting to do. By failing to appreciate this balance they are being inconsistent with the contractual purpose of the wording in our lease.

The fuller clause in our lease around security say:

"*To do such things as the council may decide are necessary to ensure the efficient maintenance administration* **or** *security of the block* ***including but without prejudice to the generality of the foregoing installing door entry systems employing caretakers' porters and other staff****…"*

Although it says, 'without prejudice' there is some clarity that the topic of security is geared around the security of the building from outside persons entering and not fire safety. It's my contention that 'without prejudice' is in relation to giving the council leeway to install other measures of building security (i.e. communal CCTV).

"Freedom from threat or danger". In this regard, if security is to in compass fire safety, it is only the council's obligation of fire spread and not fires in general. It is highly commendable to wish to save lives. But the council doesn't owe a duty of care to accidents in my flat. If I cut myself on a knife while cooking, they can't ban me from cooking or owing a knife. In terms of the risk of fire, their obligation to save lives is only to prevent fire spreading. Considering they have not demonstrated that our building has had its compartmentalization breached by any examples of high rise fires they mention, while also noting severe historic fires in our block that were contained within one dwelling (in 2009), demonstrating the excellent fire engineering of our building, we can be considered to have satisfactory cover from the threat of fire spread (in terms of WBC's sprinkler scheme having an effect on it - there may well be other actions that WBC could take to improve threat of fire spread)

ii) Obligations of the council in regard to Fire Safety and necessity

The plan fact is that the term 'fire safety' is simply not mentioned in our leases in respect of giving the council rights to install sprinklers. Fire Safety is a discrete topic in and of itself with rules and regulations. It needs specific consideration in the lease for the council to enforce sprinklers - it does not. The reason fire safety isn't mentioned in our lease is because it was assumed as a given that the building had fire safety engineered into its design through 'compartmentalization'. To enforce aspects of compartmentalization the lease mentioned specifics that could cause issues. i.e. **not to store gas canisters in flats**. The fact that this is mentioned in the lease clearly shows that fire safety was thought about when the lease was written and deemed not necessary to make further obligations on to leaseholders.

iii) Changing to WBC statement of case

In WBC's original statement it claimed it has rights of access under the terms of installing/maintaining watercourses and pipework. I note that they no longer refer to this in their full statement of case. It is clear that sprinklers are not watercourses. A sprinkler head is a device that is attached to a water supply, similar to a CCTV camera being dependent on electrical wiring. I assume WBC has realized that it will struggle to win this argument. However, in making their decision, this was one of the clauses they originally relied on and wanted the FTT to clarify. In changing their case to the "Wednesbury rule" since the case management meeting where we (the

leaseholders) highlighted Lord Neuberger's judgment shows yet further proof, that at the time of the decision they had not been satisfactorily aware of this judgement and are now post-rationalizing the original decision, omitting relevant factors that led them to their decision (i.e. that they could rely on the clauses in the leases pertaining to watercourses - which they patently cannot)

(B) Not made in good faith

i) Incorrect projection of what would give residents reassurances

There's another definition of security that the council has not highlighted.
"The state of feeling safe, stable, and free from fear or anxiety."

Point 90. 15 *"It is clear that the installation of water sprinklers would give a level of re-assurance to tenants and leaseholders"*

One of the council's stated aims in introducing this scheme was to make residents feel safe (albeit without actually asking). This is supposition and plainly wrong based on the response to the FTT. What's clear is that residents would have reassurance through consultation and understanding of their buildings fire risk assessment – not a knee-jerk reaction, 14 days after Grenfell, to enforce sprinklers. Though its heavy handed approach and in the specifics of the scheme in installing a device into people's homes that they have no control over (together with the constant, daily, fear they it may flood their homes, due to fault or even due to a small fire that can be dealt with by a fire blanket or extinguishers), WBC is having exactly the opposite effect: they are making people feel less secure in their homes.
I'm aware of people seeking counselling due to the stress and anxiety they are under entirely due to this scheme; others saying they are overwhelmed by it all; pensioners and people unable to work due to health conditions beside themselves with worry that they will lose their homes due being unable to pay – not to mention the other concerns from people who see no need for the scheme.

ii) Not Taking Advice of LFB

As noted by Cllr Grimston, the LFB advice is to install sprinklers in blocks over 18m (or 6+ storeys) not 30 metres (10+ storeys). The council has not explained why they are not following the LFB advice. It must therefore be taken into consideration that the reason why the council isn't trying to enforce sprinklers on 6+ storeys is to avoid increasing the opposition to the scheme by including more residents. This is a process called 'Chunking", They hope to win this case with as small an opposition as possible and then be a much stronger position to move the goalposts and put the imposition of sprinklers onto more residents in lower storey blocks. I consider this to be devious and taken with all the points above not in good faith.

iii) Intentionally avoiding explaining its stance on insurance issues

The installation of sprinklers also affects the liabilities place on residents.

Appendix 26 states:

"When undertaking a sprinkler/mist system installation the council should also consider responsibility of residents if the system is ever triggered in the event of a fire, accidentally or maliciously resulting in water damage to residents' personal effects. Are the council going to bear all costs regardless of the reason the system is activated, or will residents be informed that it is up to them to obtain insurance cover for all water damage resulting from activation"

In or lease Third Schedule, 9 states:
If the flat has a balcony … … not to allow any water to percolate from the balcony or roof garden to any parts of the Block underneath.

Insurance and a sprinkler activation putting us in breach of our own leases are a highly relevant point to residents. It is not part of the elements to be considered in the report (appendix 26). The council has made no clear statement on this in their submission. I consider this one of the fundamental factors the FTT needs to consider to be able to determine the reasonableness of the decision. It is therefore unreasonable of the council not to have made clear their intention in this regard.

Far from helping, this scheme is demonstrably increasing people's fear, anxiety and sense of security in a negative, adverse way.

iv) Disparaging views of residents

Point 25. **"It is only by working collaboratively with residents and the landlords of individual dwellings in the building that the duty holder will be able to effectively manage the building safety risks"**
It takes two to corporate. In the council's first port of call, choosing to take this case to the FTT rather than consult with residents, they have shown how poor they are in working collaboratively. Mr Reilly, in charge of this scheme, refer to residents with views on this topic as 'The Opposition". That's all you need to know about the council's attitude to collaboration or their regard towards residents. This surfaces bad faith in the decision making of the council. I've never considered myself 'The Opposition' only a resident who has been researching AFSS systems for 9 years and with a point of view worthy of the council's consideration and of importance in their decision-making process.

v) Unconscious bias

It is a well known fact that our brains are conditioned with unconscious bias including:

- **Law of small numbers**: We bias towards anecdotal examples rather than statistically significant data. So, we may generalize one incident to an entire population.
- **Confirmation bias**: We may be too quick to seize on limited evidence that confirms our existing perspective. And we may be too quick to dismiss contradictory evidence for the same reason.
- **Recency bias**: We bias towards recent events when we make judgments and decisions.

In making this decision 14 days after Grenfell tragedy it's my contention that the Council was

suffering from Recency bias in making its decision. It has not based its decisions on an evidence-based approach as laid out by Cllr Grimston. It has attributed the singularity of the Grenfell tragedy to the entire population of its high-rise stock.

(C) No reasonable person signing the lease could have assumed these obligations

i)

Point 22 (5) of Lord Neuberger's summary of relevant factors states

> (5) [21] The fifth point concerns the facts known to the parties. When interpreting a contractual provision, **one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasonably available to both parties…**;

This means that at the time the contract was written a reasonable person could assume the clause 'Security' could relate to sprinklers being enforced on them. At the time the contract was construed there was no market sector dealing with residential sprinklers. The council notes that sprinklers laws at the time related to commercial premises and even now, in the present day, the council is concerned there's not a large enough sector or expertise to build and install their scheme.

Appendix 26 - 14.0 Procurement states:

"From our investigations the majority of sprinklers installers operating in this market are fairly small. The larger companies at present focus on commercial/industrial markets"

How then, given there were no or next to no residential sprinkler installers at the time the lease was construed as well as it only being a requirement for a fully approved sprinkler system to be installed in commercial buildings, could a reasonable person consider the lease they signed, and in relation to the term security, might include this scheme?

(D) Made ignoring obviously relevant factors

i) Ignored relevant factors of the Grenfell enquiry

The FTT gave an instruction to explain why this scheme was a global scheme, as opposed to the necessity of block by block work to understand safety risks of individual blocks or block types. Cllr Grimston covers this, I will add.

ii) Fire Safety record and engineering of our buildings

1. Variations of ability to get a mortgage

There are some blocks in the scheme that banks will lend to for a mortgage and others they won't. This is due to the detail analysis that banks have done on the buildings. They have looked at all the safety issues and building materials allowing them to deal with each block type individually. Why is the council incapable of doing this? I consider this unreasonable and ignoring relevant factors of the building types in the scheme

2. Concrete buildings and fire spread

Point 100.
"the assumption that blocks of a concrete construction are always safe and that fires only spread in cladded blocks is not correct. "

There has never been an assumption that ALL concrete constructed blocks are ALWAYS safe. Any building has a threat of fire. We merely say that of the 100 blocks currently in the scheme, they will sit on a spectrum from low risk to higher (to some degree) and that the single attribute of building height isn't enough of a reason to enforce this scheme, particularly when we have buildings that share none of the features that the council uses as examples of fire spread. No cladding, no partial clad panels, no wooden balconies, no internal corridors/communal areas.

https://www.insidehousing.co.uk/news/news/window-panels-burnt-in-belfast-fire-says-expert-53313

It's not rocket science to know concrete doesn't burn. Not only is there not a single example of a fire spreading in a building similar to ours, there **is evidence that fire doesn't spread** in our building from severe historic fires. Therefore the council, with all its examples of high-rise fires as a basis for this decision, is using irrelevant factors in regard to fire safety of our block as there are no features our build shares which has caused fire to spread.
Building height, in and of itself, is not a cause of fire spread (though it may have implications to the outcome if fire does spread).

3. Concrete Balconies

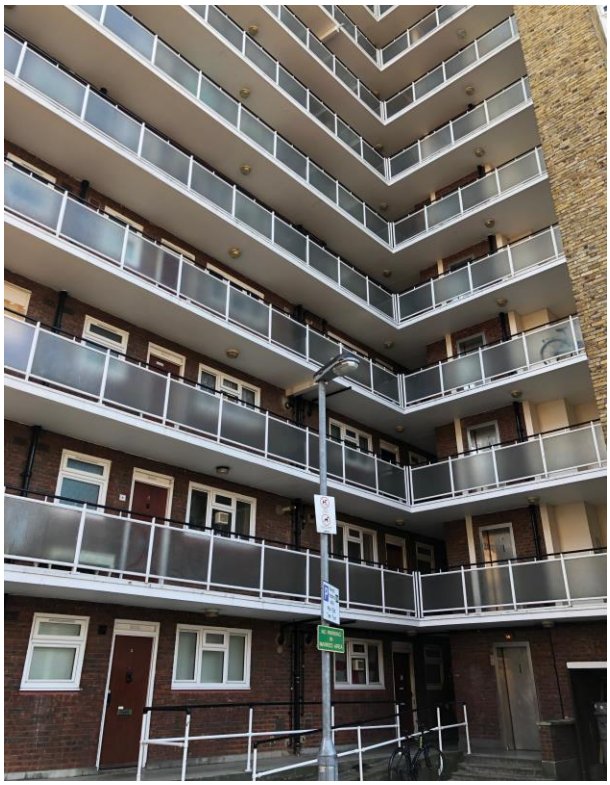
Our building has further protections to prevent fire-spreading that are not being taken into consideration.

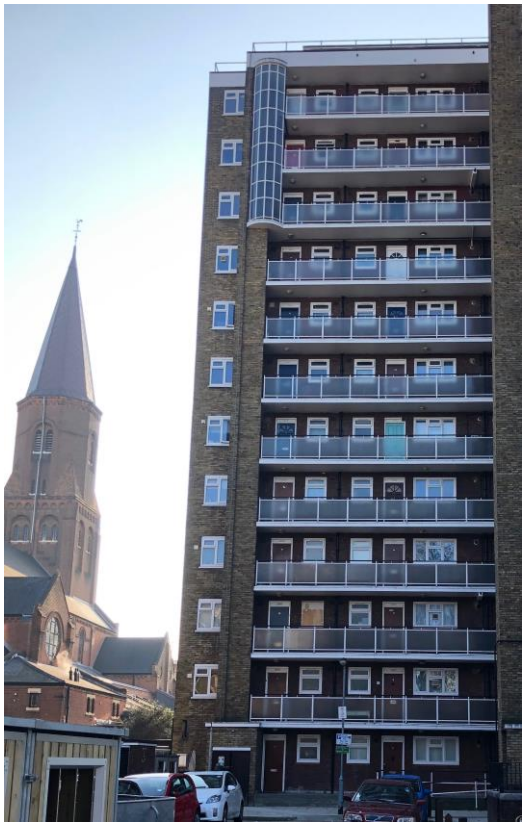
"Without the presence of a balcony, fire projecting from a window tends to travel vertically, unobstructed along the wall. However, the presence of the balcony can deflect a flame outward, away from the wall, thus impending the vertical fire spread and reducing radiation to the floors above"

"In general balconies will slow external fire spread. They reduce the impact of the Coanda effect and effectively create extended vertical and horizontal Spandrel distances."

This design is of major significance in helping prevent vertical fire spread, by pushing the fire away from the building's facade, thereby keeping heat away for the building. In 2009 there was a very severe fire that gutted a flat below me. The fire was contained and did not spread. I don't know what more proof is needed that our building has its compartmentalization intact due to the careful fire engineering of its design? If the council has inadvertently breached this compartmentalization since then through its major works scheme or in allowing other work to take place the onus should be on them to fix it rather than making residents liable and to pay for an extra layer of protection that may not even address some scenarios of fire spread.

Note, our building of 11 stories, has **no internal corridors**, has **balconies on both sides** and 2 stairwells/fire escapes for the top 3 floors. Mitigating many concerns of fatalities due to fire spread and smoke buildup. There are many other buildings of a similar low risk category to ours.





It is a fundamentally different design to some of the other building that are part of the scheme. Some are 18 floors without balconies and with internal corridors & communal areas. There may well be blocks that have a higher risk threshold where an AFSS system may be justfied. But that doesn't justify the decision for our block or many others

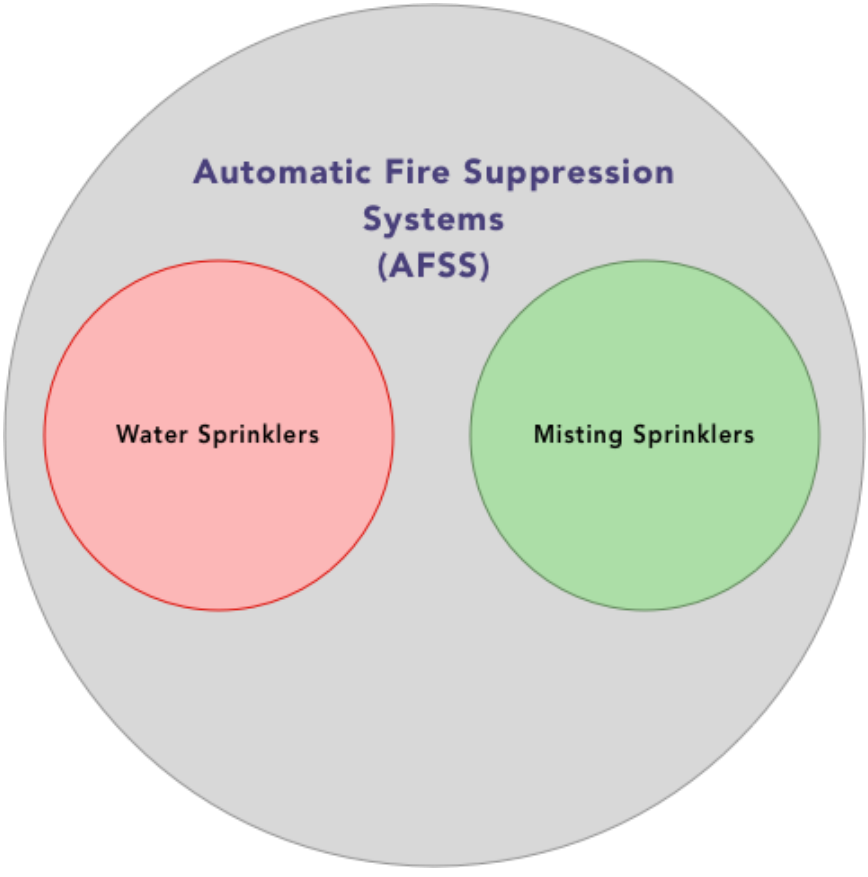
The Governments own uncertainty on the use of sprinklers undermines the councils' position.
https://twitter.com/FitzMP/status/1093827136081879041

(E) Made having regard to irrelevant factors

i) Unreasonable for the council to rule out mist systems

Background

When reading the council's full statement of case it's vital to note that in the majority of references where it mentions 'sprinklers' it is in fact referring "AFSS" systems in general (Automated Fire Suppression Systems). AFSS systems include mist systems. It is important that a clear distinction is drawn between the two systems as they have fundamental differences. Unfortunately, the statement of case is construed in such a way to constantly refer to 'sprinklers' in reference to AFSS systems in general as well as in reference to a specific type of AFSS system which the council has made a decision to install. No doubt this will add confusion when understanding the statement, for example in regard to comments made by LFB in relation to AFSS systems in general as opposed the specific sprinkler scheme of the councils.
The council has put in small print, in a footnote [1] Sprinkler systems are also referred to as Automated Fire Suppression Systems ("AFSS"). But rather than continue to use the correct terminology in the



statement to clarify the differences it discombobulates.

The council has based its decision to dismiss misting systems based on report Appendix 26

I consider it unreasonable to rule out misting systems based on a report without residents' consultation or point of view. While also using this report as a bases for their decision which contains inaccuracies and biases.

1. Biased comments on the genesis of misting systems

The report states that misting systems were born out of the maritime industry, putting this in a negative light. The council seems to think that technology **forged in extreme environments** with some of **the best engineers** is in some way not applicable elsewhere. No-one complains that a lot of the technology in our phones comes from the Space industry; lightness, miniaturization, energy efficacy...
It notes that one of the attributes of a misting system is to prevent flooding a boat with a lot of water. This is construed in the report along with other supposed negative reasoning. Preventing a tower block from flooding multiple properties is clearly a highly desirable thing!

The report makes incorrect assumptions about ventilation, state of windows and the effect of wind on a misting system. (We all have brand new ventilated double glazed windows, minimizing the need to have them open). Does the council think it's not windy at sea? Misting systems have been tested and passed under draft conditions. It's also highly doubtful that windows would be open when the strength of wind needed to affect a misting system is present.

"Given the size of Wandsworth Council's installation program all sprinkler systems should be fully compliant to standardized installations across the borough"

Why? We are dealing with 100 building of vastly different designs. Surely AFSS systems should be specific to the building and the fire engineering of that building. I appreciate it's a nice to have that there's a standardized system but in practice it may not even be possible due to specific features of buildings and flats.

"The sprinkler system specification should be designed and installed in accordance with BS9251:2014…"

Why is this being decided now. Give that the installation may not start till 2022 this spec will be 8 years out of date. Irrespective of that, misting systems have standards equivalent to this standard - https://plumis.co.uk/bs9251.html

Misting systems can be superior to sprinklers as they use 90% less water, a single pump can control up to 6 sprinkler heads without the need of a tank.

2. Unvalidated assumptions on Sprinkler installations & Flat Designs

"Pipework would enter the property at a high level either above or alongside the flat entrance door… … It is inevitable that some decorations will be damaged during installation & these will need to be made good…"

The council hasn't validated this. My flat has floor to ceiling cupboards and shelving that would prevent pipe work coming in the hallway without redesigning the flat. They mention that decoration will be damaged. However, in mine, and many other cases we'd have furniture, shelving

and complete redesigns of flats needed to accommodate the pipework and sprinklers. This hasn't been adequately or reasonably assessed by the council.

"Supply pipework from the tank would be galvanized pipe… … in the worst case run surface mounted externally up the face of the building"

Our building, and may others, we'd likely fall into the worst case. What the council has failed to stipulate is if the pipework would be wet or dry? Pipe work that has the potential to freeze should be dry (pipes filled with high pressure gas). If we have wet pipes it increases the risk of pipes freezing and bursting. These are the kind of details that the council needs to present to the FTT in order for it to make a decision as it can't rule in the abstract.

Types of sprinkler systems Wet/Dry: https://www.bafsa.org.uk/sprinkler-systems/types-of-sprinkler/

"Where pipes run between concrete floors these will need to be core drilled…"

This could do significant damage to the structure of the building unnecessarily. The council has failed to take into consideration the relevant factor that a misting system would not require this work. It's important for the FTT to understand how invasive and disruptive this is. A core drill is not your average drill

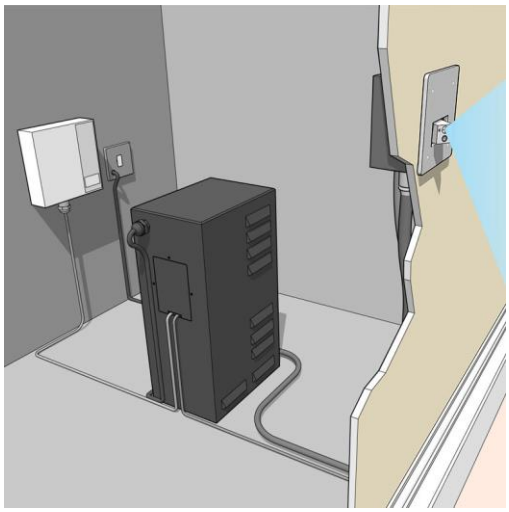
Our building is filled with legacy, deactivated pipe work and service areas that can't be reused due to asbestos concerns. The council plans to install more unupgradable pipe work. A significant advantage to the misting systems is the ease in which they can be upgraded without leaving redundant structures in place. This has not been considered. In fact it's mentioned as a negative that the misting technology is constantly evolving. This a good thing, taking advantage of the technology arc and investing in a system that is improving over time with innovations helps future proof the scheme, compared to a legacy static system, this is highly desirable.

3. Water Supply

The council's scheme means that extra water tanks will need to be purchased, installed and maintained. Due to misting systems using 90% less water, extra tanks are not necessary. Reducing costs and maintain charges further. This is part of the elements to be considered yet the report doesn't mention the significant advantages of a mist system in address this topic.

Bear in mind a misting system only needs a pump slightly bigger than a shoe box to run up to 6

sprinkler heads running off normal water supply without the need for extra tanks. https://plumis.co.uk/smartscan.html



4. Costs

The report states a misting system would be £4,426 vs a sprinkler cost of £4,622 a flat. However, they base this cost without taking into account the £34,000 discount they were offered. I myself have has quotes of £4,200, which would be further reduced at scale. In costings for the misting system they mention a charge of additional water tanks at £25,000. Misting systems don't have to require extra water tanks: it's the council's sprinkler spec that needs them. This erroneous cost has been attributed to the misting system and not the sprinklers. Misting systems would be cheaper, easier and more flexible to install. It is unreasonable of the council not to take cost into significant consideration. Although the report mentions cost, it does not state it as an element to be considered. I consider that to be unreasonable

5. Irrelevant and incorrect statements on Misting Systems

The report states

"Misting systems largely come about as a result of the maritime industry. Ships by their very nature are usually ***divided into many separate compartments****. Given this fact, it allows a mist system to operate far more effectively than in an* ***open domestic*** *or* ***commercial environment****"*

Wandsworth high rise blocks are predominately made up of one- and 2-bedroom flats. These are small dwellings. In fact, the overall schema of a high rise building is also a division into many separate compartments, similar to a ship, making a misting system an ideal candidate.

A) Why mention issues with **open domestic** spaces when the housing stock is small compartmental units.

B) Why mention **commercial environments** at all? It's that's totally irrelevant. The council is relying on irrelevant facts in making its decision.

6. Incorrect statements on Ventilation

The report states
"Mist systems do not operate effectively in well ventilated areas such as older flats … if a mist system has any wind entering the flat via an open window it could quite easily blow the mist away from the seat of the fire…."

In fact, part of the misting tests and spec state
"A situation with having the window open and having a draft is part of the test of BS:8458, this proved that it made no change to the operation of the system."

We, and many others, have recently forked out thousands of pounds for new, double glazing windows with vents built in - limiting the need to open windows.

7. Fudged statements on Project specificity

The council has wishful thinking if it thinks it will not need to design sprinkler schemes specific to blocks and individual flats. It says misting systems need to be 'project specific', while also mentioning that under their sprinkler's proposal that "inevitably some variations will need to occur given the layout of individual flats." In effect acknowledging that both systems will need to be project specific. It's the misting system that has more flexibility in this regard and hence would be the better system.

8. Incorrect statements on Suitability

The report states:

"Misting systems are more suited to new build properties". This is incorrect. They have been specifically designed to cater for retrofitting. It may interest the FTT that Runnymede Council retrofitting water-mist fire sprinklers to high rise flats
https://plumis.co.uk/portfolio30.html

9. LFB AFSS Position Statement is agnostic

The report states:
"The overriding outcome of this meeting was that London Fire Brigade welcomes the installation of either a mist or sprinkler system…"

Given the fact LFB would be happy with either system it is unreasonable of the council to have ruled out a misting system which would be far more preferable to residents (if they had to choose) without taking their views into account.

"From our discussion with London Fire Brigade their preference would be for a fully compliant sprinkler system…"

Where are the minutes of these discussions? Appendix 11 of the "LFB AFSS position Statement" states no such preference and says they would be happy with either.
Unlike the council's statement which will confuse people between AFSS systems in general and sprinklers specifically this appendix clearly uses the correct terminology. I consider it to be in bad faith that the council hasn't likewise distinguished this in their statement, only using small print in a single footnote. There is a risk that it will bias residents and the FTT who may not have so much knowledge of the subject.

Sir Ken Knight CBE QFSM DL Former Chief Fire & Rescue Advisor & commissioner of LFB
The importance of a product being 'fit for purpose' rather than following a regimented standard.

https://www.youtube.com/watch?v=dNsQlWy5Zho

10. Maintenance

The report states
"misting systems would be easier to fit but less robust, more susceptible to interference & potentially have a greater future maintenance cost given they require both water & an electrical supply to operate."

"Less robust, more susceptible to interference"? What does the council consider to be more susceptible to interference - a sprinkler system that a resident does not want or trust, or one that they are ok with? A misting system is perfectly robust for the needs of this scheme "potentially have a greater future maintenance cost". What evidence does build control base this on? Considering a misting system doesn't require extra tanks and pipework costs could be similar or cheaper. Either way I'm sure negligible.

11. Sprinkler water is dirty & stinks

It's a little known fact that sprinkler water isn't some clear, Evian mineral waterfall. The water is often **dirty** and **stinks** from being stagnant for a long-time making cleaning up after an activation harder, destroying residents' possessions. Having your possessions destroyed by either fire or water is hardly a satisfactory set of options (a misting system can plug straight into the mains and does not have this concern). This has not been considered.

http://www.piperfire.com/why-does-fire-sprinklers-water-smell-and-is-the-odor-hazardous/

https://www.youtube.com/watch?v=zSFlDvr8H1g

12. Failures in Procurement

It is somewhat ironic that Wandsworth is actually host to a local misting company that has multiple international awards. Yet the council hasn't even picked up the phone to talk to them. (I have given WBC the company details multiple times). I consider that to be unreasonable and a dereliction of their duty.

13. AFSS Conclusion

If the Council is granted permission to enforce an AFSS system, then it is clear that a misting system is far more preferential when looking at the matrix of issues and risks:

A misting system is:

- Cheaper to purchase
- Easier to fit (and hence further reducing costs)
- Designed with retro-fitting in mind
- Accommodating of individual interior design of flats
- Causes less damage to the structure of the building when installation
- Cause less damage to the internals of the flat and is more discrete
- Causes less damage when activated
- Uses 90% less water
- Solves some insurance issues
- Is as easy or easier to maintain
- Is easier to upgrade
- Is modular so installation could be staggered as well as grant people who don't want them the option not to have it should they be deemed optional

(F) Conclusion

I want the FTT to understand that although I'm adamantly opposed to council's sprinklers scheme and attitude to residents. And although I'm perfectly comfortable living without an AFSS system I could be persuaded to have a misting system installed if I could afford it. I already had plans drawn up to have one installed pre-Grenfell. I haven't gone ahead predominately due to costs (ironically this case is preventing me installing one should I find the necessary finances). Whether or not any of my neighbours choose to have an AFSS system installed is of no concern to me as an AFSS system is predominantly for the safety of myself and my family, not fire spread. I don't consider my security to be in jeopardy should others not have one installed. If only the council could sincerely collaborate with residents in designing a system that meets their needs and campaign with residents to get the government to reduce costs (i.e. reductions in VAT by adding AFSS to this list https://www.gov.uk/guidance/protective-equipment-and-vat-notice-70123) they would have a lot more success. When I speak to residents who are also determined to prevent sprinklers being installed, and I educate them about mist systems, a few of them have said - "Well I wouldn't mind one of those". My own **Red lines** are:

- I will only accept a misting system
- One I can afford (significantly less to the current estimate)
- A system I have control over. i.e. one I can deactivate should it trigger unnecessarily.

Due to all the points outlined I wish to make a motion for a stay in proceedings as it does not meet the "Wednesbury rule" that they rely on. I would have been keen to make a submission to the upper tier or for a stike out. However the costs and times involved are prohibitive, and considering any judgments made by the FTT may be superseded by the Grenfell report it does not feel like a good use of resources for any of us; the Council, the FTT or residents. A Stay in proceedings feels like a good middle ground to give time for the council to regroup, take on board residents views & debate the findings of the Grenfell report.

Failing the FTT agreeing to a "stay", we would like to request an extension of 6 months to prepare a formal submission for a stikeout. This is due in part, amongst a host of other reasons, to the group who have legal representation struggling to broaden it out to more residents due to technicalities with legal fees. Due to the structure of the FTT process it would be inconsiderate for me to put in a request for a strike out, with no legal training, that could prejudice others down the line. An extension would allow us to look at using the free services the FTT has recently directed us to while also seeing if it is possible to retain other legal services. Should the legal group make a motion to strike out without an extension I'd hope this submission could be used in support, alongside theirs.

Tab 4

Tancred, Stuart

From: Nigel Summerley
Sent: 03 March 2019 21:23
To: Tancred, Stuart
Subject: Fw: Case Reference: LON/00BJ/LSC/2018/0286

To: The First Tier Tribunal – Property Chamber (Residential Property)

Case Reference: LON/00BJ/LSC/2018/0286

Applicant: The London Borough of Wandsworth

Respondents: Various Leaseholders

From: Nigel Summerley

3 March 2019

Dear Sir/Madam,

I am writing in relation to the application which has been made by the London Borough of Wandsworth with reference LON/OOBJ/LSC/2018/0286 dated 26th July 2018. I am one of the hundreds of leaseholders affected by this. I am a leaseholder on the Fitzhugh Estate.

I wish to apply for the application to be struck out on the grounds of its being:

- made globally (rather than on a case-by-case basis)
- made without sufficient time and thought
- made without any consultation with those who would be affected
- not made in good faith
- made unreasonably
- made ignoring obviously relevant factors
- made having regard to obviously irrelevant factors

My detailed concerns about the 'Statement of Case' by Wandsworth Council are listed below... enumerated to refer item by item to the council's statement.

Can you please confirm you have received this letter and that it will be taken into account?

Best wishes
Nigel Summerley

Detailed concerns about the 'Statement of Case' by Wandsworth Council

3. 'gives the council the right as *against* the leaseholders' (my italics) – what an awful way to start the case and what a betrayal of the council's attitude – '*against* the leaseholders'.

5.1 talks about the leases imposing 'an obligation or right' for the council to install sprinklers – common sense dictates that the leases do no such thing.

5.3 'enter the relevant flats' – further evidence of insensitivity to leaseholders and their concerns for their homes

5.4 'recovery of associated costs' – further evidence of insensitivity to leaseholders and their concerns for their homes

6.5 mentions how this document will set out 'estimate of costs' – we have got through six sections of introduction and there has been not one mention of *consultation* with leaseholders on *anything*, let alone how much this unwanted and unnecessary scheme would cost.

12. If fire sprinklers are not 'those services which the landlord is entitled to recover the costs of under the terms of the lease' (as we argue and which appears to be common sense), this point makes it clear that we are not obliged to pay for them via the service charge.

18. This quotes a case that stated: ' A landlord who reasonably incurs costs *for the benefit of the lessees* should be able to recover those costs' (my italics). The fire sprinklers plan for the Fitzhugh Estate has not been arrived at 'reasonably' but in a knee-jerk, broad-brush, political manner; and it is overwhelmingly *not* considered by the lessees to be 'for the benefit of the lessees'. On the contrary, it flies in the face of their wishes and threatens their homes with disruption; ruination of interior decor; reductions of interior space; diminished fire safety due to drilling into the structure of the building; and a potential blight on their properties until the threat of sprinkler installation is lifted. Does this sound anything like being 'for the benefit of the lessees'?

22 (5) [21] 'one can only take into account facts or circumstances which existed at the time that the contract was made, and which were known or reasoanbly available to both parties...' This seems to say it all... the leases were never envisioned as covering this kind of scenario... and these words should be enough to bring an end to the matter.

22 (5) [22] is presumably quoted as an attempt to get round the import of the previous point... 'in some cases, an event subsequently occurs which was plainly not intended or contemplated by the parties, judging from the language of their contract. In such a case, *if it is clear what the parties would have intended*, the court will give effect to that intention...' but this backfires on Wandsworth, since it has become exceedingly clear that the leaseholders would never have intended this contract to be used as a means to threaten their homes with disruption; ruination of interior decor; reductions of interior space; diminished fire safety due to drilling into the structure of the building; and a potential blight on their properties until the threat of sprinkler installation is lifted. And the Wandsworth Council that was a party to the contract never intended this either.

24 The case quoted refers to the need for 'reasonable discretion' on the part of the council – there is nothing reasonable about what the council has proposed or the way that it has gone about attempting to impose its will. This case also (reading through the lack of proper punctuation here) appears to say that this reasonable discretion (which hasn't been exercised by Wandsworth) could justify charging for maintenance (not applicable), safety (not applicable since the installation of sprinklers would actually decrease rather than increase fire safety – see above), amenity (not applicable) and administration (not applicable).

25 3.46 This mentions at length the expectation that residents will cooperate in allowing access – but for maintenance, testing and inspecion – there is no mention of access for building work and ruining internal decor.

3.47 says more or less the same thing – access for maintenance, testing, inspection. It adds that 'there should be an assumption that improvements *where necessary* are permitted by any lease in relation to building safety measures' (my italics). In the case of Fitzhugh, fire sprinklers are not necessary, the majority of residents and leaseholders agree that they are not necessary; and Wandsworth has fallen far short of any proof that they are necessary.

32 To do such things as the council may decide are *necessary* to ensure the efficient *maintenance* and *administration* and *security* of the block (my italics). As pointed out above, in the case of Fitzhugh, fire sprinklers are not necessary, the majority of residents and leaseholders agree that they are not necessary; and Wandsworth has fallen far short of any proof that they are necessary. Sprinklers are nothing to do with 'maintenance' or 'administration'; and whether they would be covered by the term 'security' is highly debatable – in fact, their imposition (with attendant alteration to the structure of the buildings) is likely to be a security risk during installation and quite possible the cause of an increased risk of fire spreading after installation and

damgeto the building's structure – not to mention the potential damage caused by sprinklers being activated by mistake or unnnecessarily.

33. Once more we have the council having a right '*against*' leaseholders – what a terrible use of language in relation to this issue in which the local authority claims to be acting in *our* best interests!

34. There is a reference here to 'enhancing the quality of life within the block, due regards being given to the wishes or aspirations of the majority of residents in the block'... This seems particularly pointed, since the majority of residents in every block on Fitzhugh do not wish or aspire to have sprinklers forcibly fitted in their homes – because, for reasons already stated, they will not enhance the quality of life (and, in fact, will do the opposite).

40. Is fitting sprinklers necessary for 'efficient maintenance of the block'? No.

41. Is fitting sprinklers necessary for 'efficient maintenance and administration of the block'? No.

42. Is fitting sprinklers necessary for 'efficient maintenance and administration and security of the block'? No. The blocks are already secure in relation to fire; the damage to the blocks caused by the insertion of a sprinkler system (to judge by past experience with works such as the fitting of new windows, done in a shoddy way) is likely to impact negatively on fire security and make it possible for fire to spread (whereas at present, fire can be contained).

44. 'provided that the council reasonably considers the works are necessary, its decision that the works are necessary cannot be challenged'... Of course, it can be challenged. We are challenging it. Does the case quoted here have any relevance to the attempted enforced imposition of fire sprinklers on the Fitzhugh Estate? Probably not. The implication of this remarkably crass reference is that the council can do what the hell it wants and no questions asked. Where would be the justice in that?

46. Now we have the acceptance that a decision is 'not reasonable' if it is 'inconsistent with the contractual purpose or was made irrationally'. The majority of Fitzhugh residents argue that the sprinklers decision most definitely was 'inconsistent with the contractual purpose' and 'was made irrationally', for reasons already spelt out.

47. A decision is irrational if is one 'no reasonable person could have come to'; it is 'ignoring obviously relevant factors'; or 'made having regard to irrelevant factors'. The second and third of those definitely apply to the sprinklers and Fitzhugh Estate; and, arguably, the first does too.

49. The council's position can only be challenged if its decision was 'irrational' – which it is on two out of three grounds (see above) and probably three out of three; or if it is 'inconsistent with the contractual purpose' - which it certainly is (see arguments above).

51. The council relies for its right to impose fire sprinklers on the point that it is 'to ensure the efficient maintenance of the block' – fire sprinklers on Fitzhugh would have nothing to do with maintenance or with efficiency. The buildings are already fire safe, and this fire safety is easy to maintain. Apart from sprinklers being completely unnecessary and the fact that their installation could actually have an adverse effect on fire safety (see above).

52. Reasonable people know what the word 'maintenance' means, and more particularly, what it means in relation to the leases and to the current situation. This point 52 is a blatant bit of word-bending and sophistry and should be dismissed as such.

54. This just compounds the desperate attempts of point 52. What has road maintenance go to do with fire sprinklers on Fitzhugh. The only parallel might be if a council were proposing to install ruts and potholes in a perfectly serviceable road – that is what Wandsworth is proposing to do.

59. This is more of the same – weaselly words trying to justify the unjustifiable. The falseness of this argument has already been addressed.

63. Again, patently wrong. Imposition of sprinklers (with attendant disruption and damage to our homes) is likely to increase fire risk; the current design and maintenance of the flats has continued to minimise fire risk and fire damage for decades, and will continue to do so.

64. Again, we have a reference to 'due regard being given to the wishes and aspirations of the majority of residents in the block'. The council – peculiarly – highlights this and shoots itself in the foot, since this is precisely the opposite of what the council has done and is doing.

66. As also in 64, above, there is reference to the council only having a duty to consult on works that 'enhance the quality of life' – what about works that have an adverse effect on the quality of life?

68. This seems to hammer home the point that the council argues that it has no need to take into account the wishes of the majority of the residents.

69. More of the same. The council seems to have gone to great – and repetitive – length to argue (without apparently seeing the terrible irony) that it is perfectly ok to ride roughshod over the fears, anxieties, concerns and wishes of leaseholders. This is disgraceful – and it's even more disgraceful that the council is attempting to justify its uncaring behaviour.

71. Yet more... the council seems to be saying it would take our views into account a play area or a parking space – things that are on a minor scale and likely to be uncontroversial – and yet not on something major which affects all our properties, the state of repair of our properties, the reduction of space in our properties, the increase of risk of damage to our properties (all against the wishes of the overwhelming majority) it is happy to argue that there is no need to listen to us.

75. Argues that the case has been clearly shown that the council has the right to enter our flats to carry out works that it has a right or obligation to carry out. It has not been shown at all; and the council has no right or obligation to impose unwanted, disruptive and potentially damaging and dangerous sprinklers upon us.

80. The council claims it has the right to charge us (but not consult us) in relation to work that it has 'the right to do'. It does not have the right to do this work – let alone charge us for it.

81. At this late stage in the document, the council suddenly acknowledges that 'consultation will be required'. So why argue earlier on that it was not required? As with much of the sprinklers issue, one has to wonder whether the council really knows what it is doing.

83 and 84. The council's decision was made just a few days after the Grenfell Tower fire. Information given then about the reasons for the number of fatalities was rushed and incomplete. There was/is no mention here of the fact that some people may have died in their flats because they may have followed (wrong) advice. One could be cynical and suggest that it's no wonder the Fire Brigade might have preferred to talk about sprinklers. The fatally flawed construction of Grenfell, incidentally, had nothing in common with the Fitzhugh blocks.

86.'It is clear that installation of sprinklers would give a measure of reassurance to 6,400 tenants and leaseholders in 100 blocks.' Really? This appears to be news most of those 6,400 people – who would actually be reassured if this madcap, wasteful and potentially dangerous scheme was dropped. What on earth was this quoted report from 2017 based on? Certainly not consultation with the 6,400 residents that the council gave the appearance that it was so concerned about – and in fact has happily argued that it had no need to consult them.

89. The same applies to this mention of giving 'additional reassurance' and enhancing 'safety for all of the residents' – no research, no careful reflection, and of course no consultation.

90. Adds yet more to this erroneous idea that sprinklers would be welcomed by residents as giving 'reassurance'. They don't give reassurance. They worry us considerably; they threaten our homes; and we don't want them.

93. Why is ten storeys or more the only criterion? What about the construction of the blocks? What about ten-storey blocks that were built in the 1950s to be frieproof and to contain fires and to be easy for the fire brigade to attend and control. What about lower-rise social housing or care homes that weren't built to the same old-fashioned standards – and where residents may actually be in danger? Shouldn't they be a priority?

100. This selective and, possibly not all that relevant, 'evidence' needs careful assessment. What do a '12-storey block in Manchester' and 'retro-fitted spandrel panels have to do with the Fitzhugh Estate? The only possible common factor here is the 'retro-fitted plastic coated windows' – which Wandsworth did enforce on the Fitzhugh blocks (and now appears to be arguing that they are a potential fire hazard). Does the council really know what it is doing?

103.1 These are vague statistics that can be employed however one wants. How many fires have there been on the Fitzhugh Estate in the past 50 years? How many fatalities have there been on the Fitzhugh Estate as a result of fires? Residents know the answers to these questions.

103.4 If it is equally desirable to install sprinklers in all dwellings, as stated here, why is it reasonable to install them only in larger buildings? And let the residents in smaller buildings burn? Those are the logical questions that spring from the council's argument. Surely rather than size or height, the most important factor is what is the real risk?

103.5 The LFB and Grenfell are mentioned here again as part of the council's argument. There is no mention of the LFB having mishandled the Grenfell fire, or having given residents the wrong advice, or that people died in their homes as a result of wrong advice.

103.7 Reports of water damage are 'often exaggerated'. Really! There are people on Fitzhugh who have beautifully furnished homes, they have brought in precious musical instruments (even a grand piano), one has a priceless collection of specialist books. They cannot afford to have ANY risk of water damage from sprinklers going off in their flat or in the flats above them.

103.9 How much will this alleged saving on insurance be in relation to the cost to residents of installation and maintenance of sprinklers? How many decades would it be before we got our money back from this futile investment?

103.10 A 'short inquiry' (why short?) heard from 'industry representatives, fire safety experts, building owners and insurers' – why not residents? Why not the people whose lives this would affect? The council took a decision 'for residents' but didn't think about consulting them on it. And when did Dame Hackitt, with her apparently differing views on sprinklers, visit the Fitzhugh Estate?

107. The 'estimate' for the cost to each leaseholder of enforced imposition of sprinklers is £3,500 to £5,000. It doesn't take an economic genius to work out that the cost is likely to be significantly higher. Even if this 'estimate' were correct, there are many people, particularly those who are retired and elderly, who cannot afford something which is likely to be well in excess of £5,000. Spreading the cost over a period of time, as suggested, makes very little difference. And for the majority of residents, even if the sprinklers were funded by Wandsworth, as they should be, their imposition is not wanted.

108. The council's 'estimate' is based on a figure of £4,622 at 2017 prices. It may be worth pointing out that we are now in 2019 – and counting.

109. We get yet another not particularly relevant quotation – this time based on a building that was 'not high rise'! And in all the discussion of cost, there is no mention of the cost of disruption and lost amenity by those who would have their estate and their lives and their homes disrupted and messed around with for month after month, while this unjustified scheme was carried out.

110. The maintenance cost of sprinklers is said to be 'very low' – which is good news for someone being forced to cough up £5,000-plus for something that they didn't want.

111. £10 to £20 per flat is mentioned as a figure which seems to be more or less plucked out of the air. But that kind of figure multiplied by several thousand (leaseholders) could be used for something much more worthwhile that was of real benefit to Wandsworth's tenants and leaseholders.

Tab 5

To: The First Tier Tribunal – Property Chamber (Residential Property)

Case Reference: LON/00BJ/LSC/2018/0286

Applicant: The London Borough of Wandsworth

Respondent: Andrew Hirons – Long Leaseholder

Date: Monday 11th March, 2019

A. Introduction

This is an application requesting that:

1.1. The First Tier Tribunal strike out the application to retro-fit sprinkler systems to various high rise properties including Edgecome House, Southfields, SW19 6LR;

1.2. In the alternative, should the application not be struck out, then the Council's application should be transferred to the Upper Tribunal;

2. This application is made by Andrew Hirons ("AH") as respondent, pursuant to Direction 6 of the First-tier Tribunal ("the Tribunal") Direction Order dated 5 November 2019 (as amended by the Tribunal's email dated 28 February 2019) as a response to the Council's full statement of case made on 21 December 2018.

3. He (AH) is a long leaseholder of Flat No 16 Edgecombe House for a term of 125 years by way of assignment of a long lease [hereinafter referred to as "The Lease"] of a flat at Edgecombe House dated 4th October 1989 made originally between (1) The Mayor and Burgesses of the London Borough of Wandsworth as Landlord and (2) Catherine Joan Findel-Hawkins and Therese Maris Sidall as the Lessee

4. This application will explain in brief why the Council's Application to install sprinklers is poorly made out, but even if that were not the case, it is then wholly unreasonable to seek to recover any part of the cost of installation from the tenants as this is not something which was ever contemplated between the contracting parties at the date of grant of the long lease and therefore in making this application the council is acting ultra vires and their proposals constitute a potential breach of covenant.

5. This submission has been made personally. Whilst AH has some knowledge of the legal fundamentals and case law referred to below he has no formal legal training as such but trusts this will not detract from the force of the arguments presented.

B. Respondent's Argument

1. Lease provisions do not permit the installation of Sprinkers

1.1 The Council's case is poorly made out relying primarily on a very disingenuous and wide interpretation of the word "security" at paragraph 5 of the 4th schedule of The Lease which sets out the Council's obligations in respect of Edgecombe House. "Security" being interpreted by the Council to permit the installation of Sprinklers.

1.2 The only reasonable interpretation of the word "security" in the context of this clause must relate to matters self-evidently relating to "security" in the common usage of that word as was the original intent, namely to allow the council to take such measures as may be deemed necessary to safeguard Edgecombe House against criminal or other anti-social activity or safe-guarding of records and documents. This wording was never meant to permit the Council to install a completely new fire sprinkler system, where none existed at the date of grant of the lease

1.3 This interpretation is supported by the inclusion in the same clause of the words "installing entryphone systems employing caretakers porters and other staff etc."

1.4 A fuller submission about this argument has already been put before the FTT by Paddy Keane (Battersea High St RA) dated 17th February 2019 and I fully endorse and agree with what he has to say on the meaning of "security" which I believe the council is using out of context and contrary to what the original long leaseholder would have considered was intended to be included as the Council's obligations under paragraph 5 of the 4th Schedule at the date of grant

1.5 It is perhaps even more relevant to note that in the entire Hackitt Report ("Building a Safer Future – Independent Review of Building Regulations and Fire Safety: Final Report" dated May 2018) the word "security" appears in approximately a dozen occasions and in every case in accordance with the meaning referred to in paragraph 1.2 above and NOT in the way the word is construed to include matters of actual Fire Safety, Building Regulations and / or Fire Precautions

2. Landlord's Express covenant to give the Lessee Quiet Enjoyment

2.1 Simply, it is very difficult to foresee how the council can possibly install sprinklers involving core drilling through reinforced concrete slab floors and ceiling, together with all the additional attendant works which may be involved within the demise of Flat 16 or adjacent common parts, without breaching this express covenant (clause 4 (a))

3. Adverse impact of Council's proposals on the value of the long leasehold interest

3.1 At the date of grant of the long lease in 1989 there were sprinkler systems available on the market which the Council could have required The Builder to install as part of the landlord's plant and machinery in Edgecombe House to be thenceforth maintained at the expense of the lessees via the service charge

3.2 The Council's design criteria for the Block and Flats at Edgecombe did not provide for any sprinkler installation because the property was built in compliance with the fire safety standards and building regulations applicable in 1989

3.3 The market value (£83,500) of the flat at the purchase date was assessed and acquired by the original leaseholder on the basis that the Flat and Block were built to correct fire safety standards and those standard remain applicable today. There is no statutory requirement or direct obligation in the lease requiring for the Council to install sprinkler systems retrospectively

3.4 The cost of installing a new sprinkler system represents a capital cost which will diminish the capital value of the long leaseholders' interests, if that cost is passed directly on to them by the council as intended. Potential future liability [of the long leaseholders] for the installation of said system and subsequent maintenance costs year on year could not have been reasonably anticipated in 1989 otherwise arguably the purchase price would have been lower.

3.5 Arguably therefore the Council should pay compensation to the long leaseholders equivalent to any diminution in value of their interests attributable to the Council's proposals if the cost is ultimately passed onto the long leaseholders

4. The Proposed Installation of a Sprinkler system constitutes a Landlord's Improvement or alternatively are works now deemed necessary by the Landlord to remedy an inherent latent defect (not proven) in Fire Protection ("Security" sic) at Edgecombe House

4.1 So far as AH is aware there have been no material alterations to the structure of the property such as were (very inadequately) undertaken at Grenfell Tower. Furthermore AH has sought reassurance from the Council that the existing fire precautions e.g. fire rating/protection of internal doors, fire escape routes and fire-stopping of internal holes and ducts through floor slabs have not been compromised by any landlord's works post 1989

4.2 Whilst no such reassurance has been forthcoming yet, AH assumes the Landlord has complied with all of its existing obligations under the lease in this regard, including taking enforcement action where appropriate against any tenant who may have materially interfered with existing fire protection measures in the building e.g. removing the original one hour fire protected main flat entry doors and replacing with doors of a lesser inadequate standard

4.3 With this in mind, it is understood the Landlord is not seeking to install a new sprinkler system on the grounds that the existing (1989) fire precautions and means of escape measures in place at Edgecombe House are inadequate (inherently defective).

4.4 The Hackitt Report confirms existing buildings are not currently required to meet current regulations on building safety but makes recommendations as to improving standards in this regard in situations where a "material alteration" has been carried out. But as mentioned above no material alterations have been carried out at Edgecombe House so therefore the installation of a sprinkler system is not justified at the present time, even if it was permitted under the lease (which it is not).

4.5 If the works are therefore not required under any statutory or regulatory basis, but serve to improve the property by bringing the fire protection for an older building into line with that applicable to new hi-rise buildings, why should the tenants meet that cost if the existing 1989 fire safety measures are **adequate** (as AH contends)?

4.6 In the alternative, if the Landlord seeks to proceed with these works to remedy perceived deficiencies in fire protection, then if the existence of this inherent defect is not causing damage to the property at the time, the burden for making good the defect cannot be passed onto the tenants either directly or indirectly via the service charge (*Post Office v Aquarius Properties Ltd [1987] 1 EGLR 40, CA*)

4.7 The lack of any such system in the Block currently does not have any detrimental impact on the existing state of repair, ergo if the Council wishes to install a sprinkler system the cost of the works should be met by the Council not the tenants.

Conclusion

The Council relies on incorrect interpretation of lease wording to undertake the sprinkler installation; it is a specious to suggest the works improve "security" of the building or its inhabitants.

If the works are permitted, then in the alternative AH submits they are either works of improvement, for which compensation should be payable if the costs are passed onto the tenants, or constitute works to remedy an inherent latent defect where the burden of cost should not fall on the tenants for the reasons given above.

AH therefore respectfully requests the Tribunal strike out this application or, in the alternative, transfer it to the Upper Tribunal

Tab 6

Tancred, Stuart

From: jamesburgess
Sent: 20 March 2019 12:46
To: Tancred, Stuart
Subject: LON/00BJ/LSC/2018/0286-Regarding Disclosure Directions-re WBC letter 6/3/19

Dear Mr Tancred,

I have been provided with your email address in order to respond to the letter dated March 6, Proposal to fit sprinkler systems to high-rise residential blocks. I am the leaseholder of 74 Dresden House, Dagnall Street. I would like to file an application to strike out the application as I do not think it is necessary to install sprinklers in a brick built block. My understanding is that the council is planning to install sprinklers in every room of the flats and not just in the communal areas. As well as being very unnecessary it will be also be very unsightly and will devalue the property. We already have fire doors in place and a fire escape which are adequate fire safety measures.

Yours sincerely,

James Burgess

Tab 7

Tancred, Stuart

From:
Sent: 21 March 2019 13:45
To: Tancred, Stuart
Cc: 'Alton leaseholders'
Subject: Case Ref LON/00BJ/LSC/2018/0286

Case Ref LON/00BJ/LSC/2018/0286 Application to Strike Out the Council's application and/ or to apply to Transfer the case to the Upper Tribunal.

Dear Mr Tancred,

I am applying to the tribunal with other Alton Leaseholder association (ALA) to strike out the Council's case, it seems to have been presented on a "global and media basis". This is with reference to the tragic Grenfell fire. And in relation to the non-specific method of water sprinkler system projection, the Tribunal should ask the council to present them with a more detailed specification. This would allow whether it is legitimate to seek contributing cost from Leaseholders for such a system in relation to their block/ building specification.

Most of the tower blocks in Wandsworth Borough Council bears no similarity to the Grenfell house building specification and all other risks factors as seen on the media. In fact, I was grateful that our building has easy access for escape route.

Our block (Egbury house) or building has two stairways, two lifts, no cladding materials covering the bricks. In 1998/99, a flat on the 6th floor did catch serious fire. The fire was compartmented and by the quick response of our local fire services.

The council replaced all their tenants fire doors about four to five years ago (before the Grenfell fire), leaseholder was not considered in that project nor did the council enough then or useful to install sprinklers in the landing or stairways at that period. The council and government should invest were it really matters, i.e. purchase a twenty-first century equipment's for our fire services.

Wandsworth council officials responsible for this action, should stop posturing and wasting taxpayers money for lawyers and forcing money out of leaseholders as an easy target.

Yours sincerely

Egbury House

Tab 8

From: Mark Cooper
Sent: 08 October 2019 15:28
To: 'Alton leaseholders'
Cc: 'Tancred, Stuart'
Subject: RE: LON/00BJ/LSC/2018/0286

Categories: Saved in Visualfiles

Dear Ms Carazo

Thank you for your email and my apologies for the delay in my reply.

The submitted email was sent to the Tribunal and not direct to the Council and the copy that we did receive with the Tribunal's recent Directions had the sender blanked out. I think that from both the Tribunal and the Council there was some hesitancy that this was from the ALA, even if it was given such a heading. You most recent comments are duly noted and have copied Mr Tancred from the Tribunal for his information also.

Kind regards

Mark J. Cooper
Assistant Head of Law
Communities & Environment Team
Housing · Debt · Litigation · Enforcement · Planning & Highways · Licensing

South London Legal Partnership
Gifford House, 67c St Helier Avenue, Morden, SM4 6HY
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SLLP South London Legal Partnership
SLLP is a legal service provided by the London Boroughs of MERTON KINGSTON RICHMOND SUTTON WANDSWORTH

LGC Awards 2017 WINNER

From: Alton leaseholders <altonleaseholders@yahoo.com>
Sent: 06 October 2019 21:37
To: Mark Cooper <Mark.Cooper@merton.gov.uk>
Subject: Re: LON/00BJ/LSC/2018/0286

Dear Mr Cooper

After further investigation, The ALA would like to clarify that the response to the Council is not from the ALA.

Thanks

Nieves

On Friday, October 4, 2019, 7:55 am, Alton leaseholders <altonleaseholders@yahoo.com> wrote:

> Dear Mr Cooper,
>
> with regards to the Alton Leaseholders Association (ALA) mention in paragrpahs 68 and 69 of the Council's response could a copy of this email please be provided to the ALA. At this stage, it is not familiar to the ALA and would like to certain this was sent on behalf of the ALA.
>
> Thank you in advance.
>
> Regards,
>
> Nieves Carazo
> Alton Leaseholders Association

Tab 9

First Tier Tribunal – Property Chamber (Residential Property)

: – the Applicant's representative

Case Reference: **LON/00BJ/LSC/2018/0286**
Applicant: **The London Borough of Wandsworth**
Respondents: **Various Leaseholders**

From: Eleonora Van den Haute

Application for strike-out subject to Tribunal's decision on Interim Applications

21 March 2019

Dear Sir/Madam,

I am writing on my own behalf as an affected leaseholder in relation to the Application ("Application") which has been made by The London Borough of Wandsworth (the "Council") with reference LON/OOBJ/LSC/2018/0286 dated 26 July 2018. I have registered as a Respondent Leaseholder through submitting the Reply Form for Leaseholder to the Tribunal on 7 September 2018, yet I have never received any communication back directly from the Tribunal.

I am a Leasehold resident of the above address at Atkinson House (one of the affected properties; hereafter also sometimes referred to as "my Block"). This submission has been made personally. I have no legal training so hopefully some leeway can be made in its format, legal comprehension and spelling.

First of all I need to say that I am **very confused by the deadlines set in this Tribunal** because when I look today on the Wandsworth Council website that is supposed to have all communications coming from the Tribunal (http://www.wandsworth.gov.uk/info/200570/safety_in_your_council_home/2294/fire_safety/10) it states that the Tribunal was going to make a decision by 18 March 2019 on the Interim Applications[1] for a stay or extension to the deadline, and here we are 21 March and I have not been informed what the outcome is of the Tribunal's decision on the Interim Applications so I do not even know whether I need to respond by 22 March (i.e. tomorrow) or if the deadline is further in the future.

As a result, **this letter is to apply for a strike-out of the Council's Application subject to the Tribunal's decision on Interim Applications.** I.e. I do not want to prejudice my position if the Tribunal has decided for a stay or an extension of the strike-out application's deadline. This is because I need more time for a detailed application for all the reasons set out in the Interim Applications made by Councillor Claire Gilbert (dated 25/02/19)[2], Councillor Angela Ireland and Councillor Peter Carpenter (dated 26/2/19)[3] and Paddy Keane (Battersea High Street RA, dated 17/02/19)[4]. Therefore, if it transpires that the Tribunal has or will grant a stay or an extension to the strike-out application deadline, then I should have the opportunity to revise, add or redact part of this letter as to not prejudice my application for a strike-out.

[1] As mentioned in http://www.wandsworth.gov.uk/downloads/file/14011/email_from_the_tribunal_28_february_2019
[2] As published on http://www.wandsworth.gov.uk/downloads/file/14017/cllr_gilbert
[3] As published on http://www.wandsworth.gov.uk/downloads/file/14018/cllrs_carpenter_and_ireland
[4] As published on http://www.wandsworth.gov.uk/downloads/file/14019/battersea_high_street

My reasons to apply for a strike-out (subject to the Tribunal's decision on Interim Applications) are the same as those set out by Cllr Malcolm Grimston's statement submitted to the Tribunal. with the addition of the following reasons:

1. In particular for my Block (Atkinson House), the Council's Fire Risk assessment for Atkinson House performed in 2016[5] and effective until 2020. does not state that sprinklers are necessary, it does not mention sprinklers at all. This means to me that sprinklers are not even a consideration as to whether or not they are necessary to address fire safety for Atkinson House and therefore retro fitting them is not necessary for Atkinson House based on that Fire Risk Assessment.
   Atkinson House does not have the cladding that Grenfell Tower had, rather Atkinson House has brick cladding. Atkinson House is a purpose-built block of 10 storeys, containing 77 flats in total. There are three separate entrances within the block, each leading to a number of flats: 1-22; 23-55; 56-77. There are either two flats per floor (1-22, 56-77) or three (23-55). All flats have access to a concrete balcony. Each of the flats contains an additional means of escape. There is a door within one of the bedrooms that leads to an enclosed staircase (there are 3 such stair cases in the block), which in turn leads to a final exit door to the rear of the property (again there are 3 such exit doors at the rear of the block). The overall risk rating given to Atkinson House in the Fire Risk Assessment is:
   - "RISK OF FIRE – LOW No major additional controls required. However, there might be a need for some improvements.
   - LIKELIHOOD OF FIRE – POSSIBLE Normal fire hazards for this type of occupancy, with fire hazards generally subject to appropriate controls (other than minor shortcomings).
   - CONSEQUENCE OF FIRE – SLIGHT Outbreaks of fire unlikely to result in serious injury or death of any occupant (other than an occupant sleeping in a room in which a fire occurs). Typically high level of compartmentation."

2. The Council argues that retro-fitting sprinklers falls under efficient maintenance, administration and security of my Block[6]. I disagree completely on that:
   a. *Maintenance* – Retrofitting something (i) which was never present in my Block or part of the original design of the building, or (b) which is not required to be fitted based on law or regulation, and in this case fire risk assessment, cannot be considered maintenance. In addition, retrofitting sprinklers will increase maintenance for the building and increase maintenance cost. Increased maintenance means less efficient maintenance which is contrary to what the lease term says.
   b. *Administration* – I can't see how retrofitting sprinklers can be considered administration. Retrofitting sprinklers will have an impact on costs of administration, i.e. it will increase the administration cost of my block and estate because for instance (i) admin cost of retro-fitting the sprinklers and related system, (ii) admin cost and actual cost of making good the damage done to decorations in the flats, (iii) admin cost of calculating additional maintenance cost for the ducts, pipes, etc

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[5] See attachment "Atkinson House (1-77 Cons) (50501000).pdf" in my email which contains this letter.

[6] My lease document from the Council for flat 75 Atkinson House states on the Fourth schedule, paragraph 5 (page 29): "To do such things as the Council may decide are necessary to ensure the efficient maintenance administration or security of the Block including but without prejudice to the generality of the foregoing installing door entry 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 thereof."

for the retrofitted sprinkler system, and (iv) costs and admin cost of dealing with sprinklers going off when there is no fire. Increased administration means less efficient administration which is contrary to what the lease term says. Regarding (ii), in my case, I had custom built-in cupboards installed in my flat to ensure efficient storage space which cost over £2,000 – and if the sprinkler pipes will be running through the fitted cupboards this will mean that the Council will need to make good those built-in cupboards damaged by retrofitting a sprinkler system and that will cost a lot and I should not have to pay for that as the Council is the one destroying the interior of my flat with unnecessary sprinklers.

c. *Security* – this term in the lease is not intended to include fire safety, security is not the same as fire safety. Retrofitting sprinklers will actually make my Block less secure because:
    i. the concrete structure of the Block will be negatively impacted by drilling through the concrete structure to insert the pipes and ducts etc for the sprinkler system because the Block was never designed with retrofitting sprinklers in mind. As a result, the concrete structure of the Block will become less stable and hence less secure by retrofitting sprinklers.
    ii. The spinklers can damage my flat and its contents by being activated unintendedly and it is not clear whether the building insurance (organised by the Council) or my contents insurance will cover that damage and therefore my flat is less secure.

3. The Council argues that retrofitting sprinklers will reduce the buildings insurance costs it charges me (paragraph 103.9 in its statement of case) – I have just received the latest annual service charge bill and the annual charge for building insurance cover is £16. So, any reduction on £16 is negligible compared to the cost of up to £5,000 to install the sprinklers. Any building insurance cost reduction will be more than offset by additional annual maintenance charge for the sprinkler system which the Council states can range between £10 and £150 per flat (paragraph 111 in its statement of case). Also, my contents insurance cover premium will not be reduced because sprinklers will be installed because sprinklers are not mentioned in the insurance application questions/assumptions for contents cover.
4. As retrofitting sprinklers is not covered by the lease terms, the Council should also not be allowed to retrofit sprinklers in my flat or access my flat to do so.

Finally, I also want to ask the Tribunal to rule that **the Council should not be allowed to charge me** (or other affected Leaseholders) **for the legal costs it has incurred regarding its Application** to this Tribunal, neither through the annual service charge, nor through any other charges. I think this relates to application to the Tribunal under Section 20C of the Landlord and Tenant Act 1985 requesting an order that the landlord should not be allowed to recover such costs, but I am not sure this is the correct legal reference as I am not a lawyer.

Please can my email address be used for all correspondence on this matter.

Yours Sincerely,

Enclosure – Attachment "Atkinson House (1-77 Cons) (50501000).pdf" in my email which contains this letter.

Tab 10

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

Case reference: LON/00BJ/LSC/2018/0286

ON AN APPLICATION UNDER SECTION 27A, LANDLORD & TENANT ACT 1985

LONDON BOROUGH OF WANDSWORTH — Applicant

-and-

VARIOUS LEASEHOLDERS — Respondents

APPLICATION ON BEHALF OF THE RESPONDENTS
TO STRIKE OUT/STAY THE PROCEEDINGS

In this application, references to sections of statute are to the Landlord and Tenant Act 1985, and to the "F-tT Rules" are to the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

1. This application is made on behalf of the Respondent leaseholders (the "Represented Respondents") named in the Schedule annexed hereto.

The Basis of this Application

2. The Represented Respondents have considered the Applicant's Statement of Case in detail and concluded that the proposal to install sprinklers in respect of which this application was made is so inchoate that the Tribunal has no jurisdiction to determine this application; alternatively that the application has no real prospects of success; alternatively that it is hopelessly premature such that it amounts to an abuse of process; alternatively that the proceedings should be stayed.

3. Accordingly, the Represented Respondents make this application:

3.1. to strike out the Applicant's case under rule 9(2) and/or (3)(d) and/or (e) of the F-tT Rules, because:

3.1.1. The Tribunal has no jurisdiction to determine it, alternatively,

3.1.2. The application is an abuse of process, and/or there is no reasonable prospect of the Applicant's case succeeding.

3.2. In the alternative, to stay the proceedings under rule 6(3)(m) of the F-tT Rules.

4. The Represented Respondents are aware that the F-tT has very recently adjourned the directions for six months. However, this application had already been substantively prepared by the time that they heard of the adjournment.

The leases

5. The Council's case summary dated 25/07/18 is not entirely consistent with its statement of case dated 18/12/18.

6. The Council has throughout relied on its right to recover the costs of doing "such things as the Council may decide are necessary to ensure the efficient maintenance administration or security of the Block" [§32, statement of case].

7. At §37 of its case summary, the Council further relied on a right to "amend (in whatever way) the conduction media in relation to water courses and pipes". The Council's Statement of Case does not rely on any such right.

8. However, at §§64-71 of its Statement of Case, it contends that the costs of installing sprinklers would be recoverable though the service charge pursuant to its power to recover the costs of doing "such things as [it] may decide are necessary and … to enhance the quality of life within the Block due regards being given to the wishes and aspirations of the majority of the residents in the Block". This argument was not present in the Council's Case Summary.

9. For the avoidance of all doubt the Represented Respondents are proceeding on the basis that the totality of the Applicant's case is set out in its Statement of Case (and that the Applicant no longer relies upon the argument set out §37 of its case summary).

10. It is a pre-requisite to the exercise of the power in either of the limbs now relied upon by the Council that it should have made *a decision* that the works are necessary to further the appropriate specified result. That is expressly accepted by the Council at [40] of its statement of case.

The Tribunal has no jurisdiction to determine the application

11. The Tribunal has no jurisdiction under s.27A(3) to make the determination sought by the Council.

The law

12. By s.27A(3) the Tribunal may determine:

> *"... whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—*
>
> *(a) the person by whom it would be payable,*
>
> *(b) the person to whom it would be payable,*
>
> *(c) the amount which would be payable,*
>
> *(d) the date at or by which it would be payable, and*
>
> *(e) the manner in which it would be payable."*

13. "Service charge" is defined in s.18 of the 1985 Act as:

> *"... an amount payable by a tenant of a dwelling as part of or in addition to the rent—*
>
> *(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and*
>
> *(b) the whole or part of which varies or may vary according to the relevant costs.*
>
> *(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*
>
> *(3) For this purpose—*
>
> *"costs" includes overheads, and*
>
> *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period."*

14. Section 19(2) provides that:

> *"Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable..."*

Submissions

15. The F-tT has no inherent jurisdiction; only that granted to it by statute, and there is no statutory jurisdiction to grant a declaration. The jurisdiction of the F-tT under s. 27A is to determine the payability of a "service charge", as defined by the statute, and no more. A "service charge" is defined by statute by reference to "relevant costs", as they themselves are defined by the statute.

16. Any application under s. 27A for a determination that, if costs were incurred, a service charge would be payable, must therefore be founded upon both:

    16.1. a specification of works that is sufficiently clearly defined as to permit the F-tT to reach a view as to whether or not the lease permits recovery of the cost of such works through the service charge provisions (and therefore whether the costs of those works would constitute "relevant costs"), and

    16.2. a sufficiently clear estimate of the costs of those works such that the F-tT can reach a view as to whether the relevant costs that the landlord proposes to incur are or would be reasonable in amount.

17. Should authority for that proposition be required it is to be found:

    17.1. in *LB Southwark v Lessees of Southwark* [2011] UKUT 438 (LC) at [53], where the then President, George Bartlett QC, doubted whether an application under s.27A(3) "*could encompass a case like the present, where no specific description of the works to be carried out to each of the many premises was available*"; and

    17.2. in *RB Kensington & Chelsea v Lessees of 1-124 Pond House* [2015] UKUT 395 (LC) at [82], where on an application under s.27A(3) and despite evidence of considerably greater detail than that provided by the Council here, Judge McGrath in the Upper Tribunal was unable to make a determination as to

whether a service charge would be payable for the major works in relation to which the application was made.

18. The Council has not produced anything that comes remotely close to a sufficiently defined specification of works to permit the Tribunal to take a view as to whether the cost of those works would constitute relevant costs. It has produced the flimsiest of indicative estimates of the costs of installing sprinklers but neither asserts nor seeks a determination that its estimate is reasonable.

19. In truth, what the Council seeks is a determination in the vaguest form that, if it incurred some costs (of the amount of which it expects its estimate to provide some limited indication) in carrying out works that may generically be described as the installation of sprinklers into all flats in all blocks of 10 stories or more, it would be entitled to recover those costs as a service charge.

20. That is precisely the kind of general and non-specific declaration that the F-tT has no jurisdiction to determine. The Application should be struck out.

The Council has no reasonable prospects of succeeding on its application

21. Three types of lease have been identified. All of the Represented Respondents hold leases, the Fourth Schedule of which entitles the Council:

> *"to do such things as the Council may decide are necessary to ensure the efficient maintenance administration or security of the Block..."*

22. First, it is a simple but fundamental point that the above provision is only engaged if there has been a decision by the Council.

23. Secondly, any such decision must be a rational one, with proper reasons given – see Lewison LJ in *Waaler v LB Hounslow* [2017] EWCA Civ 45 [20] onwards. That means that:

    23.1. The Council must specify the matters that it took into account in making its decision so that the lessees concerned can be satisfied that all relevant considerations have been taken into account and no irrelevant considerations have been taken into account;

23.2. The decision will only be a valid decision for the purposes of the leases if it is one that a reasonable decision-maker could make having taken into account all relevant considerations and having excluded all irrelevant considerations. If and insofar as the Council contends that it has decided that the installation of a sprinkler system is "... *necessary ... to enhance the quality of life within the Block*", the leases themselves provide that "*the wishes and aspirations of the majority of the residents in the Block*" are one of the relevant factors to which the Council must have regard. There has been no exercise by which the Council has sought to canvass those wishes and aspirations; the only inference that may reasonable be drawn is that it has made no attempt to do so.

24. This is not, as the Applicant may be trying to hint at [49], an attempt to smuggle what ought properly to be a public law judicial review challenge into the F-tT. As *Waaler* makes clear, these issues arise pursuant to the lease and, therefore, are necessarily involved in any determination of the payability of a service charge.

Has a decision been taken?

25. The Tribunal's directions of 29/10/18 included, at 2(a), a requirement that the Council's statement should "*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".*"

26. The Council's statement of case does not satisfy that direction.

27. It has not particularised the individuals or executive body authorised (by the constitution and any proper delegation of powers) to make and responsible for making executive decisions of this nature on its behalf; nor – strikingly in light of what was said by the Represented Respondents in their Position Note of 12/10/18 and the directions subsequently made by the F-tT– has the Council particularised the date and the reasons for the decision (to install sprinklers) upon which it relies in support of its application for a determination that the costs (of implementing that decision to install sprinklers) would be recoverable through the service charge.

28. What the Council has instead done, is to provide something of a narrative as to how and why it came to make its application, and (as is explained between paras [32] and [38] below) an incomplete one at that.

29. At [82] of its statement of case, it is said that the Council has taken "decisions". In fact, the subsequent paragraphs [83-102] describe a series of reports and Committee meetings at which various issues are said to have been discussed and recommendations either made or endorsed. There is no evidence of the adopting of any of those recommendations through a formal decision-making process by any executive body with authority to make decisions on behalf of the Council.

30. Throughout the disclosed documents, there are references to an Executive Committee. The report dated 28/06/17 suggests that the Executive Committee might have met on 03/07/18. No minutes of any meeting or evidence of any substantive decisions has been disclosed.

31. The only conclusion that can reasonably be drawn upon the evidence and facts that the Council sets out in its Statement of Case is that no decision to install sprinklers had been made at all by the time that the s.27A(3) application was made.

The Executive decision post-dating the application

32. The Council's Housing and Regeneration Scrutiny and Overview Committee met on 13/09/18. Under discussion at that meeting was a fire safety update, paper 18-279. That fire safety update, paper 18-279 has not been disclosed. The Committee resolved on three amendments to the recommendations in paper 18-279, the most relevant of which was to "*allow directions from the First Tier 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*".

33. On 17/09/18, it appears that there was a meeting of the Executive at which it addressed "Housing and Regeneration Matters", the fire safety update contained in paper 18-279 and the recommendations of the Housing and Regeneration Scrutiny and Overview Committee meeting of 13/09/18.

34. The Council's Statement of Case is entirely silent as to the Executive's meeting on 17/09/18. No minutes of the meeting have been disclosed. Had that meeting been at all relevant to the Council's proposal to install sprinklers into its high-rise stock, one might reasonably have expected to see reference to the meeting between or around paras [93] and [94] of the Council's Statement of Case – but there is no mention of that meeting in the Statement of Case.

35. The Represented Respondents have been provided by Councillor Grimston with a spreadsheet setting out the decisions that were apparently made by the Executive at that meeting. That is the only evidence that the Represented Respondents have as to what happened at that meeting. It appears from the spreadsheet that the recommendations in the fire safety update, paper 18-279, as amended by the Housing and Regeneration Scrutiny and Overview Committee at its meeting of 13/09/18 were adopted by the executive for the reasons given in the report. It follows, therefore, that on 17/09/18 the Council Executive made a decision to "*allow directions from the First Tier 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*".

36. On 12 March 2019, the Council's legal representatives posted on its web-site, a letter in response to various applications for a stay and informed the solicitors for the Represented Respondents, that they had done so. The meeting of the Executive on 17/09/18, and the decision made at that meeting, was not mentioned in that letter. It was only on 13 March 2019, when pressed, that the Council, through its legal representatives, accepted that at some stage after 13 September 2019, the Executive did in fact approve a recommendation that it should "*allow directions from the First Tier Property Tribunal (sic) and recommendations made by the Grenfell Tower Inquiry to shape whether, and how, the programme is progressed across the Council's high-rise stock*".

The substance of the decision

37. As a consequence of the Council's Statement of Case and the spreadsheet setting out the decisions made by the Executive at the meeting of 17 September 2018, it has become clear not only that no decision to install sprinklers across the Council's high

rise housing stock had been made when this application was commenced; but also that the only decision that has since been made is *to put off making any such decision until after both the F-tT has provided guidance in the form of directions and the Grenfell Tower Inquiry has provided its recommendations.*

38. The Council is quite literally using this F-tT application and the recommendations that will be made by the Grenfell Tower Inquiry as part of the process at the end of which it will make a decision. But a prior decision that these works are necessary is a precondition to any possibility that the costs of these works might be payable as a service under the leases pursuant to the provisions on which the Council relies. Accordingly, the application has no reasonable prospect of success and should be struck out pursuant to F-tT rule 9(3)(e).

An abuse of process

39. For the reasons set out above, the application is premature, and is being improperly used by the Council as part of the process by which it intends in due course to make a decision as to what to do. It should therefore be struck out pursuant to F-tT rule 9(3)(d).

40. Contrary the Council's assertion in its Application Form dated 26/07/18, it is now abundantly clear that there is no urgency to the application. As noted above, the Council wishes to shape any sprinkler installation policy in the light of any recommendations emerging from the Grenfell Tower Inquiry (and this application). There is no suggestion that it has taken any practical steps towards implementing or otherwise advancing its proposals since it made the application.

41. That being the case, not only is there no urgency to the application, there is no basis for pursuing it now.

42. It is public knowledge that the Stage 2 of the Grenfell Inquiry, which will consider the materials used on Grenfell Tower, will not begin until later this year.

43. Again, given that it is public knowledge that the Inquiry will be dealing with in excess of 200,000 documents, it is unlikely that any concluded view and recommendations

on fire safety measures – if indeed any general recommendations are made – will be reached before the middle of 2020.

44. Against that background, a determination based on this application will be valueless by the time that the Council might take practical steps to implement any fire safety measures. Fire safety requirements may change; new techniques to guard against fire spread may be developed and the legislative framework may evolve.

45. Those changes are amongst the factors that the Council would be required to take into account in reaching a decision as to any steps that may be "necessary to ensure the efficient maintenance administration or security of the Block…"

Interface with section 20 consultation

46. That this application is premature is clear when viewed in the context of the requirement that will be borne by the Council to consult under section 20. If a determination of recoverability on the sprinkler question were to be made now, the requirement to consult under section 20 of the 1985 Act may render it nugatory.

47. If the current application were to proceed, and the Council were to succeed, it would have two options: either a) to begin the consultation procedure immediately, based on the proposal to install sprinklers that forms the subject-matter of this application, or b) to await the recommendations of the Grenfell Inquiry, and to consult on such works as are recommended, required or appropriate at that stage.

48. The Council has clearly decided to follow the latter course of action, not the former, but neither option would lead to a meaningful result.

49. If the Tribunal were to find that the sprinkler costs were recoverable, and the Council were to consult on the sprinklers as soon as that determination were made, the consultation process would probably be invalidated by the passage of time, if the Council then waited for the recommendations of the Grenfell Inquiry – see *Jastrzembski v Westminster City Council* [2013] UKUT 0284 (LC), particularly at [46].

50. Conversely, if the Council were to await the Grenfell Inquiry recommendations, and consult at that stage, the works for which it consulted may be materially different to the works that are the subject of this application.

51. For that further reason, this application is entirely premature and falls to be struck out as an abuse of process.

Stay

52. If the application is not to be struck out then, for all the reasons set out above, it must be stayed until such time as the Council has made a decision upon which it can rely in this application, and amended its Statement of Case as a consequence. Proceeding with this application before such a decision has been made will do no more waste a huge amount of Tribunal time and money, both that of private leaseholders and the Council's public funds.

I believe that the facts stated in this application are true.

I am authorised by the Represented Respondents to sign this application.

Name MARK EATON (Solicitor)

Signature .....

Date 25/3/19

Schedule of lessees represented by H.P.L.P solicitors as at 22/3/2019

Total 58 Flats in various blocks

Giles Chapman

Nigel Pittam

Alex Giles

Karly Olsen-Haveland

David Chapman

Kate Standley

Elaine Michel

Margaret Taylor

Edwyna Grice

Pauline Grant

Glenn and Kakp Tatsuki-Blakeborough

Chris Kemsley

Palmyra Properties Ltd

The Ferryview Partnership LLP

Tab 11

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 47[2].

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 is 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 Summary[3] which was distributed with WBC's letter to leaseholder's dated 13th August 2018[4] 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 agreed[5] 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 required[10].

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.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 damaga 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 flat[18]."

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 omitted[20].

[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 magazine[23].

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 £1,073.33[24]. 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;

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[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 leaseholders[28].

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 2017[31] – Joe Cairns of the Alton Estate provided a deputation and this is outlined in Paper 17-269A[32].
- 18th January 2018[33] - 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 18-12A[34];

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

- 20th June 2018[35] – Petition[36] from various blocks against the installation of water sprinklers.
- 13th September 2018[37] – Joe Cairns of the Alton Leaseholders provided a deputation as noted in Paper 18-280A[38]. Also Bisley House provided a deputation and summarised in Section 21[39] along with a Paper 18-286A[40] and in section 27[41] provided a petition[42].

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/2016/0064[43]) 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] HRSOC, 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] HRSOC, 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 2018[44] it was stated in Paper 18-12[45] 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 2018[46]. 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 BRF[48] 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

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[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] HRSOC, 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 areas[49]. 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 HROSC[50]. 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 2016[52] 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 2B[53]. 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 2010[55] and 2014[56] 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 £880.00[57] and in 2016/17 it was £9,446.00[58]. 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 October[61]. 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 parking[66] and bicycle stands[67] installed through use of WBC's Small Improvement Budget[68] 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_housing_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 house[69]"

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/BRFrpt040918FINAL.pdf

Further, the argument from WBC as to the use of the word "security" is so broad that where would the line 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 consider 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 CML[80].

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] HROSC, 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 12/12/18[82].

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

Tab 12

From: Tancred, Stuart <Stuart.Tancred@justice.gov.uk>
Sent: 07 May 2019 10:17
Subject: Strike out applications - 100 High Rise Blocks within Wandsworth

Sent by email to: LB Wandsworth, HPLP, Communications Group, and other relevant parties

Dear Sirs,

The Tribunal issued a Decision and Further Directions on 21 March 2019 that stayed the main case until 26 September 2019. However, the Tribunal has received a number of applications for the case to be struck out and in particular an application from HPLP, representing a number of leaseholders. The stay will continue until 26 September 2019. However, it is envisaged that the applications for a strike-out will be considered in late November or early December 2019. It is envisaged that the hearing of these applications will take one day. However the Tribunal would like to allocate two days to the matter to prevent any application being part heard and to allow the Tribunal time to make its determination.

Therefore, by **31 May 2019** the Applicant, HPLP and anyone interested in these applications should notify the Tribunal of any dates to avoid in November and December 2019. The Tribunal asks that by the same date, Wandsworth also provide the Tribunal with any availability dates of the Civic Suite at The Town Hall in Wandsworth for a period of two days during that period.

In respect of the application from HPLP, Wandsworth should make any initial response to the Tribunal, HPLP and copied onto the website by 31 May 2019. The Tribunal will issue Directions for the consideration of the strike out applications in September 2019.

Regards,

Stuart Tancred
Case Officer

First-tier Tribunal (Property Chamber) | HMCTS | 10 Alfred Place | London | WC1E 7LR

Tel: 020 7446 7727
Web: www.gov.uk/hmcts

Excerpt from the Tribunal's guidance

Use of emails

The following rules are designed to minimise the impact that emails can have on the efficient running of the tribunal office. If you wish to use emails please:

· Prepare a letter to the tribunal in Word format and attach it to the email (maximum of 5 pages - longer documents should be send by post);

· As case officers are sometimes absent, always send or copy the email to the generic office address: rplondon@hmcts.gsi.gov.uk,

· Always copy any email to the other parties, either by email or by post, and confirm in your email/ letter that you have done this;

· Always quote the reference number or case officer's name in the email;

· Email chains, email 'conversations' about the case and bundles attached to emails will not be accepted

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Tab 13

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

THE COUNCIL'S 'INITIAL RESPONSE' TO AN APPLICATION TO STRIKE OUT/STAY THE PROCEEDINGS PURSUANT TO AN EMAIL DIRECTION OF THE TRIBUNAL DATED 7.5.2019

Introduction

The Parties to this Application

1. The London Borough of Wandsworth ("**the Council**") started these proceedings by an application ("**the Council's Application**") to the First-tier Tribunal ("**the Tribuna**l").

2. The Council's Application concerns the Council's decision to install sprinkler systems in all blocks of flats of ten or more storeys which are owned by the Council. These blocks of flats are referred to herein collectively as "**the Blocks**".

3. The Respondents to the Council's Application are the leaseholders of flats in the Blocks, collectively referred to herein as "**the Leaseholders**".

The Issue on the Council's Application

4. By the Council's Application the Council seeks the Tribunal's decision on whether the Council has a contractual right to recover service charges from the Leaseholders in respect of the Council's costs of installing sprinkler systems in the Blocks? This question is referred to herein as "**the Principal Issue**"

5. The Principal Issue depends on the rights and obligations of the Council and of the Leaseholders under the terms of the leases under which the Leaseholders own their flats ("**the Leases**").

6. The relevant terms of the Leases, which relate to the rights of the Council to recover service charges from the Leaseholders for certain of the Council's costs are similar but are not identical. The Council has identified three different types of lease. The Council has referred to these three types of lease as Type 1, Type 2A and Type 2B Leases.

7. In Type 1 leases the leaseholder has an obligation to contribute, by way of service charge, to the Council's costs of:

> '… do[ing] such things as the Council may decide are necessary to ensure the efficient maintenance and administration of the Block…'

8. In Type 2A and Type 2B leases the leaseholder has an obligation to contribute, by way of service charges, to the Council's costs of:

> '… do[ing] such things as the Council may decide are necessary to ensure the efficient maintenance and administration and security of the Block …'

9. The Council's position is that the costs to which the leaseholders of both Type 1 and Type 2A and 2B leases are obliged to contribute include the costs of installation of a sprinkler system in the relevant Block; i.e. the Block in which their flat (or flats) are situated.

The Tribunal's Power to determine the Council's Application

10. The jurisdiction of the Tribunal is set out in the Landlord and Tenant Act 1985 ("**LTA 85**"), section 27A.

11. Sub-sections 27A(1), (2) and (3) provide as follows:

> ***27A Liability to pay service charges: jurisdiction***
> *(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to —*
> *(a) the person by whom it is payable,*
> *(b) the person to whom it is payable,*
> *(c) the amount which is payable,*
> *(d) the date at or by which it is payable, and*
> *(e) the manner in which it is payable.*
>
> *(2) Subsection (1) applies whether or not any payment has been made.*
>
> *(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—*
> *(a) the person by whom it would be payable,*
> *(b) the person to whom it would be payable,*
> *(c) the amount which would be payable,*
> *(d) the date at or by which it would be payable, and*
> *(e) the manner in which it would be payable.*

12. For the purposes of this Introduction it is sufficient to point out that subsection 27A(3) gives the Tribunal the power to determine whether costs that have not yet been incurred by the landlord would, if they were incurred, be payable.

<u>The Conduct of the Proceedings</u>

Directions, dated 5th November 2018

13. Following a Case Management hearing on 16th October 2018 the Tribunal issued Directions, dated 5th November 2018 ("**the First Directions**"[1]).

[1] A copy of the First Directions is available on the Council's Website at: http://www.wandsworth.gov.uk/downloads/file/13625/first_tier_property_tribunal_-_preliminary_directions

14. By paragraphs 3 and 4 of the First Directions the Council was required to produce what was called by the Tribunal a '**Full Statement of Case**' by 11th December 2018, although that was extended to 21st December 2018. The Council produced the Full Statement of Case[2] by 21st December 2018.

15. By paragraph 6 of the First Directions the Leaseholders were given the opportunity, by 5th February 2019, to apply either:
    (1) For the strike-out the Council's Application, or
    (2) For the transfer of the Council's Application to the Upper Tribunal.
    The date for compliance with this Direction was extended to 22nd March 2019.

16. By paragraph 8 of the First Directions, if the Leaseholders did not make any application to strike-out the Council's Application or for transfer to the Upper Tribunal the Leaseholders were required to produce their Statements of Case in response to Council's Full Statement of Case. The date for compliance with this direction was 19th February 2019. Again, the time period for compliance with this Direction was extended, in this case to 3rd April 2019.

Directions, dated 21st March 2019

17. During early 2019 the Tribunal received various applications from Leaseholders to adjourn the Council's Application.

18. On 21st March 2019 the Tribunal issued further Directions, adjourning the case for 6 months, until September 2019 ("**the March 2019 Directions**"[3]).

19. In paragraph 3 of a pre-amble to the March 2019 Directions under the heading 'Decision' the Tribunal stated as follows (emphasis in bold added):

> 3. Having regard to the submissions of all parties, the Tribunal does not consider at this time, that a general stay of the proceedings pending the final recommendations of the Grenfell Inquiry is appropriate. **The issue to be determined concerns the**

[2] The Council's Full Statement of Case is on the Council's Website at: http://www.wandsworth.gov.uk/downloads/file/13870/statement_of_case_-_wandsworth_sprinklers

[3] A copy of the March 2019 Directions is available on the Council's Website at: http://www.wandsworth.gov.uk/downloads/file/14057/decision_from_tribunal_22_march_2019

construction of the leases. At this stage the Tribunal is not persuaded that this cannot be considered independently of the GTI [Grenfell Tower Inquiry] inquiry.

20. By paragraph 2 of the March 2019 Directions the Tribunal stated as follows:

> 2. By 26th September 2019 the parties shall write to the Tribunal with a copy to the other side with an indication how they consider the case ought to be progressed. In particular the Tribunal may consider:
> (a) Whether to give further directions for hearing;
> (b) Whether there should be a further stay of the proceedings;
> (c) Whether to consider applications for strike out.

Current Position

21. Currently, the Council's Application is adjourned until September 2019.

Application to Strike-Out/Stay the Council's Application

Introduction

22. On 25th March 2019 14 Leaseholders represented by Housing & Property Law Partnership ("HPLP") ("**the HPLP Leaseholders**") made an application to strike out or stay the Council's Application ("**The Strike-Out Application**"[4])

23. The Strike-Out Application is out of time and no application has yet been made by HPLP to extend the time for the Strike-Out Application.

The Leaseholders represented by HPLP

24. The names of HPLP Leaseholders are set out in a Schedule to the Strike-Out Application. The HPLP Leaseholders own the leasehold interest in 58 relevant flats. Two of the HPLP Leaseholders are limited companies.

Summary of the Basis of the Application to Strike Out

25. The Strike-Out Application is made on three bases:

25.1 That the Tribunal does not have jurisdiction to determine the Council's

[4] A copy of the Strike-Out Application is available on the Council's Website at: http://www.wandsworth.gov.uk/info/200570/safety_in_your_council_home/2294/fire_safety/10

Application ("the Jurisdiction Argument");

25.2 That the Application has no real prospects of success ("the Prospects Argument"); and

25.3 That the application is so premature that it amounts to an abuse of process ("the Abuse Argument").

26. Alternatively, the Strike-Out Application asserts that the proceedings should be stayed.

27. The way in which the HPLP Leaseholders put these arguments is summarised herein below as follows:

27.1 The Jurisdiction Argument at paragraphs 33 and 34;

27.2 The Prospects Argument at paragraphs 48 and 49; and

27.3 The Abuse Argument at paragraphs 55 to 57.

Email, dated 7th May 2019

28. By an email dated 7th May 2019[5] the Tribunal notified the parties as follows:

> Dear Sirs,
> The Tribunal issued a Decision and Further Directions on 21 March 2019 that stayed the main case until 26 September 2019. However, the Tribunal has received a number of applications for the case to be struck out and in particular an application from HPLP, representing a number of leaseholders. The stay will continue until 26 September 2019. However, it is envisaged that the applications for a strike-out will be considered in late November or early December 2019. It is envisaged that the hearing of these applications will take one day. However the Tribunal would like to allocate two days to the matter to prevent any application being part heard and to allow the Tribunal time to make its determination.
>
> Therefore, by 31 May 2019 the Applicant, HPLP and anyone interested in these applications should notify the Tribunal of any dates to avoid in November and December 2019. The Tribunal asks that by the same date, Wandsworth also provide the Tribunal with any availability dates of the Civic Suite at The Town Hall in Wandsworth for a period of two days during that period.
>
> In respect of the application from HPLP, Wandsworth should make any initial response to the Tribunal, HPLP and copied onto the website by 31

[5] A copy of the email dated 7th May 2019 is available on the Council's Website at: http://www.wandsworth.gov.uk/downloads/file/14162/email_from_the_tribunal_7_may_2019

May 2019. The Tribunal will issue Directions for the consideration of the strike out applications in September 2019.

Regards,
Stuart Tancred,
Case Officer

This Document

29. This document is the Council's 'Initial Response' to the Strike-Out Application as required by the email from the Tribunal dated 7th May 2019.

30. This document is not intended to be the Council's Skeleton Argument in response to the Strike-Out Application; rather it sets out the Council's position in relation to the Strike-Out Application and summarises the Council's response to the arguments raised by the HPLP Leaseholders in the Strike-Out Application.

The Council's Position in response to the Strike-Out Application

31. The Council opposes the Strike-Out Application insofar as it is an application to strike out the Council's Application.

32. The Council also opposes the application in the Strike-Out Application to further stay the Council's Application; it is the Council's position that the Council's Application should be heard with reasonable expedition.

The Jurisdiction Argument

The HPLP's Leaseholders' Jurisdiction Argument

33. The HPLP's Leaseholders' Jurisdiction Argument is set out in the Strike-Out Application, at paragraphs 11 to 20 (inclusive). The crux of the argument is summarised in paragraph 16 of the Strike-Out Application as follows:

> 16. Any application under s. 27A for a determination that, if costs were incurred, a service charge would be payable, must therefore be founded upon both:
>
> 16.1 A specification of works that is sufficiently clearly defined as to permit the Tribunal to reach a view as to whether or not the lease permits recovery of the cost of such works

through the service charge provisions (and therefore whether the costs of those works would constitute 'relevant costs'); and

16.2 A sufficiently clear estimate of the costs of those works such that the Tribunal can reach a view as to whether the relevant costs that the landlord proposes to incur are reasonable.

34. The Strike-Out Application then refers to two cases which the HPLP Leaseholders rely on as support for the propositions in paragraph 16. Those two cases are:

34.1 *LB Southwark v Lessees of Southwark* [2011] UKUT 438 (LC); and

34.2 *RB Kensington & Chelsea v Lessees 1-124 Pond House* [2015] UKUT 395 (LC).

Summary of the Council's Response to the Jurisdiction Argument

35. Under section 27A(3) the Tribunal has power to determine whether any landlord's costs are in principle recoverable; in effect the Tribunal has the power to construe (or interpret) the terms of a lease or leases.

36. It follows, that the question is only at what stage the Tribunal's power arises; i.e. how detailed must the landlord's proposals as to any works be?

37. In addition to determining whether any landlord's costs are payable (in principle) the Tribunal also has power under LTA 85, ss. 27A(3)(a) to (e) to determine other more particular issues including the amount of the service charge: ss. 27A(3)(e). However, the Tribunal's power to determine the question in principle is not dependent on also determining the amount of any service charges.

38. The HPLP Leaseholders assert that the Tribunal's powers only arise where there is:

38.1 A sufficiently detailed specification of works to allow the Tribunal to decide whether the lease permits the landlord to recover the costs; and

38.2 A sufficiently clear estimate of the costs of the works so that the Tribunal can reach a view as to whether the landlord's relevant costs are reasonable.

39. Dealing with the first of these alleged requirements the statutory provisions do not include such requirement. There are clearly matters of construction of a lease which could be determined without a specification of works: e.g. 'whether under the terms of a lease the tenant is obliged to contribute towards the landlord's for the costs of a caretaker?'

40. If in some cases the Tribunal has power to construe a lease to determine whether in principle any head of service charge expenditure is recoverable it follows that the Council's Application is not beyond the Tribunal's jurisdiction.

41. Dealing with the second of the HPLP Leaseholders alleged requirements; i.e. that there is an estimate showing that the costs are reasonable, this clearly conflates (or confuses) the contractual recoverability of any service charges and the separate statutory limitation on the recoverability of the landlord's costs by reference to whether they have been reasonably incurred or are reasonable in amount: see LTA 85, s. 19.

42. If the Tribunal finds that the Council is entitled to recover the costs of installation of sprinkler systems under the terms of the Leases that does not mean that it has also found that the costs incurred are reasonable.

43. The two cases that the HPLP Leaseholders rely on are not authority for the proposition that the Tribunal's jurisdiction to determine, in principle, whether any head of service charge is recoverable requires specification of works and estimates.

44. *LB Southwark v Lessees of Southwark* ("the *Southwark Case*") was an application for dispensation from the consultation requirements in relation to entry into Qualifying Long Term Arrangements ("QLTAs"). In that case the application for dispensation was dismissed because the necessary level of detail required in relation to the proposed QLTA had been provided.

45. The HPLP Leaseholders rely, apparently on paragraph 53 of the decision in the *Southwark Case*. In that paragraph the judge, George Bartlett QC (then the

president of the UT) responded to LB Southwark's suggestion that a landlord seeking dispensation could apply for a prospective determination that it had in fact complied with the consultation requirements. The consultation requirements that applied in that case[6] include a cascading level of detail that is to be provided in relation to the costs that might be incurred under the QLTA; where a higher level of detail is not yet available to the landlord it can provide a lower level of detail.

46. The issues in the *Pond House Case* also initially concerned consultation. However, in that case the UT held that it could not prospectively decide whether the relevant costs were recoverable because of disquiet about the quality of historic works.

47. Neither the *Southwark Case* nor the *Pond House Case* are relevant to the construction issue in this case.

The Prospects Argument

The Prospects Argument

48. The HPLP's Leaseholders' Prospects Argument is set out in the Strike-Out Application, at paragraphs 21 to 38 (inclusive) and has the following line of argument:

    48.1 The Council's right to recover service charges depends in any case on a decision made by the Council to install sprinklers;

    48.2 The Full Statement of Case has not particularised the decision that it has taken to install sprinklers;

    48.3 In any event, after it made the decision on which it does rely the Council made a further decision delaying the method of implementation of the decision to install sprinklers.

49. The Strike-Out Application, at paragraph 38, summarises the Prospects Argument as follows:

> 38. The Council is quite literally using this F-TT application and the recommendations that will be made by the Grenfell Tower Inquiry

[6] The Service Charges (Consultation Requirements) (England) Regulations 2003, Schedule 2

> as part of the process at the end of which it will make a decision. But a prior decision on these works are necessary is a precondition to any possibility that the costs of these works might be payable as a service [charge] under the leases pursuant to the provisions on which the Council relies. Accordingly, the application has no reasonable prospect of success and should be struck out pursuant to F-TT rule 9(3)(e).

Summary of the Council's Response to the Prospects Argument

50. The Council has made a decision to install sprinklers in the Blocks: see the Full Statement of Case, paragraphs 82 to 102 (inclusive). It follows that the premise on which the Prospects Argument is based is wrong. The Council will rely in support of its position that it has made a decision to install sprinklers in the Blocks on its Constitution[7].

51. The Council made a decision to install sprinklers in the Blocks on 29th June 2017 by the Council's Finance and Corporate Resources Overview and Scrutiny Committee ("FCROSC"): see Full Statement of Case, paragraph 87.

52. On 14th September 2017 the Council's Housing & Regeneration Overview and Scrutiny Committee (HROSC) endorsed the recommendation that the Council embark on a programme of retro-fitting sprinkler systems to all residential units within Council housing blocks of ten storeys or more and that the cost of these works be recharged to leaseholders through their service charges: see Full Statement of Case, paragraph 93.

53. Councillor White's proposal at the meeting of the HROSC on 18th January 2018 that retro-fitting of sprinklers in the Blocks be reconsidered on the basis of the views of the leaseholders in each Block was rejected by the HROSC: see Full Statement of Case, paragraph 98 to 101 (inclusive).

54. It is correct that the Council is making this Application prior to embarking on the programme of works of install sprinkler systems in the Blocks.

[7] A copy of the Council's Constitution is available on line at: https://democracy.wandsworth.gov.uk/ieListDocuments.aspx?CId=679&MId=6417&Ver=4&Info=1

The Abuse Argument

The Abuse Argument

55. The HPLP's Leaseholders' Abuse Argument is set out in the Strike-Out Application, at paragraphs 39 to 51 (inclusive).

56. The basis of the Abuse Argument is that the Council's Application is not urgent because, the HPLP Leaseholders' assert that: '… the Council wishes to shape any sprinkler installation policy in the light of any recommendations emerging from the Grenfell Tower Inquiry': see Strike-Out Application, paragraph 40.

57. The HPLP Leaseholders also assert that the Council's Application is premature when 'viewed in the context of the requirement' that the Council will have to consult on any works before the costs are recoverable: see Strike-Out Application, paragraphs 46 to 49 (inclusive).

Summary of the Council's Response to the Abuse Argument

58. As the March 2019 Directions recognise, the issue for determination on the Claimant's Application turns on a construction of the Leases and that issue can be considered independently of the results of the Grenfell Tower Inquiry: see the extract from the March 2019 Directions set out in paragraph 19 above.

59. On 13th September 2018 HROSC resolved that following additional recommendations be made to the Council's Executive in relation to the Council's decision to install sprinklers in the Blocks, that the Council [8]:

    (a) 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) Continue to seek additional funding from government to pay for fire-safety improvements, particularly retro-fitting sprinklers.

[8] A copy of the Minute of the HROSC Meeting that took place on 13th September 2018 are available n the Council's Website at: https://democracy.wandsworth.gov.uk/documents/g5860/Printed%20minutes%2013th-Sep-2018%2019.30%20Housing%20and%20Regeneration%20Overview%20and%20Scrutiny%20Committee.pdf?T=1

60. This resolution does **not** overturn the Council's decision, summarised in paragraphs 50 to 54 herein above, to install sprinklers in the Blocks. In any event, the Tribunal can determine the issue it identified in the March 2019 Directions

61. The argument that the Application is premature because the Council will have to consult on any works before it can recover relevant costs, like the reasonableness argument, conflates the contractual entitlement to recover service charges and the statutory limitations on the amount of service charges that can be recovered.

Request for a Stay

The Request for a further Stay

62. In paragraph 52 of the Strike-Out Application the HPLP Leaseholders request that if the Council's Application is not struck out that it be stayed 'until such time as the Council has made a decision that can be relied upon in [the Council's] Application.

Summary of the Council's Response to the Request for a Stay

63. As set out above, the Council's position is that it has made a decision to install sprinklers in the Blocks which is sufficient for the purposes of this application.

64. The Tribunal has already declined to stay the Council's Application until after the Grenfell Tower Inquiry Report is published and the Tribunal should maintain this position.

Conclusion

65. The Strike-Out Application should be dismissed.

31st May 2019

Nicholas Grundy QC

Ben Maltz

Tab 14

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**
Type of application	**:**	**Landlord and Tenant Act 1985, s.27A(3)**
Tribunal members	**:**	**Judge Siobhan McGrath Judge Timothy Powell Mrs Helen Bowers MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Directions	**:**	**5 September 2019**

SEPTEMBER 2019 DIRECTIONS (Amended 16 September 2019)

Background

A. On 21 March 2019 the Tribunal issued a Decision and Further Directions that stayed the main case until 26 September 2019. However, the Tribunal subsequently received a number of applications for the case to be struck out including an application from HPLP. The Tribunal wrote to the parties on 7 May 2019 asking for dates to avoid. The Tribunal also directed that Wandsworth should make any initial response to the application made by HPLP by 3 June 2019. A copy of

the HPLP application and the initial response from Wandsworth has already been provided on the website.

B. Other than the application for strike-out from HPLP, the Tribunal appears to have other applications for strike-out that are listed below:

   a. Eleonora Van den Haute

   b. Steve Fannon

   c. Andrew Hirons

   d. Nigel Summerley

   e. James Burgess and

   f. Alton Leaseholders Association

   g. Paddy Keane

   It is unclear whether copies of these applications were served on Wandsworth and therefore for the sake of completeness (with the exceptions of the appendices to Mr Fannon's application), a copy of those applications are now sent to Wandsworth. It should be noted that there is other correspondence from other Respondents in support of those applications that has not been copied.

C. These Directions are issued to assist the parties and the Tribunal in preparing for the hearing to consider the strike-out applications.

DIRECTIONS

1. The hearing of the strike-out applications will take place on **11 & 12 November 2019, starting at 10:00 am** at **Civic Suite, Wandsworth High Street, London, SW18 2PU**.

2. All other Directions that have been previously issued in this case are now suspended until after the November hearing. At which stage and if appropriate further directions will be made.

3. Various locations have been made available for the viewing of certain documents in relation to this case and these are:

   - Battersea Fields RMO, Basement, Walden House, Dagnall Street, London, SW11 5DB

   - Ethelburga Community Centre, 60 Worfield Street, Ethelburga Estate, London, SW11

   - Western Area Team Office, Roehampton Parish Hall, Alton Road, London, SW15 4LG

- Housing Reception, 90 Putney Bridge Road, London, SW18 1HR
- Ackroydon East TMO, 26 Montfort Place, London, SW19 6QL

What Wandsworth must do:

4. By **18 September 2019** Wandsworth must upload to its website an electronic copy of these September 2019 Directions and send a hard copy to all of the Respondents, either by hand-delivery or by first class post and arrange for copies of these Directions to be placed in the various locations identified in Direction 2 above.

5. By **18 September 2019** Wandsworth must upload to the website an electronic copy of all the applications for strike-out as listed in paragraph B above and arrange for copies of those applications, together with the application by HPLP and the initial response from Wandsworth to be placed in the various locations identified in Direction 2 above.

6. By **2 October 2019,** Wandsworth must prepare any further response that it wishes to make to the applications for strike out and upload a copy of that further response onto the website and provide a copy to each of the locations identified in Direction 2 above.

What the Respondent leaseholders must do:

7. By **16 October 2019**, any Respondent leaseholder who wishes to submit a reply to the responses made by Wandsworth in respect of the applications to strike-out, should send a copy to the Applicant and a copy to the Tribunal.

Wandsworth's next steps:

8. Wandsworth shall upload any reply received in compliance with Direction 6 onto the website and provide a copy to each of the locations identified in Direction 2 above prepare bundles for the hearing.

9. Wandsworth shall prepare bundles for the hearing and these bundles should include:
    - All the applications for strike-out;
    - The initial and any further response made by Wandsworth;
    - Any reply submitted by the Respondent leaseholders.

10. Wandsworth shall by **30 October 2019** supply the following hard copies of the above bundles:
    - For the tribunal, four copies of each bundle;

- For each of those Respondents (or their representatives or representative organisations) that have made an application for strike-out or provided a reply in accordance with Direction 6; and
- To be available at the hearing venue, to be consulted by attendees who otherwise do not have access to the documents, three copies the bundle.

Skeleton arguments (case outlines)

11. If Wandsworth or any Respondent leaseholder wishes to rely upon any skeleton arguments (i.e. documents that summarise their case in outline, setting out the key facts and the arguments they wish to put forward at the hearing), these must be sent **by 4 November 2019:**
    - to the Tribunal;
    - by Wandsworth, to any Respondent leaseholders that that have made an application for strike-out or served a reply in compliance with Directions 6 above; and
    - by any Respondent leaseholders, to Wandsworth.

12. Wandsworth must upload any such skeleton arguments to its website, upon receipt and, in any event, by **6 November 2019**.

Name: Mrs H C Bowers **Date:** 5 September 2019

Tab 15

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

THE COUNCIL'S WRITTEN RESPONSE TO SEVEN FURTHER APPLICATIONS TO STRIKE-OUT THE COUNCIL'S APPLICATION

Introduction

The Parties to the Council's Application

1. The London Borough of Wandsworth ("**the Council**") issued these proceedings by an Application ("**the Council's Application**") to the First-tier Tribunal ("**the Tribunal**").

2. The Council's Application concerns the Council's decision to install sprinkler systems in all blocks of flats of ten or more storeys which are owned by the Council. These blocks of flats are referred to herein collectively as "**the Blocks**".

3. The Respondents to the Council's Application are the leaseholders of flats in the Blocks, collectively referred to herein as "**the Leaseholders**".

HPLP Application to Strike-Out the Council's Application

The HPLP Strike Out Application

4. A group of Leaseholders represented by Housing & Property Law Partnership applied on 25.3.2019 to strike out or stay the Council's Application ("**the HPLP Strike-Out Application**"[1])

5. The HPLP Strike-Out Application is made on three bases:
   5.1 That the Tribunal does not have jurisdiction to determine the Council's Application ("the Jurisdiction Argument");
   5.2 That the Application has no real prospects of success ("the Prospects Argument"); and
   5.3 That the application is so premature that it amounts to an abuse of process ("the Abuse Argument").

6. Alternatively, the Strike-Out Application asserts that the proceedings should be stayed.

The Council's Response to the HPLP Strike-Out Application

7. The Council provided a written response to the HPLP Strike-Out Application in a document dated 3.6.2019: 'Initial Response' to an Application to Strike-Out/Stay the Proceedings Pursuant' ("**the Council's Initial Response**")[2].

8. The Council's Initial Response was filed at the Tribunal and served pursuant to Directions issued by the Tribunal by an email dated 7.5.2019.

Directions Issued by the Tribunal on 16.9.2019

9. On 16.9.2019 the Tribunal made further Directions relating to the timetable for the hearing of the HPLP Strike-out Application ("**The September Directions**).

[1] A copy of the HPLP Strike-Out Application is on the Council's Website at: http://www.wandsworth.gov.uk/info/200570/safety_in_your_council_home/2294/fire_safety/10

[2] A copy of the Council's Initial Response is on the Council's Website at: https://www.wandsworth.gov.uk/media/4720/council_response_to_the_application_to_strike_out.pdf

Further Strike-Out Applications

10. Under the heading 'Background' paragraph B of the September Directions lists 7 additional applications to strike-out the Council's Application that the Tribunal has received from Respondent Leaseholders.

11. The 7 further strike-out applications have been made by:
    11.1 Elenora Van den Haute;
    11.2 Steve Fannon;
    11.3 Andrew Hirons;
    11.4 Nigel Summerley;
    11.5 James Burgess;
    11.6 The Alton Leaseholders' Association (purportedly); and
    11.7 Paddy Keane.

12. The Council's response to these 7 further applications to strike-out the Council's Application are set out herein below at paragraphs 22 to 78 (inclusive).

Directions

13. By the September Directions[3], para. 6, the Tribunal ordered the Council to:

> By 2 October the Council must prepare any further response that it wishes to make to the applications for strike out and up load a copy of that further response onto the website and provide a copy to each of the locations identified in Direction 2 above.

14. This document has been prepared by the Council to comply with paragraph 6 of the September Directions.

15. In this Written Response the Council sets out the following:
    15.1 That it does not consider it necessary to expand upon the Initial Response in relation to its opposition to the HPLP Strike-Out Application; and

[3] A copy of the September Directions are on the Council's Website at: https://www.wandsworth.gov.uk/housing/council-tenants-and-leaseholders/safety-in-the-home/fire-safety-in-council-homes/sprinklers/proposal-to-fit-sprinkler-systems-to-high-rise-residential-blocks/

15.2 Its response to each of the 7 further Strike-Out Applications, where appropriate by reference to relevant parts of its Initial Response.

The HPLP Strike-Out Application

16. The 14 Leaseholders who have issued the HPLP Strike-Out Application ("**the HPLP Leaseholders**") are represented by Housing & Property Law Partnership ("**HPLP**"). HPLP is a firm of solicitors holding itself out as experts in the field of landlord and tenant law.

17. The HPLP Application was drafted on behalf of the HPLP Leaseholders by HPLP.

18. The Council responded, as directed by the Tribunal, to the HPLP Application by the Council's Initial Response (see para. 7 above).

19. In the Council's Initial Response, the Council reserved the right (pursuant to the Tribunal's Directions) to file and serve a further written response to the HPLP Strike-Out Application.

20. The HPLP Leaseholders have not produced any substantive written argument in reply to the Council's Initial Response.

21. Having regard to the length and comprehensiveness of its Initial Response and the lack of any response from the HPLP Leaseholders the Council has decided that no further clarification of its position is required.

22. The Council will expand on the written arguments in its Initial Response at the hearing of the HPLP Strike-Out Application and the other 7 strike-out applications.

The Council's Response to the Further Strike-Out Applications

Elenora Van den Haute's Application

23. Elenora Van den Haute ("**EVdH**") is the lessee of a flat in Atkinson House.

24. EVdH's strike-out application is contained in a 3-page document dated 21.3.2019 ("**EVdH's Application**"). Her substantive reasons why the Council's Application should be struck-out are set out in four numbered paragraphs.

25. In summary EVdH's reasons why the Council's Application should be struck-out are as follows:

    25.1 Para. '1': Because the Council's Fire Risk Assessment, conducted in 2016, and valid until 2020, makes no reference to any requirement for sprinklers in Atkinson House;

    25.2 Para. '2': Raises the issue of the construction of the words '*maintenance*'; '*administration*' and '*security*' and seek to argue that retro-fitting sprinklers does not come within the definition of those words;

    25.3 Para. '3': States that the retro-fitting of sprinklers is not cost-effective by reference to a comparison between the cost of retro-fitting sprinklers and the increase in the cost of insurance caused by the absence of sprinklers; and

    25.4 Para. '4': Refers to the terms of EVdH's lease and states that 'as retro-fitting sprinklers is not covered by the terms of her lease the Council should not be allowed access to her flat to carry out such work.

The Council's Response to EVdH's Application

Fire Risk Assessment

26. The issue of the 2016 Fire Risk Assessment in relation to Atkinson House does not go to the Tribunal's jurisdiction to hear the Council's Application.

27. The 2016 Fire Risk Assessment of Atkinson House was carried out before the Grenfell Tower disaster.

Construction of the Leases and Terms of the Lease

28. The Council's response to the propositions in paras 2 and 4 of the EVdH Application both relate to the construction of the Leases.

29. The terms '*maintenance*', '*administration*' and '*security*' are words in the Leases outlining the extent of the Council's obligations and/or rights in relation to the upkeep etc. of the Blocks. In Type 2A and Type 2B Leases the Council's repairing covenants include an obligation/right to: '*ensure the efficient maintenance and administration and security of the* Block …'

30. It is the Council's case that having regard to the terms of the leases as a whole and the factual background pertaining at the time that the leases were granted these words are sufficient to include the retro-fitting of sprinklers.

31. Unless the Council's case is clearly unarguable then this is not a basis for striking-out the Council's Application.

32. If the Council's case that its obligations and/or rights in the Leases in relation to the upkeep etc. of the Blocks includes the retro-fitting of sprinklers it does not matter that the precise words 'the retro-fitting of sprinklers' are not included in the Leases.

33. It is notable that the HPLP Strike-Out application does not seek to argue that the Council's construction of the extent of its repairing obligations/rights by reference to the words *maintenance*', '*administration*' and '*security*' does not include the right to retro-fit sprinkler systems where the Council considers that that step is appropriate.

34. The issue of access to EVdH's flat turns on a construction of her lease.

Cost Effectiveness

35. Whether or not the retro-fitting of sprinklers is cost-effective is not a basis on which the Tribunal can strike-out the Council's Application.

36. In any event, the Council is not simply concerned with cost-efficiency when deciding whether or not to take what might be life-saving measures.

Steve Fannon's Application

37. Steve Fannon's Application is contained in an undated 25-page document ("SF's Strike-Out Application").

38. It is difficult to ascertain from SF's Strike-Out Application what SF's main arguments are for the striking-out of the Council's Application.

39. SF's Strike-Out Application, para. 4.0 refers to the Council's Statement of Case ("**the SoC"**) para. 47 which deals with the construction (or interpretation) of the Council's right under the Leases to *'… do such things as the Council may decide are necessary to ensure the efficient maintenance and administration … of the Block …*'.

40. The SoC, between paras. 40 and 50 (inclusive), deals with the legal position in relation to the construction of a contractual right (or power) by reference to the decision of the Supreme Court in *Braganza v BP Shipping Ltd* [2015] 1 WLR 1661: i.e. a decision to rely on a right under a contract can only be challenged if it the decision was made unreasonably in public law terms.

41. Section 5 of the SoC (paras 82 to 106 (inclusive)) sets out the Council's case why its decision to retro-fit sprinklers in the Blocks is not 'unreasonable'.

42. 'Section 4' of SF's Strike-Out Application is divided into four parts, each part dealing with one of public law principles; i.e. that the decision (presumably to retro-fit sprinklers) is one that:
    42.1 Was 'Not made in 'good faith' (para. 4.1);
    42.2 'No reasonable person could have come to' (para. 4.2);
    42.3 Was 'Made Ignoring obviously relevant factors' (para 4.3); and
    42.4 Was 'Made having regard to irrelevant factors' (para. 4.4).

The Council's Response to SF's Application

43. It would appear from SF's Application that Mr Fannon accepts (or does not dispute) the Council's legal analysis of when the exercise of a contractual right would be a breach of contract; i.e. only if it is exercised unreasonably.

44. In *R (Clarke) v Birmingham City Council* [2019] EWHC 1728 (Admin) the Court dismissed an application for Judicial Review of Birmingham CC's decision to retro-fit sprinklers. In that case the Court clearly considered the evidence. A copy of that case is attached hereto.

45. Whether or not the Council's decision to retro-fit sprinklers is one that was reasonable or unreasonable is a matter for evidence and therefore not a basis on which the Tribunal could strike-out the Council's Application.

<u>Andrew Hiron's Application</u>

46. Andrew Hiron's strike-out application ("**AH's Application**") is contained in a 4-page document, dated 11.3.2019. AH asks the Tribunal either to strike-out the Council's Application, or to transfer it to the Upper Tribunal ("**the UT**").

47. AH's Application is set out in four substantive sections, starting at the top of page 2 under the heading 'B Respondent's Argument'. Those four sections are, in summary, as follows:

    47.1 That the Council's arguments in relation to the construction of the Leases are based on a 'very disingenuous and wide interpretation of the word "security"';

    47.2 It is very difficult to see how the Council could install sprinklers without breaching the lessees' right of quiet enjoyment;

    47.3 That the installation of sprinklers will have an adverse impact on the value of the leasehold interests; and

    47.4 That the installation of sprinkler systems is a landlord's improvement or alternatively the remedy of an inherent defect.

The Council's Response to AH's Application

Construction of the word 'security'

48. Unless the Council's position as to the construction of the word '*security*' is clearly unarguable, then this is not a basis for striking out the Council's Application.

49. The Council's case as to the meaning of the relevant phrase in the Leases is set out in the SoC at paras. 60 to 63; this is clearly arguable.

50. In any event the Council also relies on its obligation/right to *ensure the efficient 'maintenance*' and '*administration*' of the Blocks.

Covenant of Quiet Enjoyment

51. As a matter of law, a landlord does not interfere with its tenant covenant of quiet enjoyment if it reasonably exercises its rights under the lease: See *Goldmile Properties Ltd v Lechouritis* [2003] 2 P&CR 1 (a copy of which is attached hereto).

52. It follows that provided that the Council takes reasonable precautions the installation of sprinkler systems is not a breach of the lessees' covenant of quiet enjoyment.

Adverse Impact on Value

53. Whether or not the installation of sprinklers would have an adverse impact on the value of the leasehold interests of flats in the Blocks is not relevant to the construction of the Leases and not relevant to the Tribunal's jurisdiction to determine the issue raised by the Council's Application.

54. For the avoidance of doubt, the Council does not accept that the value of the leasehold interests of flats in the Blocks would be adversely affected by the installation of sprinkler systems in those Blocks. The Council notes that Mr Hirons produces no evidence to support this proposition.

Improvement or Inherent Defect?

55. The Council's Application is that on a construction of the Leases the installation of sprinkler systems in the Blocks is within the Council's rights under the Council's covenant in relation to the upkeep etc. of the Blocks.

56. It follows that whether or not the installation of sprinkler systems is also an improvement or the remedy of an inherent defect is not relevant to the Council's Application.

Transfer to the UT

57. AH's Application contains no grounds or argument on which he proposes that the Council's Application should be transferred to the UT.

Nigel Summerley's Application

58. Nigel Summerley's strike-out application ("NS's Application") is contained in a 5-page email, dated 3.3.2019. NS's Application contains a critique of certain paragraphs of the Council's Statement of Case ("**the SoC**").

59. Again, it is difficult to ascertain from NS's Strike-Out Application what his main arguments are for the striking-out of the Council's Application.

60. Mr Summerley's main arguments appear to relate to the construction of the words: 'to *ensure the efficient maintenance administration and security*' of the Blocks, which he states clearly cannot bear the construction the Council has given them. These are set out in paragraphs '32' to '63' of NS's Application (the paragraph numbering is not consecutive because Mr Summerley has used the numbering of the SoC).

The Council's Response to NS's Application

Construction of the word 'security'

61. Unless the Council's position as to the construction of the words '*to ensure the efficient maintenance administration and security*' is clearly unarguable, then

this is not a basis for striking out the Council's Application.

62. The Council's case as to the meaning of the relevant phrase in the Leases is set out in the SoC at paras. 40 to 81 and are clearly arguable.

James Burgess' Application

63. James Burgess' strike-out application ("JB's Application") comprises of a single paragraph on an email dated 20.3.2019.

64. The basis of JB's Application is that he does not consider that the installation of sprinklers in the Block in which his flat is situated; i.e. Dresden House, Dagnall Street, London SW11, is necessary because the block is a brick-built building. Mr Burgess also refers to other fire-safety measures in the Block.

The Council's Response to JB's Application

65. Whether or not Mr Burgess considers the installation of a sprinkler system in Dresden House is not the correct approach to the construction of the Leases.

66. Even if Mr Burgess' opinion as to the necessity of the installation of a sprinkler system in Dresden House is relevant to the construction of the Leases it would not be so conclusive as to allow the Tribunal to strike-out the Council's Application.

The Alton Leaseholders Association's Application

67. The strike-out application stated to have been made by the Alton Leaseholder's Association ("**the ALA Application**") comprises a single paragraph on an email dated 21.3.2019. The email address of the sender of the email has been redacted and the sender is unnamed. There is no confirmation that the application is made by the Alton Leaseholders Association; indeed, the email is drafted in the first person singular, 'I'.

68. The ALA Application is also based on the premise that the installation of a sprinkler system in Egbury House is unnecessary because:

68.1 Egbury House has two escape routes;

68.2 Egbury House is not clad in ACM;

68.3 The flats in Egbury House are 'compartmented' as illustrated by a fire in 1998/99 to a flat on the 6th floor; and

68.4 The Council has installed fire-doors to the flats in Egbury House.

The Council's Response to the ALA Application

Installation of a sprinkler system is unnecessary

69. The ALA Application does not address the main issue in the Council's Application: i.e. whether or not on a construction of the Leases the Council has the right to install sprinkler systems in the Blocks.

70. It follows that the ALA Application contains no ground for striking-out the Council's Application.

Paddy Keane's Application

71. Paddy Keane's Application is contained in a 20-page document, dated 17.2.2019 ("PK's Application").

72. PK's Application states that it is application for a stay of the proceedings, or failing a stay for an extension of time; it does not state that it is an application to strike-out the Council's Application: see SF's Application paras 1.1 and 1.2.

73. PK's Application, para. 3, states that it 'explains in detail … why the Council's Application … is unreasonable.'

74. PK's Application has 5 substantive sections in which he sets out his case why the Council's Application is:

74.1 Inconsistent with the contractual purpose of the Lease;

74.2 Not made in good faith;

74.3 One that no reasonable person signing the Lease would have assumed;

74.4 Made ignoring obviously relevant factors; and

74.5 Made having regard to irrelevant factors.

75. In the final paragraph of PK's Application under the heading 'Conclusion', Mr Keane states that in the absence of: *the FTT agreeing to a 'stay' we would like to request an extension of 6 months to prepare a formal submission for a strike-out.*'

The Council's Response to PK's Application

76. It is not clear that Mr Keane has applied for the strike-out of the Council's Application; PK's application expressly refers to a 'stay' or alternatively 'an extension of time'.

A reasonable decision?

77. If Mr Keane is applying to strike-out the Council's Application his position is, in many respects, similar to that of Mr Fannon in that he seeks to argue that the Council's decision to install sprinkler systems in the Blocks is one that is clearly not reasonable within the public law sense of the word.

78. For the same reasons that are set out in relation to SF's Application (see paras 43, 44 and 45 above), unless that was clearly and obviously the case (i.e. that the Council's decision to install sprinkler systems in the Blocks is *Wednesbury* unreasonable) Mr Keane's assertion that the decision is not reasonable is not a basis for strike-out of the Council's Application.

Conclusion

79. The 7 further strike-out applications contain no grounds for striking out the Council's Application.

1st October 2019

Nicholas Grundy QC

Ben Maltz

five paper

Tab 16

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

ANDREW HIRONS' WRITTEN COUNTER-REPRESENTATIONS TO THE COUNCIL'S RESPONSE DATED 1ST OCTOBER 2019

Introduction

1. On 1st October 2019 the Landlord submitted written representations to the First Tier Tribunal in respect of seven further applications seeking to strike out the Landlord's application

2. The Council's Application concerns the Council's decision to install sprinkler systems in all blocks of flats of ten or more storeys which are owned by the Council.

3. Andrew Hirons ("the Leaseholder") is one of the Respondents to the Council's Application and is a leaseholder of one of the flats located in one of the Blocks (Edgecombe House SW19 6SL) affected by the Council's application.

4. These further representations are made as a counter to what the Council says in response to Andrew Hirons' application dated 11 March 2019

Counter-Representations

Lease Construction and Interpretation

5. The 4th Schedule sets out the Landlord's (Council) repairing and maintenance obligations in paragraphs 1 to 5.

6. As stated in my original submission, I am contending that the 4th Schedule (Council's Obligations in respect of the Block) of the lease of Flat 16 ("the subject lease") does not contain (1) any express or implied provisions which allow the tenant to install a sprinkler system in the Edgecombe House and thus (2) **do not** permit the Council to seek recovery of the cost from the leaseholder of Flat 16 under the service charge provisions of the subject lease at Clause 5

7. The construction and interpretation of the subject lease is clearly a matter of law but I think it pertinent to emphasise the following points which the Council's case disregards:

7.1 It is important to look at the factual matrix at the date the subject lease was granted in 1989; it was not a contract entered into by two equal parties; one was an institutional landlord (The Council) the other a council tenant exercising their right to buy;

7.2 The form of lease granted by the council was in a standard form and in my experience this was substantially in a form that was non-negotiable reflecting the Council's policy to impose standard leases on this block for ease of management;

7.3 The full extent of the council's repairing and maintenance obligations for the Block are set out in paragraph 2 of the Fourth Schedule and it is here that we would expect to find references to items which in more modern leases would now be captured under a separate "plant and machinery" schedule e.g. entry phone systems, lifts etc.

7.4 Even taken into account the wording in paragraph 2 of "without prejudice to the generality of foregoing", nothing in this paragraph either expressly or impliedly permits the Council to install a sprinkler system

7.5 This reflects the fact that at the date of the grant of the subject lease the original Parties to it did not contemplate sprinklers would be

installed at a later date retrospectively, or indeed at the leaseholder's cost (pro-rata for the Block.)

7.6 The Council used its standard Block form of lease in 1989. With the benefit of hindsight the Council now realises that the absence of any express or implied provisions in the subject lease is now potentially a costly oversight and is therefore being forced to attribute meanings to wording in the 4th Schedule which was never contemplated by the original parties at the date of grant of the subject lease.

7.7 It had full control over the drafting of the lease originally and if clear and unambiguous language had been used then the Council would not be devoting so much legal expertise to now seeking to implement the sprinker installation works on the spurious grounds ***"security"*** and "***efficient maintenance***".

7.8 The Leaseholder does in fact concur with what the Council say at paragraph 21 of their original submission and would ask the Tribunal to consider why the Council still maintain in their reply to his original submission at paragraph 49 "*this is clearly arguable*"?

7.9 Does the above wording in bold meet any of the criteria (six matters) set out by Lord Neuberger in paragraph 21 of the Council's original submission? No it does not!

(1) It is submitted that the **natural and ordinary meaning** of the wording in this clause now relied upon by the Council was intended originally to deal with "security" involving doors, locks, CCTV cameras, fencing, plus the employment of staff for purposes associated with ensuring the security of the Block. It was not intended to capture firefighting plant as this was never envisaged as being required in 1989.

(2) There are **no other relevant provisions** in the lease

(3) The **overall purpose of the clause and the lease** is to continue to provide the tenants with what they had originally been demised and to fulfil the associated landlord's obligations. It is not to install a completely new sprinkler fire system at the leaseholders' expense (ultimately) as this would not have been contemplated by the original Parties to the subject lease when granted in 1989

(4) The Council's current difficulties in pursuing their proposed course of action reflect "**the facts and circumstances known or assumed by the parties at the time**" the subject lease was granted did not foresee the necessity or obligation to retrospectively install a new sprinkler system.

(5) **Commercial common-sense** is a rather subjective criteria,

but again is it likely that either the original landlord or tenant would have expected or anticipated a problem of this nature arising in 2019 when at the time in 1989 the Block was deemed fully complied with the then current fire regulations and in fact it is understood it still does to the extent there is no statutory obligation for the Council to fit a Sprinkler system at Edgecombe House

(6) Agreed

7.10 It is also important to note that if in the future the Council as landlord is caught by an express or implied statutory obligation to fit sprinklers in this Block, there is no reference in the 4th schedule to works undertaken in connection with complying with such obligations and therefore these costs would still sit outside the scope of Clause 5 (service charge provisions).

7.11 The seven relevant factors stated by Lord Neuberger are also agreed [Para. 22 of the Council's submission] in particular the point that if one party to a lease makes a poor commercial decision (as in not including the correct drafting in a standard residential Block long lease) and is therefore faced with an unexpected financial liability it does not justify seeking to pass on said liability to the Leaseholder even where he might gain a material benefit

7.12 In terms of the language relied upon by the Council - specifically "**security**" and "***efficient maintenance***" - they are seeking to persuade the Tribunal these words mean allowing works for "fire protection or fire defence". But the Tribunal should be aware that there is existing fire detection equipment already installed in the property ("wiring and conduction media" falling under paragraph 2 of the 4th Schedule) which together with appropriate fire stopping and correct building materials should currently afford adequate statutory fire protection and as such these words were never intended to take on the meaning now suggested by the Council

7.13 The installation of a sprinkler system has nothing to do with "efficient maintenance", as the obverse would be that the Council has been neglecting its fire protection obligations for the past 30 years or so. Nothing has changed other than the quite proper desire of the Council to try to improve fire protection following the Grenfell disaster and introduce a system which is mandatory in new build high rise blocks.

7.14 But Grenfell should and must be distinguished from the subject Block. As noted above, it is understood from making enquiries of the Council that the subject Block has proper fire stopping in place, that cladding is adequately fire retardant, that existing common parts fire detection systems are properly maintained. Additionally the Leaseholder flat is fitted with a one hour fire protected door plus smoke detectors.

7.15 Therefore whilst this leaseholder supports the Council's desire to

install the sprinklers it is contended that the works are not permitted under the subject lease without the consent of the Leaseholder under a deed of variation for the reasons given herein regarding the incorrect interpretation of the lease by the Council

7.16 "Maintenance" signifies an action, usually in respect of property maintenance an ongoing one on a periodic basis. The concept that a static and inoperative sprinkler system is actively contributing at any point is time to the efficient maintenance of the block is nonsense. It would be hoped that the system is never used, so how conceptually that can be deemed as contributing towards the "efficient maintenance" of the Block is a puzzle?

7.17 There is nothing efficient about the deployment of a water based sprinkler system in a fire. The water damage caused to the Block is likely to be equal or greater than damage to the fabric of the Block than a localised fire. The Council's submission fails to acknowledge that a wet based sprinkler system may potentially either operate when not required by accident or not operate properly in the event of fire having stood for many years without being fully tested (you can't otherwise the Block is flooded!). Either eventuality gives rise to potential "security" risks in the language of the Council

7.18 It is accepted that a mist system is likely to cause less water damage

Quiet Enjoyment

8. The Leaseholder is willing to concede this point, on the assumption the Council will implement the works (if permitted) in a reasonable manner and make good any damage to the demised premises of Flat 16

Impact on Value

9. The Council estimates the Leaseholder's share of the cost at c. £3,500 to £5,000. It is conceded that if the works are ultimately completed at the lower end of this range of values the impact is likely to be minimal.

Landlord's Improvement and/or Inherent Defect

10. It is accepted that if the Council is within its rights under the terms of the subject lease to install a sprinkler system then it follows it is not a landlord's improvement, the works are undertaken under the 4th Schedule and therefore the costs are recoverable via the service charge.

11. It is not agreed however that the same position applies if the works are undertaken to remedy an inherent defect.

12. It has already been argued above by the Leaseholder that the works are not required on the understanding that the existing building complies with current building and fire regulations

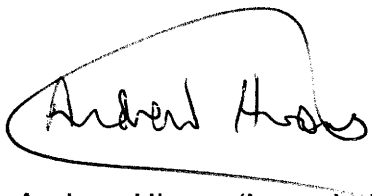
13. The Council does not currently hold a statutory or implied duty to carry out these additional fire protection measures

14. The question therefore arises as to why the Council is seeking to carry out the works? If the existing Block complies with current fire regulations there is no need for the works to be undertaken. If not then the building has not complied with said regulations since it was built in 1989 and therefore that is a design fault (much like Grenfell arising from a very poorly conceived and implemented refurbishment project) that should be more properly laid back at the feet of the original build and design teams / companies who were employed by the Council or directly employed by the Council

15. It is unreasonable in the view of this Leaseholder for him to be expected to meet part of the cost of these proposed works in order to enable the Council to rectify its perception the Block suffers from inadequate fire protection. If it is not inadequate what is the justification for the proposed expenditure? The case is not soundly made out. Even if it is within the "rights" of the Council to carry out these works, it cannot be justified

Conclusion

It is respectfully requested that the Tribunal to take into account these further representations made in reply to the Council's further response to the Leaseholder's submission of 11th March 2019 and support his original application to strike out the application by the Council



Andrew Hirons (Leaseholder)

15th October 2019

Tab 17

BPP
UNIVERSITY
LAW SCHOOL
PRO BONO
CENTRE

BPP Legal Advice Clinic
HOLBORN OFFICE
BPP Law School
68-70 Red Lion Street
London WC1R 4NY

Tel: 020 7430 7014
Email: blac@bpp.com

C/O Mark Evans, Assistant Director for Corporate Governance
South London Legal Partnership
Gifford House, 67c St Helier Avenue
Morden
SM4 6HY

By email also to: mark.cooper@merton.gov.uk

16 October 2019

Dear Sirs,

Your Ref: L/MJC/2616/5093
Tribunal Ref: LON/00BJ/LSC/0286

I am writing to confirm I will be representing Mr Patrick Keane at the hearing on 11/12 November in this matter.

Please find enclosed our reply to the Applicant's response to applications to strike-out their application. I also enclose a copy of the Respondent's lease, as appended to our reply.

Yours sincerely

H. M. Lennox

Hannah Lennox
Trainee Solicitor

South London Legal Partnership

17 OCT 2019

advice quality standard

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

LON/00BJ/LSC/0286

In the matter of section 27A
Landlord and Tenant Act 1985

BETWEEN:

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

Respondent / Leaseholders

REPLY TO THE APPLICANT'S WRITTEN
RESPONSES TO APPLICATIONS TO
STRIKE-OUT THE APPLICANT'S APPLICATION

---

1. This reply is made on behalf of Patrick Keane of 53 Lindsay Court, Battersea High Street, London, SW11 3HZ (the "Respondent").

2. In response to paragraph 76 of the Applicant's written response to seven further applications to strike-out the Applicant's application, the Respondent's application ("Strike-out Application") dated 17 February 2019 should be understood to be an application to strike-out the Applicant's application (the "Application").
   i. The Respondent contacted the Tribunal to ask for the Strike-out Application to be accepted as a strike out application.
   ii. The Tribunal included the Strike-out Application in the September 2019 Directions (Amended 16 September 2019).
   iii. The Applicant accepted the Strike-out Application was an application to strike-out in their description of it online.

3. We note the Applicant has failed to respond to several substantive arguments within the Strike-out Application. Specifically, the Respondent continues to assert

that on a proper construction of the various leases the Applicant has no reasonable prospect of succeeding in their argument that

i. they have an obligation or right to install sprinkler systems under the various types of lease;
ii. they have the right to access the leasehold properties to install the sprinkler systems; nor that
iii. they have the ability to recover the associated costs from the lessees through a service charge.

4. For the avoidance of doubt, the Rule on which the Respondent submits the Tribunal has the power to strike-out the application is Rule 9. Rule 9 states:

> *9.—(1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.*
>
> *(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal—*
>
> *(a)does not have jurisdiction in relation to the proceedings or case or that part of them; and*
>
> *(b)does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.*
>
> *(3) The Tribunal may strike out the whole or a part of the proceedings or case if—*
>
> *(a)the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;*
>
> *(b)the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;*
>
> *(c)the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;*
>
> *(d)the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or*

(e)the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.

(7) This rule applies to a respondent as it applies to an applicant except that—

(a)a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and

(b)a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings, or part of them.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.

5. The Respondent submits that the Tribunal must strike out the Application in accordance with Rule 9(2)(a) because the Tribunal does not have jurisdiction in relation to the proceedings or case or that part of them.

6. In the alternative, the Respondent submits that the Tribunal may strike out the Application in accordance with Rule 9(3)(e) because the Application has no reasonable prospect of succeeding.

7. In the alternative, the Respondent submits that the Tribunal may strike out the Application in accordance with Rule 9(3)(d) because the Application is an abuse of the Tribunal process where the Applicant has not resolved to install the sprinklers, but instead to await the outcome of the Grenfell Public Inquiry.

8. In the event that the Tribunal accepts the Respondents argument that it may strike-out the Application under Rule 9(3), but does not have to do so under Rule 9(2), the Respondent submits the Tribunal should exercise its discretion to do so.

Jurisdiction

9. According to paragraph 13 of the Applicant's Case Summary, the Applicant asserts the Tribunal has jurisdiction to determine the Application under section 27A(3) of the Landlord and Tenant Act 1985. Section 27A(3) says:

> *An application may also be made to [the appropriate tribunal] for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—*
>
> *(a)the person by whom it would be payable,*
>
> *(b)the person to whom it would be payable,*
>
> *(c)the amount which would be payable,*
>
> *(d)the date at or by which it would be payable, and*
>
> *(e)the manner in which it would be payable.*

10. Section 27A(3) therefore requires the Applicant to provide a "specified description" of the item of expenditure which the Tribunal is asked to consider. In Directions of 5 November 2018 the Tribunal asked the Applicant to prepare its Statement of Case in relation to "specified works". The Respondent submits that the Applicant has failed to provide a sufficiently detailed "specified description" of the "automatic sprinkler system" which the Applicant has applied for a determination regarding.

11. The following description was provided in the Application but is insufficient

> "The Applicant is proposing to install [sic] automatic sprinkler systems in each of its high rise residential blocks. Each block will require an independent, pressurized water supply to be provided which will require the installation of additional pumps and tanks. Pipework will be run through the communal areas at high level and into each property. The pipework will be enclosed in a duct and sprinkler heads will be located in each room of the property with the exception of the bathroom. No sprinkler heads will be fitted in the communal means of escape (corridors, lobbies and staircases)" (Application page 10)

12. The Applicant provided no description of the sprinkler system in its case summary, nor in its statement of case. The comparisons and estimates at paragraphs 104 – 111 of the Applicant's Statement of Case provide some detail about the system to be used but are insufficient to be described as a "specified description". The Applicant has not provided a description which details how the sprinkler systems would vary between the differently designed blocks.

No Reasonable Prospect of Succeeding

13. In the alternative, and for the reasons set out below, it is submitted there is no reasonable prospect of the Applicant succeeding in their application and it is appropriate for the Tribunal to exercise their power under Tribunal Rule 9(3)(e) to strike out the Application.

14. In Directions issued 5 November 2018 the Tribunal asked the Applicant to set out its case in relation to the following purposes:

    i. To decide whether or not there is an obligation or right for the council to carry out the specified works in each flat;
    ii. To decide whether or not there is a right of access to each flat for the purpose of undertaking the specified work; and
    iii. 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.

15. The Applicant asserts that through three variously drafted leases they have all of the rights listed above. The Applicant provides selective quotes of leases in their Case Summary and Statement of Case. However, the Respondent's lease is materially different from any of the three lease categories described. A copy of the Respondent's lease is appended to this Reply.

16. In relation to the Respondent, it is expected that the Applicant relies on the following section in the fifth paragraph of the fourth schedule of the lease:

> 'To do such things as the Council may decide are necessary to ensure the efficient maintenance administration or security of the Block…'

Almost identical wording is used in relation to the Estate at paragraph 2 of the fifth schedule of the lease, however the Applicant indicated in paragraph 29 of its Case Summary that it intends to rely on its rights in relation to the relevant Block:

> 'To do such things as the Council may decide are necessary to ensure the efficient maintenance administration and security of the Estate…'

17. These clauses do not provide the Applicant with the obligation or right to carry out the specified works (install water sprinklers of any description, or lack thereof).

18. The maintenance obligation referred to by the Applicant at paragraph 30 of their Case Summary does not provide the obligation or right to carry out the specified works.

19. The installation of water sprinklers is an improvement. The lease does not provide the right for the Applicant to make improvements.

20. Water sprinklers are a fire safety measure. They cannot be interpreted as necessary to ensure the efficiency of any of the following:
    i. Maintenance;
    ii. Administration; or
    iii. Security.

21. Ensuring 'security' does not mean ensuring 'safety' or 'freedom from threat or danger' as stated by the Applicant at paragraph 62 of their Statement of Case. Safety is a different concept to security and would have been understood by the parties to the lease to be different at the time the lease was formed. We note that the Applicant has failed to address the Respondent's position on this, as provided in the Strike-out Application.

22. Even if it were to be accepted that 'security' means 'freedom from threat or danger', water sprinklers do not ensure freedom from the threat or danger of fire. Water sprinklers are systems which, at best, reduce the impact of a fire.

23. Efficient 'maintenance' of the building does not give a private landlord the obligation or right to maintain a building in a comparable way to the public law duty given to the Highways Authority to maintain highways (Applicant's Statement of Case paragraphs 54-55).

24. Even if such a comparable duty does exist, the standard of maintenance required of a landlord does not include the installation of new technologies to combat any potential risk to a property. It therefore does not include provision for the installation of water sprinklers.

25. It cannot be reasonably argued that the installation of sprinklers was reasonably within the contemplation of the parties when they included a provision for "maintenance administration or security" in the lease.

26. Even if the lease is sufficiently elastic so as to allow for the installation of the water sprinklers in each flat, it does not provide a right of access to the flats for the purpose of undertaking the installation.

27. Again, the Applicant has failed to provide an accurate replication of the Respondent's lease provisions in its Case Summary or Statement of Case. It is expected that the Applicant intends to rely on paragraph 3 of the second schedule to the lease:

> 'Full right and liberty for the Council their lessees and their surveyors or agents with or without workmen and others at all reasonable times on reasonable written notice (except in case of emergency) to enter upon the Flat for the purposes of carrying out all their covenants conditions and obligations under the terms hereof or of the leases of their respective flats ...'

28. Even if the lease is so broad as to allow for the installation of sprinklers and access to the flats for such installation, the lease cannot be construed as providing the right for the Applicant to claim a proportion of the cost of the works as a service charge payable by the Respondent.

29. Under the Applicant's own argument on the interpretation of a lease, the Tribunal should give effect to the intention of the parties (paragraph 19 Applicant's Statement of Case, citing *Arnold v Britton*[1]). That the leaseholder would be charged for the installation of sprinklers could not reasonably be argued to have been within the contemplation of the parties when the lease was formed.

Abuse of Process

30. In the alternative, the Respondent submits that the Application is an abuse of the Tribunal's process and therefore the Tribunal should strike out the Application under Rule 9(3)(d). The Applicant is not resolved to deciding on whether it will install sprinklers until after the outcome of the Grenfell Public Inquiry. The Applicant is not giving evidence to the Grenfell Public Inquiry, nor is it a core participant. It is an abuse of process to ask for a determination where the Applicant has not resolved to proceed with (even plans for) work until the outcome, or report, of an inquiry which could suffer prolonged delays.

31. The Applicant has "said that although it had originally been indicated that the application was urgent, it had now been decided that no further steps would be

[1] [2015] UKSC 36.

taken towards implementation of the planned works until after the Chairman of the Grenfell Tower inquiry had issued his report... [and] that this would not be until at least Autumn 2019." (Tribunal Directions 5 November 2018 background paragraph 4)

32. The Tribunal acknowledged in its Decision of 21 March 2019 that "any decision to proceed with the works is dependent upon the findings from the Grenfell Inquiry".

Overriding Objective

33. In considering whether to exercise its power to strike-out the Application it is necessary for the Tribunal to consider the overriding objective. The Respondent therefore submits it is appropriate for the Tribunal to exercise its power to strike-out the Application as a proportionate response to the anticipated costs and resources involved in a full hearing given that the Applicant has no reasonable prospect of success.

34. For these reasons the Tribunal is respectfully requested to strike-out the Application.

Hannah Lennox
Trainee Solicitor
BPP University Pro Bono Centre Legal Advice Clinic

C7
NIL

DATED 16th December 1998

THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF WANDSWORTH

- to -

KENNETH DORSETT

L E A S E

relating to

53 Lindsay Court
Battersea High Street
London
SW11 3HZ

=======

Gotelee & Goldsmith
35 & 37 Elm Street Ipswich
Suffolk IP1 2AY
[LJS/WAN4387-1KEN]

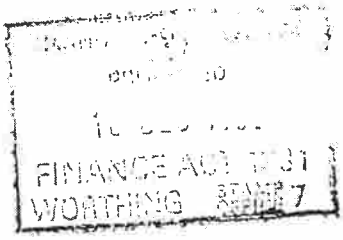
[DOC48 - WRL - two tier]
(stf.wd11/12/13/14 - lse.53lind]

H M LAND REGISTRY

Land Registration Acts 1925 to 1986

LEASE OF PART

LONDON BOROUGH OF WANDSWORTH



TITLE NUMBER: SGL414944

PROPERTY: 53 Lindsay Court
Battersea High Street
London SW11 3HZ

DATE: 16th December 1998

PARTICULARS

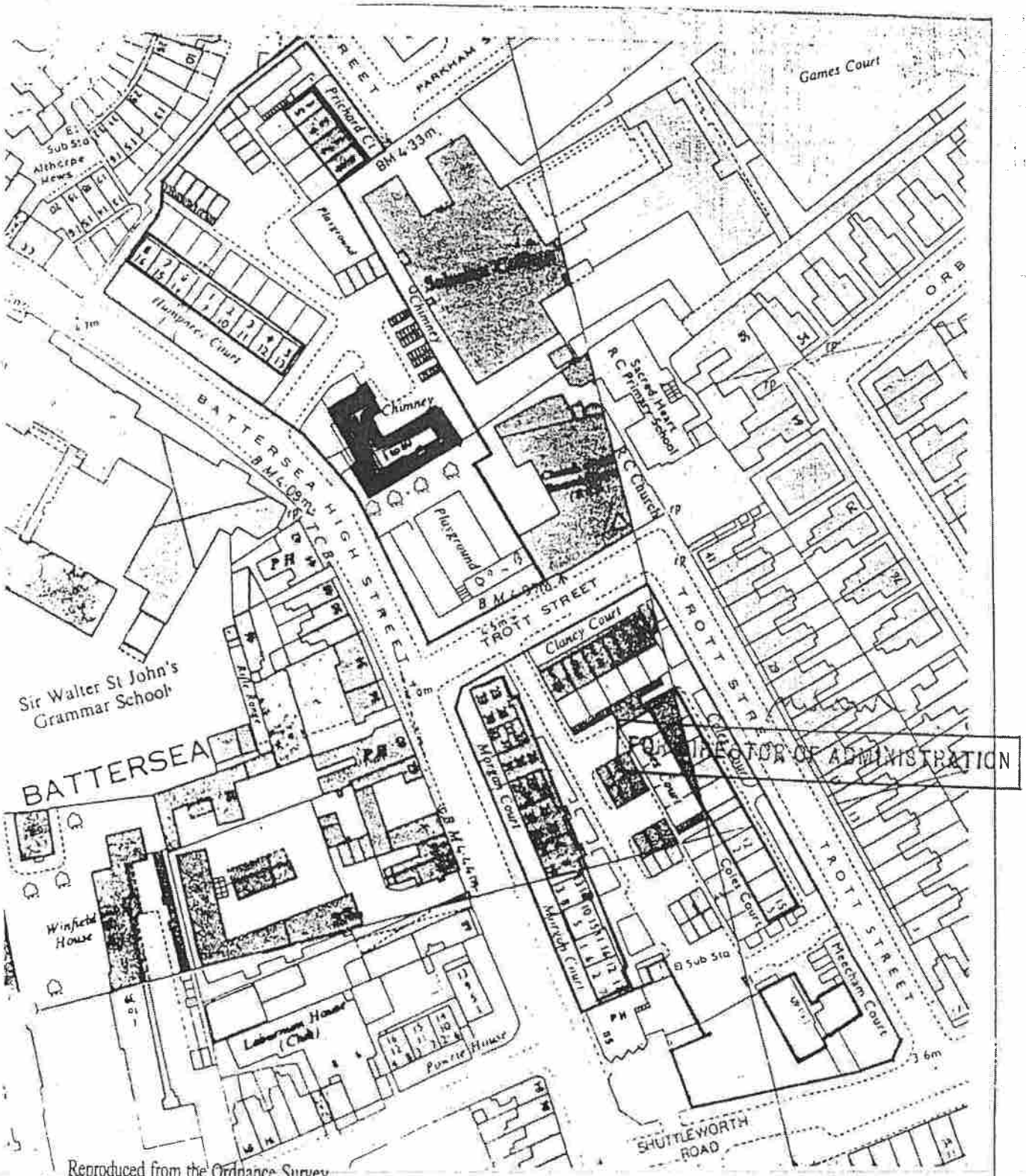
LESSEE:	KENNETH DORSETT
of -	53 Lindsay Court Battersea High Street London SW11 3HZ
PURCHASE PRICE:	TWELVE THOUSAND AND SIX HUNDRED POUNDS (£12,600.00)
RENT:	One peppercorn
LOCATION:	Tenth Floor
FLAT:	53 Lindsay Court Battersea High Street London SW11 3HZ
ESTATE:	Battersea High Street
STATUTORY POWER OF SALE:	Section 138 Housing Act 1985
DISCOUNT:	£29,400.00
DISCOUNT EXPIRY DATE:	The third anniversary of the date hereof
FOURTH SCHEDULE PERCENTAGE:	1.691%
FIFTH SCHEDULE PERCENTAGE:	0.528%
CERTIFICATE OF VALUE CONSIDERATION:	£60,000
HEATING AGREEMENT:	Clause 6 shall not have effect
HEATING SUPPLY:	Not applicable
INITIAL CHARGE FOR HEATING SUPPLY:	Not applicable

The following expressions shall have the following meanings

ascribed to them and shall be deemed to be incorporated in and form part of the within written Lease-

Expression	Meaning
"the Particulars"	The details hereinbefore appearing in the section so headed
"the Council"	THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH of Town Hall London SW18 2PU
"the Lessee"	The Lessee specified in the Particulars
"Plan No 1"	the Plan No 1 annexed hereto
"Plan No 2"	the Plan No 2 annexed hereto
"Block"	the block or blocks of flats together with the entrance ways and common parts shown edged in blue on Plan No 1
"Estate"	the Block together with the gardens roads not being public highways and other communal areas and blocks of flats and houses shown edged in black on Plan No 1
"Act"	the Housing Act 1985 (as amended)
"Discount"	the sum specified as such in the Particulars allowed to the Lessee on the grant of this Lease under the provisions of the Act
"Purchase Price"	the sum specified in the Particulars
"Statutory Power of Sale"	The Section of the Act specified in the Particulars

"The Heating Equipment" as defined in Clause 6 hereof



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No 53 LINDSAY COURT.

BATTERSEA HIGH STREET ESTATE SW11

PLAN No 1

LONDON BOROUGH OF WANDSWORTH

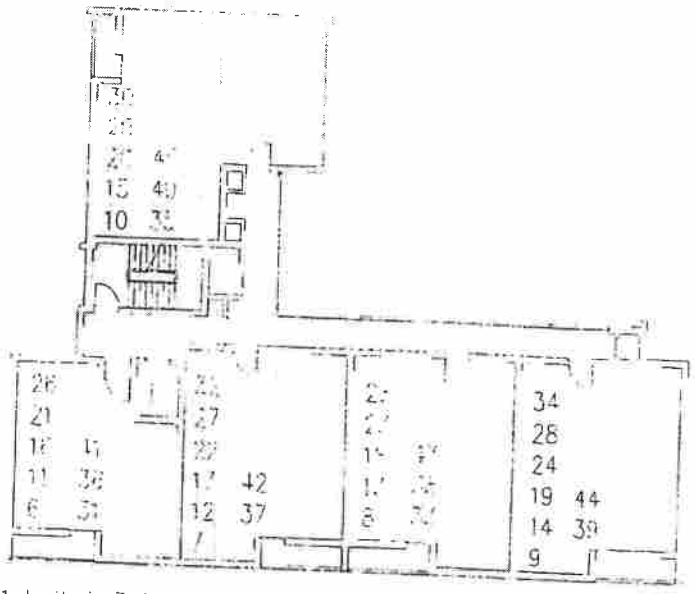
BOROUGH VALUER & ESTATES SURVEYOR

in association with

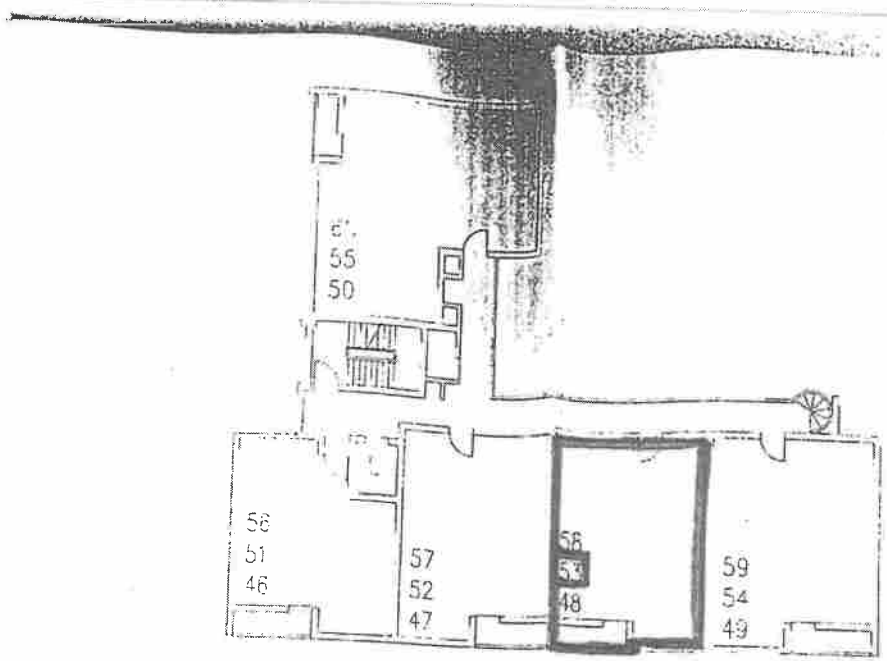
BOROUGH ARCHITECT

The Town Hall
Wandsworth High Street
London SW18 2PU
Tel No 01 871 6000

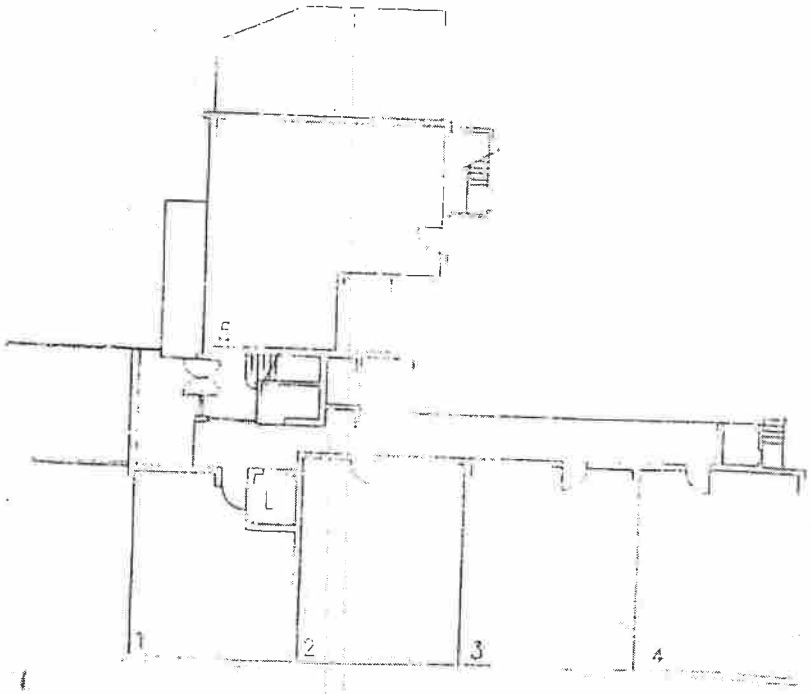
Date 1·5·86 Scale 1:1250



1st, 2nd, 3rd, 4th, 5th, 6th, 7th, & 8th Floor



9th, 10th, & 11th Floor



Ground Floor

FOR DIRECTOR OF ADMINISTRATION

53
LINDSAY COURT
BATTERSEA HIGH STREET
S.W.11.
PLAN No. 2
Wandsworth Borough Council
Technical Services Department

Wandsworth
BOROUGH VALUER & ESTATES SURVEYOR
In association with
BOROUGH ARCHITECT
The Town Hall,
Wandsworth High Street,
London SW18 2PU
Tel: 01-871 6000

DO NOT SCALE

Scale 1:200 Date

"Heating Supply"	as defined in Clause 6 hereof
"Flat"	The Flat shown edged in red on Plan No 2 and located on the **Tenth Floor** of the Block as specified in the Particulars including for the purpose of obligation as well as grant:-

(i) the interior part of the window frames and of the balcony or patio doors (if any) and the glass in the windows and in the balcony or patio doors (if any) of the Flat (subject to the Council's duty to maintain the same as provided in paragraph 3 of the Fourth Schedule hereto)

(ii) the front door internal doors internal door frames and internal staircases (if any) of the Flat

(iii) the interior non-structural walls of the Flat and the interior faces of the external walls and of the floors and ceilings within the Flat

(iv) all the drains channels watercourses gas and water pipes electric cables wires and supply lines and other conduction media in under upon or installed in or affixed to and exclusively serving the Flat

(v) the Council's fixtures and fittings sanitary apparatus and appurtenances installed in or fixed to the Flat EXCEPT AND RESERVING from the Flat the Heating Equipment and any

	heating equipment of the Council serving other parts of the Estate (if any) and the main structural parts of the Block including the roof foundations and any part or parts of the Block lying above or below the afore-mentioned faces of the ceilings or the floor respectively and the external and common parts thereof
"Initial Period"	the period defined for payment of itemised estimates in respect of repairs and improvements as defined by the Act
"Service Charge"	As defined in Clause 3 (b) hereof
"Certificate of Value Consideration":	As specified in the Particulars
"the Facilities" (if available)	(a) car parking areas (b) children's playground (c) communal gardens (d) communal clubroom (e) laundry (f) drying rooms (g) refuse facilities (h) communal aerials (i) store sheds

CONTENTS OF LEASE

COUNCIL'S COVENANTS:

enforcement of covenants in other Leases	Clauses 4(e) and 4(f)
grant of leases of other flats on similar terms	Clauses 4(c) and 4(d)
quiet enjoyment	Clause 4(a)
repair structure	Clauses 4(b) and 4th and 5th Schedules
Demise	Clause 1
Easements	Clause 2 and First Schedule
Heating	Clause 6
Insurance	Clause 4(b) and Fourth Schedule

LESSEES COVENANTS:

abatement of nuisance	Clause 3(k)
covenants affecting freehold	Clause 3(n)
covenants for benefit of other lessees	Clause 5(viii)
discount	Recital 4 Clauses 3(m) and 5(iii) and Sixth Schedule

floor covering	Clause 3(q)
notices -	
affecting Flat	Clause 3(e)
assignment	Clause 3(f)
Section 146	Clause 3(d)
access to Block	Clause 3(o)
install aerial	Clause 3(p)
keep combustibles	Clause 3(l)
make structural alterations	Clause 3(c)
pay rates	Clause 3(a)
permit viewing	Clause 3(g)
remedy defects	Clause 3(j)
repair	Clause 3(i)
restrictions and regulations	Clauses 2 and 5(vii) and Third Schedule
yield up	Clause 3(h)
Re-entry	Clause 5(i)
Rent	Clause 1
Reservations out of Lease	Clause 1 and Second Schedule
Service Charge	Clauses 3(b) 4(g) 5(iv) 5(v) and Fourth and Fifth Schedules
Variation	Clause 5(ix)

These notes are intended as a guide only and do not constitute part of the Lease-

W H E R E A S:

1. THE Council is registered at HM Land Registry as proprietor with Absolute Title of the freehold of the Estate under the Title Number referred to above-

2. THE other flats in the Block and on the Estate are let by the Council to tenants of the Council in pursuance of the Council's obligations as a housing authority and the Council has:-

(i) in the case of the other flats in the Block either previously sold the same by granting leases thereof or will in cases where it agrees or is required hereafter to sell the same only do so by granting leases thereof and in these cases the leases are or shall be (respectively) in substantially the same form as this lease or as near the same form so far as the circumstances may admit or require containing the restrictions and regulations set out in Parts I and II of the Third Schedule hereto and the other restrictions regulations covenants and conditions as hereinafter set out to the intent that any lessee for the time being of any flat in the Block may be able to enforce the observance of all the said restrictions regulations covenants and conditions by the lessees or occupiers for the time being of the other flats in the Block and to the intent that any lessee for the time being of any flat in the Block may be able to enforce the observance of the restrictions and regulations set out in Part II of the Third Schedule hereto and the restrictions regulations covenants and conditions relating to the use maintenance and enjoyment of the Estate by the lessees or occupiers for the time being of the other flats on the Estate-

(ii) in the case of the flats on the Estate (other than those in the Block) either previously sold the same by way of granting leases thereof or will in cases where it agrees or is required hereafter to sell the same only do so by granting leases thereof and in these cases

the leases are or shall be (respectively) in substantially the same or as near the same form as the circumstances may admit or require containing inter alia the restrictions and regulations set out in Part II of the Third Schedule hereto and other restrictions and regulations covenants and conditions relating to the use maintenance and enjoyment of the Estate to the intent that any lessee for the time being of any flat on the Estate may be able to enforce the observance of the restrictions and regulations set out in Part II of the Third Schedule hereto and the said restrictions regulations covenants and conditions by the lessees or occupiers of the flats on the Estate and in the Block and the Council has agreed that at any time before the grant of a lease of a flat in the Block or on the Estate has been completed or otherwise during which the Council retains or has possession or the right to possession of any flat in the Block or on the Estate the Council shall assume all the responsibilities and obligations of a lessee as if the Council was the lessee of such flat in the Block or on the Estate-

3. THE Council has agreed with the Lessee for the grant to the Lessee of a lease of the Flat for the consideration and on the terms and conditions hereinafter appearing-

NOW THIS DEED W I T N E S S E T H as follows:-

1. IN PURSUANCE of the said agreement and in consideration of the Purchase Price paid to the Council by the Lessee (the receipt whereof the Council hereby acknowledges) and of the covenants hereinafter contained and on the part of the Lessee to be performed and observed THE COUNCIL pursuant to the Statutory Power of Sale HEREBY DEMISES with Full Title Guarantee unto THE LESSEE ALL THAT the Flat TOGETHER with the easements rights and privileges mentioned in the First Schedule hereto EXCEPT AND RESERVING as mentioned in the Second Schedule hereto TO HOLD the same unto the Lessee for the term of 125 years from the date hereof YIELDING AND PAYING therefor the yearly rent of a peppercorn (if demanded)-

2. WITH THE OBJECT AND INTENT and so as to bind the Flat into whosesoever hands the same may come and for the benefit of the Estate and every part thereof THE LESSEE HEREBY COVENANTS with the Council and with the Lessees and occupants of the other flats in the Block that the Lessee and the persons deriving title under him will at all times hereafter observe the restrictions and regulations set forth in Part I and Part II of the Third Schedule hereto and such other restrictions and regulations as the Council may from time to time impose in writing and with the Council and with the Lessees and occupiers of the other flats on the Estate that the Lessee and the persons deriving title under him will at all times hereafter observe the restrictions set forth in Part II of the Third Schedule hereto and such other restrictions and regulations as the Council may from time to time impose in writing-

3. THE LESSEE HEREBY COVENANTS with the Council and as separate covenants severally with the lessees of the other flats in the Block as follows:

(a) To pay to the Council or to such person as the Council shall direct in writing all rates taxes assessments charges impositions and outgoings which may at any time during the said term be assessed charged or imposed upon the Flat or the owner or occupier thereof and in the event of any such matters being assessed charged or imposed in respect of premises of which the Flat forms part to pay the proper proportion of them attributable to the Flat-

(b) Subject to the provisions of Clause 5 to pay a service charge ("Service Charge") consisting of:

(i) the Fourth Schedule percentage of the costs and expenses and outgoings of the Council from the date of the Notice given by the Council under Section 125 of the Act in complying with its obligations under paragraphs 2, 3, 4 and 5 of the Fourth Schedule hereto and

(ii) the Fourth Schedule percentage of the costs, expenses and outgoings of the Council from the

date hereof in complying with its obligations under paragraphs 1 of the Fourth Schedule hereto

(iii) the Fifth Schedule percentage of the costs, expenses and outgoings of the Council from the date of the Notice of Estimates in complying with its obligations under the Fifth Schedule hereto-

(c) Not to make any structural alterations or structural additions to the Flat nor to remove any of the Landlord's fixtures and fittings-

(d) To pay all costs charges and expenses (including solicitors' costs and surveyors' fees) reasonably incurred by the Council for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court

(e) Forthwith after service upon the Lessee of any notice affecting the Flat served by any competent authority (other than the Council) to deliver a true copy thereof to the Council and if so required by the Council to join the Council in making such representations to any such authority concerning such proposals as the Council may consider desirable and to join with the Council in any appeal against any order or direction affecting the Flat as the Council may consider desirable

(f) Within one calendar month after the date of any assignment mortgage legal charge or permitted underlease or other instrument effecting a devolution of title to this Lease or the Flat or any part thereof to give notice thereof to the Council's Solicitor for the purpose of registration and for such registration to pay the Council's Solicitor's reasonable charges in respect of each notice of such document or instrument so given such charges being not less than £30 for each such notice

(g) To permit the Council by its agents officers servants workmen and others at all reasonable times in the day to enter upon the Flat upon giving prior notice in writing to examine the state and condition thereof

(h) At the expiration or sooner determination of the said term quietly to yield up to the Council the Flat together with any additions and improvements and all fixtures of every kind in the Flat except tenants fixtures

(i) To keep the Flat in good and tenantable repair and condition and to make good all damage occasioned whether to the Flat or to any other part of the Block caused by a stopping up bursting leakage or overflow of water or any other substance in or from the Flat or any part thereof-

(j) To make good all defects decays and wants of repair of which notice in writing shall be given by the Council to the Lessee and for which the Lessee may be liable hereunder within three months after the giving of such notice-

(k) To pay all reasonable costs charges and expenses incurred by the Council in abating a nuisance which may exist or emanate from the Flat and executing all such works as may be necessary for abating such nuisance and for complying with any notice served by a competent authority-

(l) Not to store nor bring upon the Flat or into the Block any articles whatsoever of a specially combustible or inflammable nature and not to do nor permit to be done in the Block or any part thereof any act or omission by reason of or in consequence of which any increased or extra premium may become payable or by virtue of which the insurance of the Block may become void or voidable-

(m) To pay on demand the amount specified in the Sixth Schedule hereto if there is a disposal as defined in the Sixth Schedule before the Discount Expiry Date but if there is more than one disposal then only on the first of them-

(n) To observe and perform the restrictions covenants and stipulations mentioned in any of the Entries of the Charges Register of the Title above referred to so far as the same relate to the Flat and are still subsisting and capable of taking effect and to indemnify and keep

indemnified the Council from and against all actions claims costs and demands arising from any future breach or non-observance-

(o) Not to do nor suffer to be done anything which might hinder or prevent free access with or without vehicles to the entrance of the Block and not to obstruct any passages footpaths or common parts of the Estate-

(p) Not to erect nor cause nor permit to be erected upon any exterior part of the Block any satellite dish or other apparatus for receiving wireless telegraphic or other signals and not to cause nor permit any such apparatus to project wholly or in part from the interior of the flat-

(q) To keep all the floors of the Flat including the passages thereof substantially covered with material suitable for substantially reducing the transmission of noise-

(r) To permit the Council its lessees and its or their surveyors or duly authorised agents with or without workmen to enter upon the Flat in exercise of the rights contained in the Second Schedule hereto the person entering making good all damage occasioned thereby-

4. THE COUNCIL HEREBY COVENANTS with the Lessee as follows:-

(a) That the Lessee paying the rents hereby reserved and performing and observing the several covenants conditions and agreements herein contained and on the Lessee's part to be performed and observed shall and may peaceably and quietly hold and enjoy the Flat during the said term without any lawful interruption or disturbance from or by the Council or any person or persons rightfully claiming under or in trust for it-

(b) To carry out and effect its obligations under the Fourth and Fifth Schedules-

(c) To require every person to whom it shall hereafter grant a lease of a Flat in the Block or on the Estate to covenant with the Council to observe the restrictions and regulations set out in Part II of the Third

Schedule hereto and other substantially the same restrictions regulations covenants and conditions as those set out herein insofar as they relate to the use maintenance and enjoyment of the Estate and at any time before the lease of any flat in the Block or on the Estate has been executed or otherwise during which the Council retains or has possession or the right to possession of any flat in the Block or on the Estate (whether or not the same shall have been let to a Council tenant) to make such payments and observe and perform such obligations in respect of the Block and the Estate as a lessee thereof would be liable to perform and observe if such flat were so let in the form of this lease-

(d) To require every person to whom they shall hereafter grant a lease of a flat in the Block to covenant with the Council to observe substantially the same restrictions regulations covenants and conditions as set out herein and at any time before the lease of any flat in the Block has been executed or otherwise during which the Council retains or has possession or the right to possession of any flat in the Block (whether or not the same shall have been let to a Council tenant) to make such payments and observe and perform such obligations in respect of such flat as a lessee thereof would be able to observe and perform if such flat had been so let in the form of this lease-

(e) If so required by the Lessee to enforce the restrictions regulations covenants and conditions on the part of the lessee of any other flat in the Block on the Lessee's indemnifying the Council against all reasonable costs and expenses in respect of such enforcement and providing such security in respect of costs and expenses as the Council may reasonably require-

(f) If so required by the Lessee to enforce the covenants restrictions and regulations set out in Part II of the Third Schedule hereto and other restrictions regulations covenants and conditions on the part of the

lessee of any flat on the Estate relating to the use maintenance and enjoyment of the Estate on the lessee indemnifying the Council against all reasonable costs and expenses in respect of such enforcement and providing such security in respect of costs and expenses as the Council may reasonably require-

(g) To implement the provisions of paragraphs 18 and 19 of Part III of the Sixth Schedule to the Act insofar as the collection of Service Charges is concerned-

5. PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED BETWEEN the parties hereto:

(i) that if the covenants on the part of the Lessee herein contained shall not be performed or observed then in such case it shall be lawful for the Council at any time thereafter to re-enter upon the Flat or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to any right of action or remedy of the Council in respect of any antecedent breach of any of the Lessee's covenants or the conditions herein -

(ii) (a) that the expression "the Council" shall where the context so admits include the person for the time being entitled to the reversion immediately expectant on the determination of the term granted by this lease-

(b) that the expression "the Lessee" shall where the context so admits include his her or their successors in title and that where the Lessee consists of two or more persons all covenants by and with the Lessee shall be deemed to be by and with such persons jointly and severally-

(iii) that the liability arising under the covenant in Clause 3(m) hereof shall be a charge on the Flat in accordance with the Act-

(iv) that the payment of the Service Charge shall be subject to the following terms and conditions and for the purposes of this sub-clause the following expressions shall have the following meanings ascribed to them-

Expression	Meaning
"Financial Year"	The period from the first day of April in one year to the thirty first day of March in the following year or such other annual period as the Council may in its absolute discretion from time to time determine-
"Expenses Outgoings Other Heads of Expenditure"	The expenses and outgoings disbursed incurred and or made as a result of the Council's obligations under the provisions of Clause 4(b) hereof and more particularly described in the Fourth and Fifth Schedules hereto and also such reasonable part of these expenses and outgoings which are of a periodically recurring nature (whether or not recurring by regular periods) whenever disbursed incurred or made including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Council or their Agents may in their absolute discretion allocate to the Financial Year in question as being both fair and reasonable in the circumstances-
"Certificate"	A certificate signed by a person who is either a member of the Chartered Institute of Public Finance and Accountancy or the Institute of Chartered Accountants and who is duly authorised to sign the Certificate by the Council certifying the amount of the Service Charge for the Financial Year to which it relates containing a fair Summary and details of the Expenses Outgoings and Other Heads of Expenditure for that Financial Year specifying under which Schedule hereto the Council purports to recharge each item which makes up the Expenses Outgoings and Other Heads of Expenditure-
"Estimated Charge"	An estimate of the amount of the Expenses Outgoings and other Heads of Expenditure for the Financial Year in question which the Council or its Agents may in its or their absolute discretion determine as being a fair and reasonable projection for the Financial Year-

(a) The Certificate shall be conclusive evidence for the purposes hereof of the matters which it purports to certify-

(b) On the first day of October next following the date of this lease the Council shall send to the Lessee a written statement setting out therein the amount of the Estimated Charge for the then current Financial Year and shall (if the Council's Notice under Section 125 of the Act was given more than six months before that date) send also to the Lessee the Certificate for the Financial Year during which the said Notice was given with the Service Charge apportioned for the period from the date on which the Notice was given to the end of that Financial Year and the Certificate for any intervening Financial Year and the Council shall on each succeeding first day of October send to the Lessee a written statement setting out therein the amount of the Estimated Charge for the then current financial Year together with the Certificate for the preceding Financial year-

(c) The Certificate shall give credit for the amount of the Estimated Charge in respect of the Financial Year to which the Certificate refers which may have been previously paid by the Lessee and if the amount of this Estimated Charge shall exceed the amount referred to in the Certificate then due credit for the amount by which it so exceeds shall be given to the Lessee in respect of the Estimated Charge for the following Financial Year contained in the written statement referred to in (b) above and the Lessee shall pay to the Council the amount of the Estimated Charge as contained in the written statement together with the

amount shown in the Certificate as being due (if any) within 14 days of receipt by the Lessee of the Certificate and the written statement-

(d) If the Lessee shall not have paid to the Council any sums of money due under Clause 3 and/or Clause 6 within 14 days of the same having been demanded then the Council shall be entitled to charge interest thereon at the rate of 6% above the Base Rate for the time being of Barclays Bank PLC from the date of demand until the sum of money shall actually be paid to the Council and this interest shall then become due and payable by the Lessee forthwith-

(e) If in the reasonable opinion of the Council it should become equitable to do so by virtue of any of the flats in the Block or on the Estate ceasing to exist or additional flats coming into existence then the Council shall be entitled to recalculate the percentage contributions appropriate to the flats in the Block or on the Estate (as appropriate) including the Flat on an equitable basis and shall notify the Lessee in writing accordingly and in that event then from the date of that notice the new percentage so notified shall be substituted for the figure or figures referred to in Clause 3 hereof and all references herein to the percentage of the Service Charge payable by the Lessee shall be construed as references to that new percentage PROVIDED THAT the Council shall take into account any insurance monies received in respect of any insurance against loss of Service Charge when

considering whether to vary the percentages-

(v) (a) If the whole or any part of the Flat is destroyed or damaged by fire or other risks covered by the Council's insurance of the Block so as to be unfit for residential occupation then (unless the insurance monies are irrecoverable by reason of any act or omission of the Lessee) the Service Charge payable under this Lease or a fair proportion of it according to the nature of the destruction or damage sustained shall cease to be payable until the Flat or the part of the Flat which was destroyed or damaged is again fit for use such abatement to be in full satisfaction of all claims for damage by the Lessee against the Council arising out of such destruction or damage-

(b) Any dispute as to the amount of any abatement under this sub-clause shall be referred to a person appointed by the President for the time being of the Royal Institution of Chartered Surveyors who shall act as an expert and not as an arbitrator-

(vi) Nothing herein contained and no consent given hereunder shall be deemed to be a consent or approval of the Council in any capacity other than as landlord of the Flat-

(vii) The Council may at any time or times during the term hereby granted in the interest of good estate management impose such reasonable additional restrictions and regulations of general application relating to the Block or the Estate generally as they may in their absolute discretion think fit in addition to or in place of the restrictions and regulations set out in the Third Schedule hereto and the said additional restrictions and regulations shall take effect from the date that written notice of the same shall be served upon the lessee by the Council-

(viii) That it is the intention and the Lessee accepts the

grant of this lease upon the express understanding that each lessee of a flat in the Block or on the Estate is to have the benefit of the restrictions regulations covenants and conditions binding on all other lessees of flats in the Block or the Estate whether such flats were let before or after the date of the lease to any such lessee by the Council-

(ix) That nothing in this Lease shall prevent the Council:-

(i) removing from or adding to the area comprised in the Estate-

(ii) removing terminating varying amending or altering the Facilities or any other areas services or facilities which may from time to time be available to residents on the Estate-

(iii) removing adding or altering the position of any estate roads on the Estate-

N/A

6. IT IS HEREBY AGREED BETWEEN THE PARTIES:

(1) This clause shall not have effect unless it is stated in the Particulars that this clause shall have effect-

(2)(a) (i) In this clause the term "Heating Supply" shall mean either:

(aa) a good sufficient and constant supply of hot water to the Flat; or

(bb) adequate space heating to the Flat between 1st October and 1st April in each year (or such other dates as shall be exclusively determined by the Council at its sole discretion); or

(cc) both (aa) and (bb) above as specified in the Particulars-

(ii) In this clause the term "Heating Equipment" shall mean the pipes wires cables thermostats conduits radiators valves taps conductive media and other equipment and apparatus (including those parts inside the Flat) and the boilers and boiler houses (if appropriate) installed by the Council for the purpose of providing a Heating

Supply to the Flat-

(b) In pursuance of the statutory powers conferred on the Council the Council will provide (subject as hereinafter provided) and the Lessee will accept from the date hereof a Heating Supply on the terms and conditions as set out in this clause-

(c) The Lessee hereby covenants to pay to the Council the charges for the Heating Supply which shall initially be the sum specified in the Particulars and which shall be payable by the Lessee in advance weekly every Monday PROVIDED THAT this charge may be increased or decreased to a figure specified in a written notice given by the Council to the Lessee one month prior to the date on which the increase or decrease shall take effect-

(d) The Lessee hereby covenants with the Council:-

(i) to ensure that there is no waste of the Heating Supply whether due to the act neglect or default of the Lessee or his servants agents contractors or otherwise-

(ii) to comply with all Acts of Parliament and rules orders regulations and byelaws whether made or enacted by the Council or by the National Rivers Authority or by the relevant water undertaker or sewerage undertaker and whether governing the supply of water or heat or preventing the waste undue consumption misuse or contamination of water-

(iii) not to interfere with the Heating Equipment or any part or parts thereof-

(e) The Lessee acknowledges that the Heating Supply may be cut off interrupted or suspended by the Council in the event of:

(i) mechanical breakdown-

(ii) failure of the supply of fuel-

(iii) failure of the water undertaker in supplying water required for the transmission or distribution of heat-

(iv) any interruption to the Heating Equipment from drought frost or otherwise-

(v) any repairs or alterations being made to the Heating Equipment-

(vi) any interference by the Lessee with the Heating Equipment-

(vii) any other cause (whether ejusdem generis or not) beyond the control of the Council-

(f) The times of day and the temperature and pressure at which the system providing the Heating Supply is operated shall be at the sole discretion of the Council and the Council may vary such times of day and temperature and pressure or any of them from time to time without individual notice to the Lessee-

(g) The Council shall not be responsible for any damage or loss which the Lessee may sustain directly or indirectly by reason of any cutting off interruption or suspension of the Heating Supply or any excess or deficiency of pressure or temperature or any breakdown of or accident to or failure of the Heating Equipment or by reason of any repairs being carried out thereto or by reason of any act or default of any servant or agent of the Council the Lessee or his servants or agents or any third party-

(h) The Heating Equipment (which shall at all times be and remain the property of the Council) shall be fixed and maintained by the Council at the sole risk of the Lessee. The Lessee shall not remove alter or in any way interfere with the same or any part or parts thereof and shall keep the Council indemnified against all claims for or in respect of any injury suffered in the Flat or any neighbouring or adjoining premises the Council making good all damage occasioned thereby-

(i) Without prejudice to the Council's other rights or remedies in the event of a breach of this clause by the Lessee, the obligations of the parties under this Clause shall remain in full force and effect until such time as they are terminated:

(a) forthwith by notice by the Council following any breach by the Lessee of the provisions of this Clause or this lease; or

(b) upon the Council giving to the Lessee one month's written notice at any time-

(j) Without prejudice to any of the Council's other rights or remedies at law or at equity in the event of breach by the Lessee of this lease, if the obligations of the parties under this clause are terminated the Lessee shall forthwith pay to the Council the charges due for the Heating Supply provided up to the date of such termination and shall on demand notwithstanding the termination pay to the Council all costs incurred by the Council in making good any damage caused by the Lessee to the Heating Equipment-

7. IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount or value or aggregate amount or value of the consideration exceeds the Certificate of Value Consideration-

8. IT IS CERTIFIED that there is no Agreement for Lease to which this Lease gives effect-

IN WITNESS whereof the Council has set its Common Seal and the Lessee has hereunto set his hand the day and year first before written-

THE FIRST SCHEDULE

Easements rights and privileges included in the Lease

1. Full right and liberty for the Lessee and all persons authorised by him (in common with all other persons entitled to the like right) at all times by day or by night and for all purposes in connection with the use and enjoyment of the Flat to go pass and repass over and along the forecourt and through and along the main entrances of the Block and the Estate and the passages landings staircases and lifts (if any) leading to the Flat including those areas (if any) edged in blue on Plan No 2-

2. The right to subjacent and lateral support and to shelter and protection from the other parts of the Block-

3. The free and uninterrupted passage and running of water soil gas electricity or other piped fuel from and to the Flat through the drains watercourses cables pipes wires or other conduction media which now are or may at any time hereafter be in under or passing through the Estate or any part thereof-

4. The right to the use and maintenance of cables or other installations for the supply of electricity for telephone or for the receipt directly or by landline of visual or other wireless transmissions which are now or may at any time hereafter be in under or passing through the Estate or any part thereof-

5. The right for the Lessee with servants workmen and others at all reasonable times on reasonable written notice (except in case of emergency) to enter into and upon other parts of the Estate for the purpose of repairing cleansing maintaining or renewing any such sewers drains and watercourses cables pipes and wires as aforesaid and of laying down any new sewers drains and watercourses cables pipes and wires in place thereof causing as little disturbance as possible and making good any damage so caused-

6. The right for the Lessee with servants workmen and others at all reasonable times on reasonable written notice (except in case of emergency) to enter into and upon other parts of the Block for the purpose of repairing maintaining renewing altering or rebuilding the Flat or any part of the Block giving subjacent or lateral support shelter or protection to the Flat-

7. The benefit of the restrictions contained in the leases of the other flats comprised in the Estate granted or to

be granted-

8. The right to the access of light and air to the Flat-

9. The right to the use of such of the Facilities (if any) as are from time to time made available by the Council to the Lessee-

10. A right of way at all times over such of the roads forming part of the Estate giving access to the Flat as are made available from time to time by the Council to the Lessee-

THE SECOND SCHEDULE

There is reserved out of this lease to the Council and to the owners and occupiers of the other flats in the Block and on the Estate -

1. To the owners and occupiers of the other flats comprised in the Block easements rights and privileges over along and through the Flat equivalent to those set forth in paragraphs 2 and 6 of the First Schedule to this Lease-

2. To the owners and occupiers of the other dwellings comprised in the Estate easements rights and privileges over along and through the Flat equivalent to those set forth in paragraphs 3 4 and 5 of the First Schedule to this Lease-

3. Full right and liberty for the Council their lessees and their surveyors or agents with or without workmen and others at all reasonable times on reasonable written notice (except in case of emergency) to enter upon the Flat for the purposes of carrying out all their covenants conditions and obligations under the terms hereof or of the leases of their respective flats-

THE THIRD SCHEDULE

PART I

Restrictions imposed in respect of the Flat as part of the Block

1. Not to use the Flat nor permit the same to be used for any purpose other than as a private dwellinghouse-

2. (a) Not to use the Flat for any illegal or immoral purpose-

(b) Not to commit nor suffer to be committed in the Flat or in other areas which comprise part of the Block or the Estate any acts or omissions which cause or could cause a nuisance, annoyance, inconvenience or disturbance to other owners and occupiers of other flats in the Block or on the Estate or which amount to racial, religious, ethnic, cultural, sexual or other form of harassment of such other owners and occupiers-

"Harassment" includes but is not limited to:

(a) violence or threat of violence towards any person;

(b) abusive or insulting words or behaviour;

(c) damage or threats of damage to property belonging to another person including damage to any part of a person's home;

(d) writing threatening, abusive or insulting graffiti;

(e) any act or omission calculated to interfere with the peace or comfort of any other person or to inconvenience such person-

3. Not to throw dirt rubbish rags or other refuse or permit the same to be thrown into the sinks baths lavatories cisterns or waste or soil pipes in the Flat-

4. Not to play any gramophone wireless loudspeaker or mechanical or other musical instrument of any kind nor to practice any singing in the Flat so as to cause annoyance to the owners and occupiers of the other flats in the Block-

5. Not to keep any animal in the Flat without the written consent of the Council which consent may be revoked at the reasonable discretion of the Council-

6. To clean the stairways passageways balconies and other areas in the vicinity of the Flat used in common with the owners and occupiers of other flats in the Block if and so often as they may be directed in writing so to do by the Council-

7. (a) Not to bring into the flat or into the block liquid petroleum gas or use or keep or permit to be used or kept in the flat or in the block liquid petroleum gas other than in disposable cylinders (including aerosols) which comply with the current British Standard for disposable cylinders and which have a maximum capacity of one litre and in any event limited to such number of cylinders as is reasonably required for domestic use-
(b) Not to store nor permit to be stored in the Flat or on the Estate any quantities of inflammable materials liquids gases or other harmful noxious or offensive substances other than may be reasonably required for domestic use-

8. Not to obstruct nor permit to be obstructed any of the entrances halls stairways passages balconies rubbish chutes lifts or fire escapes used in common with the owners or occupiers of any of the dwellings in the Block-

9. If the Flat has a balcony or roof garden not to place any excessive weight on the balcony or roof garden so as to cause damage to the structure of the Block and

not to allow any water to percolate from the balcony or roof garden to any parts of the Block underneath-

10. Not to alter the external appearance of the Flat in any way-

11. Not to erect any security grille over or across the front door or any other external door of the Flat without the prior written consent of the Council-

12. If the Flat has a Garden to use it only for the purposes of a garden and to keep the same in a neat and tidy condition free from weed-

13. If the Flat has a Store Area to use it only for storage purposes but not to use the same for the storage of noxious or offensive substances-

14. If the Flat has a Bin Store to use it only for keeping household refuse in one closed receptacle-

15. If the Flat has a Garage to use it only for the purpose of parking therein a private vehicle-

PART II

Restrictions imposed in respect of the Flat as part of the Estate

16. Not to use the Flat nor permit the same to be used for any purpose from which a nuisance can arise to the owners and occupiers of the other dwellings comprised in the Estate-

17. Not to park any vehicle on any part of the Estate other than a private motorcar or similar sized vehicle except on a parking area approved by the Council and not to obstruct nor permit to be obstructed any of the common access ways or roadways on the Estate-

18. To use the common amenity areas on the Estate for the purposes of recreation only-

THE FOURTH SCHEDULE

Council's Obligations in respect of the Block

1. 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 in the full reinstatement value thereof (including Architects and Surveyors fees) in the name of the Council with the interest of the Lessee the lessees of the other flats in the Block and their mortgagees noted thereon in an insurance office of repute and whenever required to produce to the Lessee a copy of or a suitable extract from the policy or policies of such insurance and written confirmation that the last premium has been paid and in the event of any part of the Block (including any common parts) being destroyed or damaged by fire or other insured risk as soon as reasonably practicable lay out the insurance monies in the repair rebuilding or reinstatement of the Block-

2. Subject to the terms of paragraph 6 of the Third Schedule hereto at all times during the term well and substantially to repair cleanse uphold support and maintain the exterior of the Block and the communal television aerials door entry systems fences walls and the entrance ways paths lifts staircases main walls party walls roof foundations and all structural parts thereof respectively including but without prejudice to the generality of the foregoing all those parts used in common with lessees of other flats in the Block and all drains watercourses sewers pipes water pipes gas pipes electric wiring gutters down pipes and other conduction media belonging thereto respectively with all necessary reparations and amendments whatsoever and to light the passages landings lifts balconies

staircases and other communal parts of the Block-

3. To repair and maintain the exterior of the window frames window sashes and balcony or patio doors and of the frames thereof (if any) of the Flat and as often as may be necessary to replace the whole or part of the window frames window sashes window furniture and balcony or patio doors and frames and furniture thereof (if any)-

4. As often as may reasonably be required to paint with two coats of good quality paint suitable for outside use and to decorate all the outside wood iron and other parts of the Block which are usually or ought to be painted or decorated and also to decorate those parts of the interior of the Block which are used in common with the lessees or occupiers of the other flats in a workmanlike manner-

5. To do such things as the Council may decide are necessary to ensure the efficient maintenance administration or security of the Block including but without prejudice to the generality of the foregoing installing door entry 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 thereof-

THE FIFTH SCHEDULE

Obligations in respect of the Estate

1. To repair cleanse and maintain the landscaped areas driveways car parking spaces and play areas used in common with the owners and occupiers of the other

dwellings on the Estate-

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

THE SIXTH SCHEDULE

Discount

1. The amount payable under Clause 3(m) hereof shall be an amount equal to the Discount reduced by one third of the Discount for each complete year which elapses from the date hereof-

2. A disposal shall mean any transfer or grant of an underlease for more than twenty-one years otherwise than at a rack rent and not being a mortgage term or any option enabling any person to carry out such a disposal and not being an exempted disposal as defined in Section 160 of the Act-

THE COMMON SEAL of THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH was affixed to this deed)

Director of Administration

90509

Tab 18

DATED 16th December 1998

THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF WANDSWORTH

- to -

KENNETH DORSETT

C O U N T E R P A R T /

L E A S E

relating to

53 Lindsay Court
Battersea High Street
London
SW11 3HZ

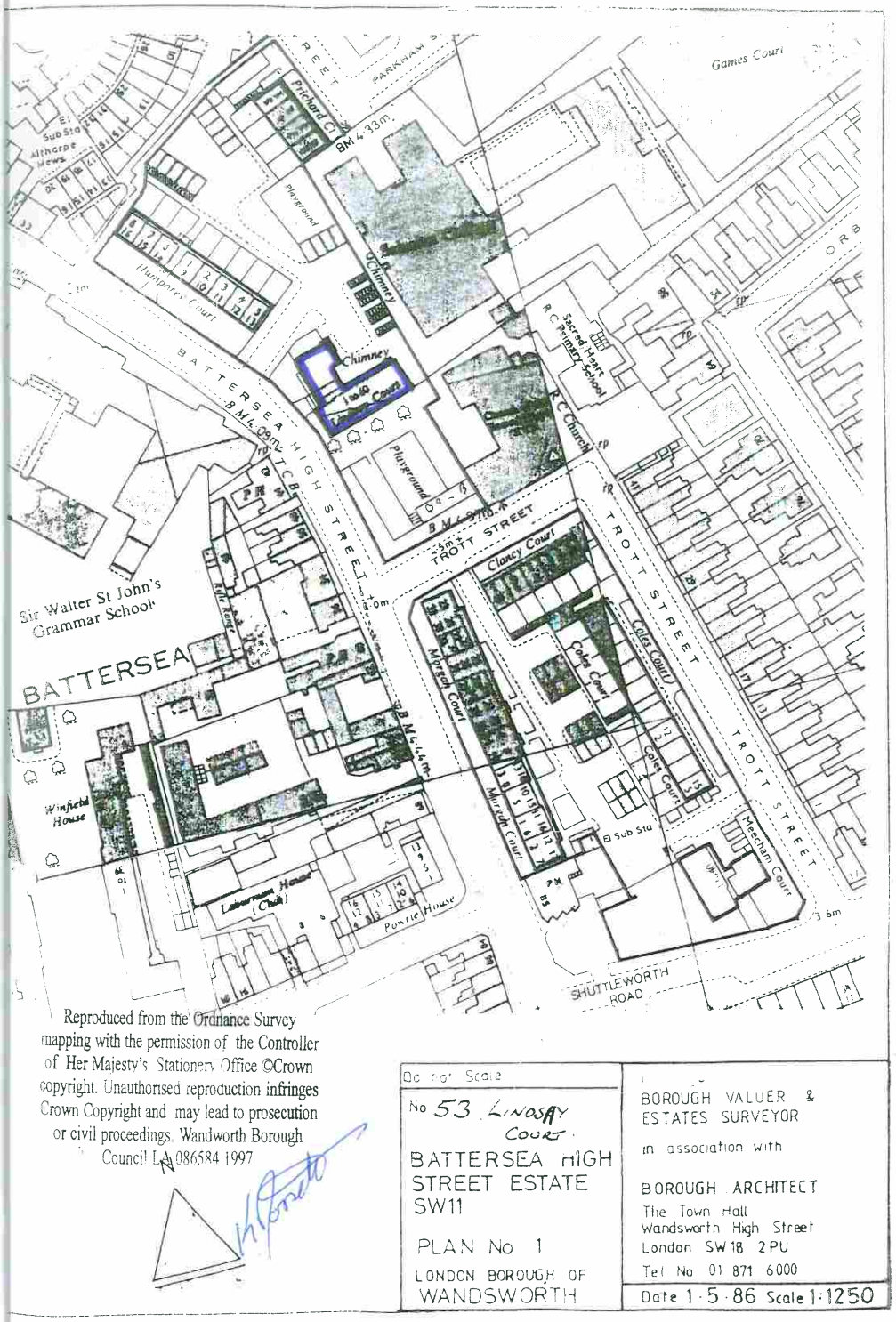
=======

Gotelee & Goldsmith
35 & 37 Elm Street Ipswich
Suffolk IP1 2AY
[LJS/WAN4387-1KEN]

[DOC48 - WRL - two tier]
(stf.wd11/12/13/14 - lse.53lind]

ascribed to them and shall be deemed to be incorporated in and form part of the within written Lease-

Expression	Meaning
"the Particulars"	The details hereinbefore appearing in the section so headed
"the Council"	THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH of Town Hall London SW18 2PU
"the Lessee"	The Lessee specified in the Particulars
"Plan No 1"	the Plan No 1 annexed hereto
"Plan No 2"	the Plan No 2 annexed hereto
"Block"	the block or blocks of flats together with the entrance ways and common parts shown edged in blue on Plan No 1
"Estate"	the Block together with the gardens roads not being public highways and other communal areas and blocks of flats and houses shown edged in black on Plan No 1
"Act"	the Housing Act 1985 (as amended)
"Discount"	the sum specified as such in the Particulars allowed to the Lessee on the grant of this Lease under the provisions of the Act
"Purchase Price"	the sum specified in the Particulars
"Statutory Power of Sale"	The Section of the Act specified in the Particulars
"The Heating Equipment"	as defined in Clause 6 hereof



"Heating Supply"	as defined in Clause 6 hereof
"Flat"	The Flat shown edged in red on Plan No 2 and located on the **Tenth Floor** of the Block as specified in the Particulars including for the purpose of obligation as well as grant:-
	(i) the interior part of the window frames and of the balcony or patio doors (if any) and the glass in the windows and in the balcony or patio doors (if any) of the Flat (subject to the Council's duty to maintain the same as provided in paragraph 3 of the Fourth Schedule hereto)
	(ii) the front door internal doors internal door frames and internal staircases (if any) of the Flat
	(iii) the interior non-structural walls of the Flat and the interior faces of the external walls and of the floors and ceilings within the Flat
	(iv) all the drains channels watercourses gas and water pipes electric cables wires and supply lines and other conduction media in under upon or installed in or affixed to and exclusively serving the Flat
	(v) the Council's fixtures and fittings sanitary apparatus and appurtenances installed in or fixed to the Flat EXCEPT AND RESERVING from the Flat the Heating Equipment and any

	heating equipment of the Council serving other parts of the Estate (if any) and the main structural parts of the Block including the roof foundations and any part or parts of the Block lying above or below the afore-mentioned faces of the ceilings or the floor respectively and the external and common parts thereof
"Initial Period"	the period defined for payment of itemised estimates in respect of repairs and improvements as defined by the Act
"Service Charge"	As defined in Clause 3 (b) hereof
"Certificate of Value Consideration":	As specified in the Particulars
"the Facilities" (if available)	(a) car parking areas (b) children's playground (c) communal gardens (d) communal clubroom (e) laundry (f) drying rooms (g) refuse facilities (h) communal aerials (i) store sheds

CONTENTS OF LEASE

COUNCIL'S COVENANTS:

enforcement of covenants in other Leases	Clauses 4(e) and 4(f)
grant of leases of other flats on similar terms	Clauses 4(c) and 4(d)
quiet enjoyment	Clause 4(a)
repair structure	Clauses 4(b) and 4th and 5th Schedules
Demise	Clause 1
Easements	Clause 2 and First Schedule
Heating	Clause 6
Insurance	Clause 4(b) and Fourth Schedule

LESSEES COVENANTS:

abatement of nuisance	Clause 3(k)
covenants affecting freehold	Clause 3(n)
covenants for benefit of other lessees	Clause 5(viii)
discount	Recital 4 Clauses 3(m) and 5(iii) and Sixth Schedule

floor covering	Clause 3(q)
notices -	
affecting Flat	Clause 3(e)
assignment	Clause 3(f)
Section 146	Clause 3(d)
access to Block	Clause 3(o)
install aerial	Clause 3(p)
keep combustibles	Clause 3(l)
make structural alterations	Clause 3(c)
pay rates	Clause 3(a)
permit viewing	Clause 3(g)
remedy defects	Clause 3(j)
repair	Clause 3(i)
restrictions and regulations	Clauses 2 and 5(vii) and Third Schedule
yield up	Clause 3(h)
Re-entry	Clause 5(i)
Rent	Clause 1
Reservations out of Lease	Clause 1 and Second Schedule
Service Charge	Clauses 3(b) 4(g) 5(iv) 5(v) and Fourth and Fifth Schedules
Variation	Clause 5(ix)

These notes are intended as a guide only and do not constitute part of the Lease-

W H E R E A S:

1. THE Council is registered at HM Land Registry as proprietor with Absolute Title of the freehold of the Estate under the Title Number referred to above-

2. THE other flats in the Block and on the Estate are let by the Council to tenants of the Council in pursuance of the Council's obligations as a housing authority and the Council has:-

(i) in the case of the other flats in the Block either previously sold the same by granting leases thereof or will in cases where it agrees or is required hereafter to sell the same only do so by granting leases thereof and in these cases the leases are or shall be (respectively) in substantially the same form as this lease or as near the same form so far as the circumstances may admit or require containing the restrictions and regulations set out in Parts I and II of the Third Schedule hereto and the other restrictions regulations covenants and conditions as hereinafter set out to the intent that any lessee for the time being of any flat in the Block may be able to enforce the observance of all the said restrictions regulations covenants and conditions by the lessees or occupiers for the time being of the other flats in the Block and to the intent that any lessee for the time being of any flat in the Block may be able to enforce the observance of the restrictions and regulations set out in Part II of the Third Schedule hereto and the restrictions regulations covenants and conditions relating to the use maintenance and enjoyment of the Estate by the lessees or occupiers for the time being of the other flats on the Estate-

(ii) in the case of the flats on the Estate (other than those in the Block) either previously sold the same by way of granting leases thereof or will in cases where it agrees or is required hereafter to sell the same only do so by granting leases thereof and in these cases

the leases are or shall be (respectively) in substantially the same or as near the same form as the circumstances may admit or require containing inter alia the restrictions and regulations set out in Part II of the Third Schedule hereto and other restrictions and regulations covenants and conditions relating to the use maintenance and enjoyment of the Estate to the intent that any lessee for the time being of any flat on the Estate may be able to enforce the observance of the restrictions and regulations set out in Part II of the Third Schedule hereto and the said restrictions regulations covenants and conditions by the lessees or occupiers of the flats on the Estate and in the Block and the Council has agreed that at any time before the grant of a lease of a flat in the Block or on the Estate has been completed or otherwise during which the Council retains or has possession or the right to possession of any flat in the Block or on the Estate the Council shall assume all the responsibilities and obligations of a lessee as if the Council was the lessee of such flat in the Block or on the Estate-

3. THE Council has agreed with the Lessee for the grant to the Lessee of a lease of the Flat for the consideration and on the terms and conditions hereinafter appearing-

NOW THIS DEED W I T N E S S E T H as follows:-

1. IN PURSUANCE of the said agreement and in consideration of the Purchase Price paid to the Council by the Lessee (the receipt whereof the Council hereby acknowledges) and of the covenants hereinafter contained and on the part of the Lessee to be performed and observed **THE COUNCIL** pursuant to the Statutory Power of Sale **HEREBY DEMISES** with Full Title Guarantee unto **THE LESSEE** ALL THAT the Flat TOGETHER with the easements rights and privileges mentioned in the First Schedule hereto EXCEPT AND RESERVING as mentioned in the Second Schedule hereto TO HOLD the same unto the Lessee for the term of 125 years from the date hereof YIELDING AND PAYING therefor the yearly rent of a peppercorn (if demanded)-

2. WITH THE OBJECT AND INTENT and so as to bind the Flat into whosesoever hands the same may come and for the benefit of the Estate and every part thereof **THE LESSEE HEREBY COVENANTS** with the Council and with the Lessees and occupants of the other flats in the Block that the Lessee and the persons deriving title under him will at all times hereafter observe the restrictions and regulations set forth in Part I and Part II of the Third Schedule hereto and such other restrictions and regulations as the Council may from time to time impose in writing and with the Council and with the Lessees and occupiers of the other flats on the Estate that the Lessee and the persons deriving title under him will at all times hereafter observe the restrictions set forth in Part II of the Third Schedule hereto and such other restrictions and regulations as the Council may from time to time impose in writing-

3. THE LESSEE HEREBY COVENANTS with the Council and as separate covenants severally with the lessees of the other flats in the Block as follows:

(a) To pay to the Council or to such person as the Council shall direct in writing all rates taxes assessments charges impositions and outgoings which may at any time during the said term be assessed charged or imposed upon the Flat or the owner or occupier thereof and in the event of any such matters being assessed charged or imposed in respect of premises of which the Flat forms part to pay the proper proportion of them attributable to the Flat-

(b) Subject to the provisions of Clause 5 to pay a service charge ("Service Charge") consisting of:

(i) the Fourth Schedule percentage of the costs and expenses and outgoings of the Council from the date of the Notice given by the Council under Section 125 of the Act in complying with its obligations under paragraphs 2, 3, 4 and 5 of the Fourth Schedule hereto and

(ii) the Fourth Schedule percentage of the costs, expenses and outgoings of the Council from the

date hereof in complying with its obligations under paragraphs 1 of the Fourth Schedule hereto

(iii) the Fifth Schedule percentage of the costs, expenses and outgoings of the Council from the date of the Notice of Estimates in complying with its obligations under the Fifth Schedule hereto-

(c) Not to make any structural alterations or structural additions to the Flat nor to remove any of the Landlord's fixtures and fittings-

(d) To pay all costs charges and expenses (including solicitors' costs and surveyors' fees) reasonably incurred by the Council for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court

(e) Forthwith after service upon the Lessee of any notice affecting the Flat served by any competent authority (other than the Council) to deliver a true copy thereof to the Council and if so required by the Council to join the Council in making such representations to any such authority concerning such proposals as the Council may consider desirable and to join with the Council in any appeal against any order or direction affecting the Flat as the Council may consider desirable

(f) Within one calendar month after the date of any assignment mortgage legal charge or permitted underlease or other instrument effecting a devolution of title to this Lease or the Flat or any part thereof to give notice thereof to the Council's Solicitor for the purpose of registration and for such registration to pay the Council's Solicitor's reasonable charges in respect of each notice of such document or instrument so given such charges being not less than £30 for each such notice

(g) To permit the Council by its agents officers servants workmen and others at all reasonable times in the day to enter upon the Flat upon giving prior notice in writing to examine the state and condition thereof

(h) At the expiration or sooner determination of the said term quietly to yield up to the Council the Flat together with any additions and improvements and all fixtures of every kind in the Flat except tenants fixtures

(i) To keep the Flat in good and tenantable repair and condition and to make good all damage occasioned whether to the Flat or to any other part of the Block caused by a stopping up bursting leakage or overflow of water or any other substance in or from the Flat or any part thereof-

(j) To make good all defects decays and wants of repair of which notice in writing shall be given by the Council to the Lessee and for which the Lessee may be liable hereunder within three months after the giving of such notice-

(k) To pay all reasonable costs charges and expenses incurred by the Council in abating a nuisance which may exist or emanate from the Flat and executing all such works as may be necessary for abating such nuisance and for complying with any notice served by a competent authority-

(l) Not to store nor bring upon the Flat or into the Block any articles whatsoever of a specially combustible or inflammable nature and not to do nor permit to be done in the Block or any part thereof any act or omission by reason of or in consequence of which any increased or extra premium may become payable or by virtue of which the insurance of the Block may become void or voidable-

(m) To pay on demand the amount specified in the Sixth Schedule hereto if there is a disposal as defined in the Sixth Schedule before the Discount Expiry Date but if there is more than one disposal then only on the first of them-

(n) To observe and perform the restrictions covenants and stipulations mentioned in any of the Entries of the Charges Register of the Title above referred to so far as the same relate to the Flat and are still subsisting and capable of taking effect and to indemnify and keep

indemnified the Council from and against all actions claims costs and demands arising from any future breach or non-observance-

(o) Not to do nor suffer to be done anything which might hinder or prevent free access with or without vehicles to the entrance of the Block and not to obstruct any passages footpaths or common parts of the Estate-

(p) Not to erect nor cause nor permit to be erected upon any exterior part of the Block any satellite dish or other apparatus for receiving wireless telegraphic or other signals and not to cause nor permit any such apparatus to project wholly or in part from the interior of the flat-

(q) To keep all the floors of the Flat including the passages thereof substantially covered with material suitable for substantially reducing the transmission of noise-

(r) To permit the Council its lessees and its or their surveyors or duly authorised agents with or without workmen to enter upon the Flat in exercise of the rights contained in the Second Schedule hereto the person entering making good all damage occasioned thereby-

4. THE COUNCIL HEREBY COVENANTS with the Lessee as follows:-

(a) That the Lessee paying the rents hereby reserved and performing and observing the several covenants conditions and agreements herein contained and on the Lessee's part to be performed and observed shall and may peaceably and quietly hold and enjoy the Flat during the said term without any lawful interruption or disturbance from or by the Council or any person or persons rightfully claiming under or in trust for it-

(b) To carry out and effect its obligations under the Fourth and Fifth Schedules-

(c) To require every person to whom it shall hereafter grant a lease of a Flat in the Block or on the Estate to covenant with the Council to observe the restrictions and regulations set out in Part II of the Third

Schedule hereto and other substantially the same restrictions regulations covenants and conditions as those set out herein insofar as they relate to the use maintenance and enjoyment of the Estate and at any time before the lease of any flat in the Block or on the Estate has been executed or otherwise during which the Council retains or has possession or the right to possession of any flat in the Block or on the Estate (whether or not the same shall have been let to a Council tenant) to make such payments and observe and perform such obligations in respect of the Block and the Estate as a lessee thereof would be liable to perform and observe if such flat were so let in the form of this lease-

(d) To require every person to whom they shall hereafter grant a lease of a flat in the Block to covenant with the Council to observe substantially the same restrictions regulations covenants and conditions as set out herein and at any time before the lease of any flat in the Block has been executed or otherwise during which the Council retains or has possession or the right to possession of any flat in the Block (whether or not the same shall have been let to a Council tenant) to make such payments and observe and perform such obligations in respect of such flat as a lessee thereof would be able to observe and perform if such flat had been so let in the form of this lease-

(e) If so required by the Lessee to enforce the restrictions regulations covenants and conditions on the part of the lessee of any other flat in the Block on the Lessee's indemnifying the Council against all reasonable costs and expenses in respect of such enforcement and providing such security in respect of costs and expenses as the Council may reasonably require-

(f) If so required by the Lessee to enforce the covenants restrictions and regulations set out in Part II of the Third Schedule hereto and other restrictions regulations covenants and conditions on the part of the

lessee of any flat on the Estate relating to the use maintenance and enjoyment of the Estate on the lessee indemnifying the Council against all reasonable costs and expenses in respect of such enforcement and providing such security in respect of costs and expenses as the Council may reasonably require-

(g) To implement the provisions of paragraphs 18 and 19 of Part III of the Sixth Schedule to the Act insofar as the collection of Service Charges is concerned-

5. PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED BETWEEN the parties hereto:

(i) that if the covenants on the part of the Lessee herein contained shall not be performed or observed then in such case it shall be lawful for the Council at any time thereafter to re-enter upon the Flat or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to any right of action or remedy of the Council in respect of any antecedent breach of any of the Lessee's covenants or the conditions herein -

(ii) (a) that the expression "the Council" shall where the context so admits include the person for the time being entitled to the reversion immediately expectant on the determination of the term granted by this lease-

(b) that the expression "the Lessee" shall where the context so admits include his her or their successors in title and that where the Lessee consists of two or more persons all covenants by and with the Lessee shall be deemed to be by and with such persons jointly and severally-

(iii) that the liability arising under the covenant in Clause 3(m) hereof shall be a charge on the Flat in accordance with the Act-

(iv) that the payment of the Service Charge shall be subject to the following terms and conditions and for the purposes of this sub-clause the following expressions shall have the following meanings ascribed to them-

Expression	Meaning
"Financial Year"	The period from the first day of April in one year to the thirty first day of March in the following year or such other annual period as the Council may in its absolute discretion from time to time determine-
"Expenses Outgoings Other Heads of Expenditure"	The expenses and outgoings disbursed incurred and or made as a result of the Council's obligations under the provisions of Clause 4(b) hereof and more particularly described in the Fourth and Fifth Schedules hereto and also such reasonable part of these expenses and outgoings which are of a periodically recurring nature (whether or not recurring by regular periods) whenever disbursed incurred or made including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Council or their Agents may in their absolute discretion allocate to the Financial Year in question as being both fair and reasonable in the circumstances-
"Certificate"	A certificate signed by a person who is either a member of the Chartered Institute of Public Finance and Accountancy or the Institute of Chartered Accountants and who is duly authorised to sign the Certificate by the Council certifying the amount of the Service Charge for the Financial Year to which it relates containing a fair Summary and details of the Expenses Outgoings and Other Heads of Expenditure for that Financial Year specifying under which Schedule hereto the Council purports to recharge each item which makes up the Expenses Outgoings and Other Heads of Expenditure-
"Estimated Charge"	An estimate of the amount of the Expenses Outgoings and other Heads of Expenditure for the Financial Year in question which the Council or its Agents may in its or their absolute discretion determine as being a fair and reasonable projection for the Financial Year-

(a) The Certificate shall be conclusive evidence for the purposes hereof of the matters which it purports to certify-

(b) On the first day of October next following the date of this lease the Council shall send to the Lessee a written statement setting out therein the amount of the Estimated Charge for the then current Financial Year and shall (if the Council's Notice under Section 125 of the Act was given more than six months before that date) send also to the Lessee the Certificate for the Financial Year during which the said Notice was given with the Service Charge apportioned for the period from the date on which the Notice was given to the end of that Financial Year and the Certificate for any intervening Financial Year and the Council shall on each succeeding first day of October send to the Lessee a written statement setting out therein the amount of the Estimated Charge for the then current financial Year together with the Certificate for the preceding Financial year-

(c) The Certificate shall give credit for the amount of the Estimated Charge in respect of the Financial Year to which the Certificate refers which may have been previously paid by the Lessee and if the amount of this Estimated Charge shall exceed the amount referred to in the Certificate then due credit for the amount by which it so exceeds shall be given to the Lessee in respect of the Estimated Charge for the following Financial Year contained in the written statement referred to in (b) above and the Lessee shall pay to the Council the amount of the Estimated Charge as contained in the written statement together with the

amount shown in the Certificate as being due (if any) within 14 days of receipt by the Lessee of the Certificate and the written statement-

(d) If the Lessee shall not have paid to the Council any sums of money due under Clause 3 and/or Clause 6 within 14 days of the same having been demanded then the Council shall be entitled to charge interest thereon at the rate of 6% above the Base Rate for the time being of Barclays Bank PLC from the date of demand until the sum of money shall actually be paid to the Council and this interest shall then become due and payable by the Lessee forthwith-

(e) If in the reasonable opinion of the Council it should become equitable to do so by virtue of any of the flats in the Block or on the Estate ceasing to exist or additional flats coming into existence then the Council shall be entitled to recalculate the percentage contributions appropriate to the flats in the Block or on the Estate (as appropriate) including the Flat on an equitable basis and shall notify the Lessee in writing accordingly and in that event then from the date of that notice the new percentage so notified shall be substituted for the figure or figures referred to in Clause 3 hereof and all references herein to the percentage of the Service Charge payable by the Lessee shall be construed as references to that new percentage PROVIDED THAT the Council shall take into account any insurance monies received in respect of any insurance against loss of Service Charge when

considering whether to vary the percentages-

(v) (a) If the whole or any part of the Flat is destroyed or damaged by fire or other risks covered by the Council's insurance of the Block so as to be unfit for residential occupation then (unless the insurance monies are irrecoverable by reason of any act or omission of the Lessee) the Service Charge payable under this Lease or a fair proportion of it according to the nature of the destruction or damage sustained shall cease to be payable until the Flat or the part of the Flat which was destroyed or damaged is again fit for use such abatement to be in full satisfaction of all claims for damage by the Lessee against the Council arising out of such destruction or damage-

(b) Any dispute as to the amount of any abatement under this sub-clause shall be referred to a person appointed by the President for the time being of the Royal Institution of Chartered Surveyors who shall act as an expert and not as an arbitrator-

(vi) Nothing herein contained and no consent given hereunder shall be deemed to be a consent or approval of the Council in any capacity other than as landlord of the Flat-

(vii) The Council may at any time or times during the term hereby granted in the interest of good estate management impose such reasonable additional restrictions and regulations of general application relating to the Block or the Estate generally as they may in their absolute discretion think fit in addition to or in place of the restrictions and regulations set out in the Third Schedule hereto and the said additional restrictions and regulations shall take effect from the date that written notice of the same shall be served upon the lessee by the Council-

(viii) That it is the intention and the Lessee accepts the

grant of this lease upon the express understanding that each lessee of a flat in the Block or on the Estate is to have the benefit of the restrictions regulations covenants and conditions binding on all other lessees of flats in the Block or the Estate whether such flats were let before or after the date of the lease to any such lessee by the Council-

(ix) That nothing in this Lease shall prevent the Council:-

(i) removing from or adding to the area comprised in the Estate-

(ii) removing terminating varying amending or altering the Facilities or any other areas services or facilities which may from time to time be available to residents on the Estate-

(iii) removing adding or altering the position of any estate roads on the Estate-

6. IT IS HEREBY AGREED BETWEEN THE PARTIES:

(1) This clause shall not have effect unless it is stated in the Particulars that this clause shall have effect-

(2)(a) (i) In this clause the term "Heating Supply" shall mean either:

(aa) a good sufficient and constant supply of hot water to the Flat; or

(bb) adequate space heating to the Flat between 1st October and 1st April in each year (or such other dates as shall be exclusively determined by the Council at its sole discretion); or

(cc) both (aa) and (bb) above as specified in the Particulars-

(ii) In this clause the term "Heating Equipment" shall mean the pipes wires cables thermostats conduits radiators valves taps conductive media and other equipment and apparatus (including those parts inside the Flat) and the boilers and boiler houses (if appropriate) installed by the Council for the purpose of providing a Heating

Supply to the Flat-

(b) In pursuance of the statutory powers conferred on the Council the Council will provide (subject as hereinafter provided) and the Lessee will accept from the date hereof a Heating Supply on the terms and conditions as set out in this clause-

(c) The Lessee hereby covenants to pay to the Council the charges for the Heating Supply which shall initially be the sum specified in the Particulars and which shall be payable by the Lessee in advance weekly every Monday PROVIDED THAT this charge may be increased or decreased to a figure specified in a written notice given by the Council to the Lessee one month prior to the date on which the increase or decrease shall take effect-

(d) The Lessee hereby covenants with the Council:-

(i) to ensure that there is no waste of the Heating Supply whether due to the act neglect or default of the Lessee or his servants agents contractors or otherwise-

(ii) to comply with all Acts of Parliament and rules orders regulations and byelaws whether made or enacted by the Council or by the National Rivers Authority or by the relevant water undertaker or sewerage undertaker and whether governing the supply of water or heat or preventing the waste undue consumption misuse or contamination of water-

(iii) not to interfere with the Heating Equipment or any part or parts thereof-

(e) The Lessee acknowledges that the Heating Supply may be cut off interrupted or suspended by the Council in the event of:

(i) mechanical breakdown-

(ii) failure of the supply of fuel-

(iii) failure of the water undertaker in supplying water required for the transmission or distribution of heat-

(iv) any interruption to the Heating Equipment from drought frost or otherwise-

(v) any repairs or alterations being made to the Heating Equipment-

(vi) any interference by the Lessee with the Heating Equipment-

(vii) any other cause (whether ejusdem generis or not) beyond the control of the Council-

(f) The times of day and the temperature and pressure at which the system providing the Heating Supply is operated shall be at the sole discretion of the Council and the Council may vary such times of day and temperature and pressure or any of them from time to time without individual notice to the Lessee-

(g) The Council shall not be responsible for any damage or loss which the Lessee may sustain directly or indirectly by reason of any cutting off interruption or suspension of the Heating Supply or any excess or deficiency of pressure or temperature or any breakdown of or accident to or failure of the Heating Equipment or by reason of any repairs being carried out thereto or by reason of any act or default of any servant or agent of the Council the Lessee or his servants or agents or any third party-

(h) The Heating Equipment (which shall at all times be and remain the property of the Council) shall be fixed and maintained by the Council at the sole risk of the Lessee. The Lessee shall not remove alter or in any way interfere with the same or any part or parts thereof and shall keep the Council indemnified against all claims for or in respect of any injury suffered in the Flat or any neighbouring or adjoining premises the Council making good all damage occasioned thereby-

(i) Without prejudice to the Council's other rights or remedies in the event of a breach of this clause by the Lessee, the obligations of the parties under this Clause shall remain in full force and effect until such time as they are terminated:

(a) forthwith by notice by the Council following any breach by the Lessee of the provisions of this Clause or this lease; or

(b) upon the Council giving to the Lessee one month's written notice at any time-

(j) Without prejudice to any of the Council's other rights or remedies at law or at equity in the event of breach by the Lessee of this lease, if the obligations of the parties under this clause are terminated the Lessee shall forthwith pay to the Council the charges due for the Heating Supply provided up to the date of such termination and shall on demand notwithstanding the termination pay to the Council all costs incurred by the Council in making good any damage caused by the Lessee to the Heating Equipment-

7. IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount or value or aggregate amount or value of the consideration exceeds the Certificate of Value Consideration-

8. IT IS CERTIFIED that there is no Agreement for Lease to which this Lease gives effect-

IN WITNESS whereof the Council has set its Common Seal and the Lessee has hereunto set his hand the day and year first before written-

THE FIRST SCHEDULE

Easements rights and privileges included in the Lease

1. Full right and liberty for the Lessee and all persons authorised by him (in common with all other persons entitled to the like right) at all times by day or by night and for all purposes in connection with the use and enjoyment of the Flat to go pass and repass over and along the forecourt and through and along the main entrances of the Block and the Estate and the passages landings staircases and lifts (if any) leading to the Flat including those areas (if any) edged in blue on Plan No 2-

2. The right to subjacent and lateral support and to shelter and protection from the other parts of the Block-

3. The free and uninterrupted passage and running of water soil gas electricity or other piped fuel from and to the Flat through the drains watercourses cables pipes wires or other conduction media which now are or may at any time hereafter be in under or passing through the Estate or any part thereof-

4. The right to the use and maintenance of cables or other installations for the supply of electricity for telephone or for the receipt directly or by landline of visual or other wireless transmissions which are now or may at any time hereafter be in under or passing through the Estate or any part thereof-

5. The right for the Lessee with servants workmen and others at all reasonable times on reasonable written notice (except in case of emergency) to enter into and upon other parts of the Estate for the purpose of repairing cleansing maintaining or renewing any such sewers drains and watercourses cables pipes and wires as aforesaid and of laying down any new sewers drains and watercourses cables pipes and wires in place thereof causing as little disturbance as possible and making good any damage so caused-

6. The right for the Lessee with servants workmen and others at all reasonable times on reasonable written notice (except in case of emergency) to enter into and upon other parts of the Block for the purpose of repairing maintaining renewing altering or rebuilding the Flat or any part of the Block giving subjacent or lateral support shelter or protection to the Flat-

7. The benefit of the restrictions contained in the leases of the other flats comprised in the Estate granted or to

be granted-

8. The right to the access of light and air to the Flat-

9. The right to the use of such of the Facilities (if any) as are from time to time made available by the Council to the Lessee-

10. A right of way at all times over such of the roads forming part of the Estate giving access to the Flat as are made available from time to time by the Council to the Lessee-

THE SECOND SCHEDULE

There is reserved out of this lease to the Council and to the owners and occupiers of the other flats in the Block and on the Estate -

1. To the owners and occupiers of the other flats comprised in the Block easements rights and privileges over along and through the Flat equivalent to those set forth in paragraphs 2 and 6 of the First Schedule to this Lease-

2. To the owners and occupiers of the other dwellings comprised in the Estate easements rights and privileges over along and through the Flat equivalent to those set forth in paragraphs 3 4 and 5 of the First Schedule to this Lease-

3. Full right and liberty for the Council their lessees and their surveyors or agents with or without workmen and others at all reasonable times on reasonable written notice (except in case of emergency) to enter upon the Flat for the purposes of carrying out all their covenants conditions and obligations under the terms hereof or of the leases of their respective flats-

THE THIRD SCHEDULE

PART I

Restrictions imposed in respect of the Flat as part of the Block

1. Not to use the Flat nor permit the same to be used for any purpose other than as a private dwellinghouse-

2. (a) Not to use the Flat for any illegal or immoral purpose-

(b) Not to commit nor suffer to be committed in the Flat or in other areas which comprise part of the Block or the Estate any acts or omissions which cause or could cause a nuisance, annoyance, inconvenience or disturbance to other owners and occupiers of other flats in the Block or on the Estate or which amount to racial, religious, ethnic, cultural, sexual or other form of harassment of such other owners and occupiers-

"Harassment" includes but is not limited to:

(a) violence or threat of violence towards any person;

(b) abusive or insulting words or behaviour;

(c) damage or threats of damage to property belonging to another person including damage to any part of a person's home;

(d) writing threatening, abusive or insulting graffiti;

(e) any act or omission calculated to interfere with the peace or comfort of any other person or to inconvenience such person-

3. Not to throw dirt rubbish rags or other refuse or permit the same to be thrown into the sinks baths lavatories cisterns or waste or soil pipes in the Flat-

4. Not to play any gramophone wireless loudspeaker or mechanical or other musical instrument of any kind nor to practice any singing in the Flat so as to cause annoyance to the owners and occupiers of the other flats in the Block-

5. Not to keep any animal in the Flat without the written consent of the Council which consent may be revoked at the reasonable discretion of the Council-

6. To clean the stairways passageways balconies and other areas in the vicinity of the Flat used in common with the owners and occupiers of other flats in the Block if and so often as they may be directed in writing so to do by the Council-

7. (a) Not to bring into the flat or into the block liquid petroleum gas or use or keep or permit to be used or kept in the flat or in the block liquid petroleum gas other than in disposable cylinders (including aerosols) which comply with the current British Standard for disposable cylinders and which have a maximum capacity of one litre and in any event limited to such number of cylinders as is reasonably required for domestic use-
(b) Not to store nor permit to be stored in the Flat or on the Estate any quantities of inflammable materials liquids gases or other harmful noxious or offensive substances other than may be reasonably required for domestic use-

8. Not to obstruct nor permit to be obstructed any of the entrances halls stairways passages balconies rubbish chutes lifts or fire escapes used in common with the owners or occupiers of any of the dwellings in the Block-

9. If the Flat has a balcony or roof garden not to place any excessive weight on the balcony or roof garden so as to cause damage to the structure of the Block and

not to allow any water to percolate from the balcony or roof garden to any parts of the Block underneath-

10. Not to alter the external appearance of the Flat in any way-

11. Not to erect any security grille over or across the front door or any other external door of the Flat without the prior written consent of the Council-

12. If the Flat has a Garden to use it only for the purposes of a garden and to keep the same in a neat and tidy condition free from weed-

13. If the Flat has a Store Area to use it only for storage purposes but not to use the same for the storage of noxious or offensive substances-

14. If the Flat has a Bin Store to use it only for keeping household refuse in one closed receptacle-

15. If the Flat has a Garage to use it only for the purpose of parking therein a private vehicle-

PART II

Restrictions imposed in respect of the Flat as part of the Estate

16. Not to use the Flat nor permit the same to be used for any purpose from which a nuisance can arise to the owners and occupiers of the other dwellings comprised in the Estate-

17. Not to park any vehicle on any part of the Estate other than a private motorcar or similar sized vehicle except on a parking area approved by the Council and not to obstruct nor permit to be obstructed any of the common access ways or roadways on the Estate-

18. To use the common amenity areas on the Estate for the purposes of recreation only-

THE FOURTH SCHEDULE

Council's Obligations in respect of the Block

1. 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 in the full reinstatement value thereof (including Architects and Surveyors fees) in the name of the Council with the interest of the Lessee the lessees of the other flats in the Block and their mortgagees noted thereon in an insurance office of repute and whenever required to produce to the Lessee a copy of or a suitable extract from the policy or policies of such insurance and written confirmation that the last premium has been paid and in the event of any part of the Block (including any common parts) being destroyed or damaged by fire or other insured risk as soon as reasonably practicable lay out the insurance monies in the repair rebuilding or reinstatement of the Block-

2. Subject to the terms of paragraph 6 of the Third Schedule hereto at all times during the term well and substantially to repair cleanse uphold support and maintain the exterior of the Block and the communal television aerials door entry systems fences walls and the entrance ways paths lifts staircases main walls party walls roof foundations and all structural parts thereof respectively including but without prejudice to the generality of the foregoing all those parts used in common with lessees of other flats in the Block and all drains watercourses sewers pipes water pipes gas pipes electric wiring gutters down pipes and other conduction media belonging thereto respectively with all necessary reparations and amendments whatsoever and to light the passages landings lifts balconies

staircases and other communal parts of the Block-

3. To repair and maintain the exterior of the window frames window sashes and balcony or patio doors and of the frames thereof (if any) of the Flat and as often as may be necessary to replace the whole or part of the window frames window sashes window furniture and balcony or patio doors and frames and furniture thereof (if any)-

4. As often as may reasonably be required to paint with two coats of good quality paint suitable for outside use and to decorate all the outside wood iron and other parts of the Block which are usually or ought to be painted or decorated and also to decorate those parts of the interior of the Block which are used in common with the lessees or occupiers of the other flats in a workmanlike manner-

5. To do such things as the Council may decide are necessary to ensure the efficient maintenance administration or security of the Block including but without prejudice to the generality of the foregoing installing door entry 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 thereof-

THE FIFTH SCHEDULE

Obligations in respect of the Estate

1. To repair cleanse and maintain the landscaped areas driveways car parking spaces and play areas used in common with the owners and occupiers of the other

dwellings on the Estate-

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

THE SIXTH SCHEDULE

Discount

1. The amount payable under Clause 3(m) hereof shall be an amount equal to the Discount reduced by one third of the Discount for each complete year which elapses from the date hereof-

2. A disposal shall mean any transfer or grant of an underlease for more than twenty-one years otherwise than at a rack rent and not being a mortgage term or any option enabling any person to carry out such a disposal and not being an exempted disposal as defined in Section 160 of the Act-

SIGNED AND DELIVERED AS A DEED)
by the **LESSEE**)
in the presence of:)

J.R. ABBOTT
77/79, ST. JOHN'S ROAD
LONDON SW11 1QZ
SOLICITOR

NB PLEASE SIGN PLANS

Tab 19

HPLP

Housing & Property Law Partnership
Solicitors

2-5 Warwick Court
London
WC1R 5DJ
Tel: 020 7553 9000
Fax: 020 7553 9001
DX: 53338 Clerkenwell
www.housingandproperty.co.uk

Mr. Mark Cooper
South London Legal Partnership
DX 161030 Morden 3

Fax:
Your ref: L/MC/2616/5093
Our ref: ME9213
Date: 07 November 2019

Also by e-mail: mark.cooper@merton.gov.uk

Dear Sir,

RE: LON/00BJ/LSC/0286 – London Borough of Wandsworth v Various Leaseholders.

We e-mailed you on 22nd October asking you indicate which paragraphs of the Council's constitution it relies upon in support of its submission that a decision was made on 29.6.17 by the Council's Finance and Corporate Resources and Overview and Scrutiny Committee (FCROSC) (paragraphs 51 of Initial Response re-asserting para 87 of the statement of case). The footnote 7 then refers to the entire constitution.

We have tried to work out the basis for the assertion that the FROSC has power to make the decision that you say it has made, and we can't.

Part 1 of the constitution under the heading "Overview and Scrutiny" states; "These committees submit reports and recommendations to the Executive"

Under the heading "How decisions are made" States; "The Executive is the part of the Council which is responsible for most member level decisions"

Article 6 in relation to Overview and Scrutiny Committees does not appear to contain any power to make decisions and is consistent with their function as described above.

We also note that although never referred to in the Statement of Case it is now accepted that the recommendation made in the minutes of the Housing and Regeneration overview and Scrutiny Committee on 13.9.18 was adopted by a decision made by the Executive on17.9.18. There is a clear document showing that.

Despite directions to do so, it still seems to us that the Council has failed to show that a decision was made and produce evidence to support it. Why, for example is there no document as per the decision made on 17.9.18 in relation to the decision that you claim was made?

Please explain by reference to specific parts and paragraphs of the Constitution the basis for your assertion.

Finally, please explain the mechanism as between your firm and the Council as to how documents come to be posted on the website. Do you do it directly? Are they sent by you to the Council for posting or what?

We ask because, as you will recall your "Response to Application" dated 12.3.19 was misleading and you sent a further letter to the Tribunal dated 13.3.19 correcting your error.

On recent review we note that the website has entries for "Council's response to application" and "Additional Council's response". The first is the letter of 12.3.19. We assumed that clicking on the "Additional Council's response would reveal the letter of 13.3.19 correcting your error. In fact it's a further copy of the 12.3.19 letter.

This rather compounds the first error and it appears that anyone not aware directly of your error would have remained unaware. We would like an explanation of how this occurred.

Yours faithfully

Housing & Property Law Partnership.

Tab 20

Wandsworth

Chief Executive
Paul Martin

Wandsworth Borough Council
Chief Executive's Group
The Town Hall Wandsworth High Street
London SW18 2PU

Date: 23rd June 2017

For further information on this agenda, please contact the Committee Secretary: Peter Sass on Tel. 020 8871 6005 or e-mail: psass@wandsworth.gov.uk

EXECUTIVE

MONDAY, 3RD JULY, 2017 AT 7.30 P.M.
TOWN HALL, WANDSWORTH HIGH STREET, LONDON, SW18 2PU

Members of the Committee:
Councillor Govindia (Leader of the Council); Councillors Cook (Deputy Leader of the Council), Caddy, Ellis, McDermott, Salier, Senior and Mrs Sutters.

AGENDA

DISCLOSABLE PECUNIARY INTERESTS

1. **Declarations**

To receive any declarations of personal and prejudicial interests in any of the matters to be considered at the meeting.

EXECUTIVE FUNCTIONS

2. **Matters for decision**

To consider matters for decision as referred to in the schedule prepared by the Chief Executive. (To follow – Paper No. 17-242)

The reports on matters for decision at this meeting (and which are listed in the Appendix to the schedule) have been,

or will be, considered at meetings of the following Overview and Scrutiny Committees:-

Overview and Scrutiny Committee	Date
Housing and Regeneration	20th June 2017
Education and Children's Services	20th June 2017
Community Services	21st June 2017
Adult Care and Health	26th June 2017
Finance and Corporate Resources	29th June 2017

The reports can be inspected at the Town Hall concourse, Wandsworth High Street, SW18 2PU and on the Council's website: www.wandsworth.gov.uk/modern.gov

WANDSWORTH BOROUGH COUNCIL

EXECUTIVE

Statement of decisions made at the meeting held on 3rd July 2017

(Present:- Councillor Govindia (Leader of the Council); Councillor Cook – Deputy Leader of the Council; Councillors Caddy, McDermott, Salier and Mrs Sutters

Agenda item	Paper No.	(1) Matter considered	(2) Decision and reasons	(3) Any alternative options considered and rejected
1.	-	**Declarations of interest**	No declarations were made.	
2.	17-242	**Executive functions – matters for decision**		
		HOUSING AND REGENERATION MATTERS		
		OS Committee Paper No. Subject matter of report		
		17-171: Building for Wandsworth	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-171: Review of Homes in Multiple Occupation (HMO) licensing fees and implementation of the Planning Act 2016	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.

2. (cont'd)	17-242 (cont'd)	**HOUSING AND REGENERATION MATTERS (CONTINUED)**		
		OS Committee Paper No. Subject matter of report		
		17-173: Housing Policies and Schemes	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-174: Joint Venture Arrangement for the delivery of the Winstanley/York Road regeneration project	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-175: Annual Housing resources and commitments for 2017/18	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-176: Affordable Housing Update	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-177: Nightingale Square modular development, SW12	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-178: Implementation of Self-Build and Custom Housebuilding Act 2015	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.

2. (cont'd)	17-242 (cont'd)	**HOUSING AND REGENERTION MATTERS (CONTINUED)**		
		OS Committee Paper No. Subject matter of report		
		17-239: Fire at Grenfell Tower and the implications for the management of high rise blocks in Wandsworth Council's housing stock	Recommendations adopted as amended for the reasons given in the report	See report for any alternative options considered.
		EDUCATION AND CHILDREN'S SERVICES MATTERS		
		OS Committee Paper No. Subject matter of report		
		17-197: Children's Services Ofsted Improvement Plan	Recommendations adopted as amended for the reasons given in the report	See report for any alternative options considered.
		17-198: Topline Indicators and Key issues	Recommendations adopted as amended for the reasons given in the report	See report for any alternative options considered.
		17-199: Care Leavers' Service	Recommendations adopted as amended for the reasons given in the report	See report for any alternative options considered.
		17-200: Special Educational Needs Strategic Review	Recommendations adopted as amended for the reasons given in the report	See report for any alternative options considered.

2. (cont'd)	17-242 (cont'd)	**EDUCATION AND CHILDREN'S SERVICES MATTERS (CONTINUED)**		
		OS Committee Paper No. Subject matter of report		
		17-209: Schools Capital Programme 2017/18	Recommendations adopted for the reasons given in the report	See report for any alterative options considered
		COMMUNITY SERVICES MATTERS		
		OS Committee Paper No. Subject matter of report		
		17-182: Regulatory Services Partnership	Recommendations adopted as amended for the reasons given in the report	See report for any alternative options considered.
		17-183: Q4 Results, key issues, indicators and targets	Recommendations adopted as amended for the reasons given in the report	See report for any alterative options considered
		17-184: CCTV	Recommendations adopted for the reasons given in the report	See report for any alterative options considered
		17-185: Quietways	Recommendations adopted for the reasons given in the report	See report for any alternative options considered.

2. (cont'd)	17-242 (cont'd)	**COMMUNITY SERVICES MATTERS (CONTINUED)**		
		17-186: CIL Instalments Policy Review	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-187: Harberson Road Parking Petition	Recommendations adopted for the reasons given in the report	See report for any alternative options considered.
		17-189: Mysore Road	Recommendations adopted for the reasons given in the report	See report for any alternative options considered.
		17-190: Eatonville Road	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		ADULT CARE AND HEALTH MATTERS		
		OS Committee Paper No. Subject matter of report		
		17-167: Adult Social Services Budget and improved Better Care Fund Grant	Recommendations adopted as amended for the reasons given in the report.	See report for any alternative options considered.
		17-168: Commissioning a Joint Supported Employment Service for adults with social care needs	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.

2. (cont'd)	17-242 (cont'd)	**ADULT CARE AND HEALTH MATTERS (CONTINUED)**		
		17-169: Progress report	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		FINANCE AND CORPORATE RESOURCES MATTERS		
		OS Committee Paper No. Subject matter of report		
		17-233: Petition from Ritherden Road Traders' Association	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-224: Discretionary Rate Relief	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-225: Nine Elms Vauxhall Strategy Board (7.4.17) and Sleaford Street Health Care Facility	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-175: Annual Review of housing resources and commitments – and acquired sales policies	Recommendations adopted as amended for the reasons given in the report.	See report for any alternative options considered.

2. (cont'd)	17-242 (cont'd)	**FINANCE AND CORPORATE RESOURCES MATTERS (CONTINUED)**		
		17-226: Progress report; top line performance indicators and targets; key issues for 2017/18 and; Corporate Objectives of the Council for 2017/18	Recommendations adopted as amended for the reasons given in the report.	See report for any alternative options considered.
		17-227: 'Wave 4' of the Wandsworth Local Fund (Neighbourhood CIL)	Recommendations adopted as amended for the reasons given in the report.	See report for any alternative options considered.
		17-229: Operation of the Grants (Overview and Scrutiny) Sub-Committee	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-230: Aviation Matters: responses to Government consultation	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-231: Shared Staffing Arrangement – Progress report	Recommendations adopted as amended for the reasons given in the report.	See report for any alternative options considered.
		17-232: Members' Allowances paid in 2016/17 and the Schemes to apply in 2017/18 and 2018/19	Recommendations adopted for recommendation to Council (in the case of (c)) for the reasons given in the report.	See report for any alternative options considered.

2. (cont'd)	17-242 (cont'd)	**FINANCE AND CORPORATE RESOURCES MATTERS (CONTINUED)**		
		17-234: Council's Financial Results for the year ended 31st March 2017	Recommendations adopted as amended for the reasons given in the report.	See report for any alternative options considered.
		17-227: 'Wave 4' of the Wandsworth Local Fund (Neighbourhood CIL)	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-235: Medium Term Financial Strategy for 2017/18	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
		17-236: Treasury Management in 2016/17 and 2017/18	Recommendations adopted for recommendation to Council for the reasons given in the report.	See report for any alternative options considered.
		17-237: Budget Variations	Recommendations adopted as amended for the reasons given in the report.	See report for any alternative options considered.
		17-174 and 174A: Joint Venture arrangement for the delivery of Winstanley/York Road regeneration project	Recommendations adopted bearing in mind the exempt information in Paper 17-174A for the reasons given in the report.	See report for any alternative options considered.

2. (cont'd)	17-242 (cont'd)	**FINANCE AND CORPORATE RESOURCES MATTERS (CONTINUED)**		
		17-243: Fire Safety in High Rise Blocks	Recommendations adopted as amended for the reasons given in the report.	See report for any alternative options considered.

Issued in accordance with Regulation 12 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (Statutory Instrument No. 2012/2089)

Peter Sass
Head of Governance (for the Chief Executive)
Town Hall
Wandsworth
SW18 2PU

4th July 2017

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Wandsworth

Chief Executive
Paul Martin

Wandsworth Borough Council
Chief Executive's Group
The Town Hall Wandsworth High Street
London SW18 2PU

Date: 7 September 2018

For further information on this agenda, please contact the Committee Secretary: Peter Sass on Tel. 020 8871 6005 or e-mail: peter.sass@richmondandwandsworth.gov.uk

EXECUTIVE

MONDAY, 17TH SEPTEMBER, 2018 AT 7.30 P.M. ROOM 123 - THE TOWN HALL, WANDSWORTH HIGH STREET, WANDSWORTH SW18 2PU

Members of the Committee:
Councillor Govindia (Leader of the Council); Councillors Caddy, Cook, Ellis, Locker, Mrs. McDermott, O'Broin, Senior and Mrs Sutters.

AGENDA

DISCLOSABLE PECUNIARY INTERESTS

1. **Declarations**

To receive any declarations of personal and prejudicial interests in any of the matters to be considered at the meeting.

EXECUTIVE FUNCTIONS

2. **Matters for decision**

To consider matters for decision as referred to in the schedule prepared by the Chief Executive. (To follow – Paper No. 18-310)

The reports on matters for decision at this meeting (and which are listed in the Appendix to the schedule) have been,

or will be, considered at meetings of the following Overview and Scrutiny Committees:-

Overview and Scrutiny Committee	Date
Adult Care and Health	10th September 2018
Housing and Regeneration	13th September 2018

The reports can be inspected at the Town Hall concourse, Wandsworth High Street, SW18 2PU and on the Council's website: www.wandsworth.gov.uk/modern.gov

WANDSWORTH BOROUGH COUNCIL

EXECUTIVE

Statement of decisions made at the meeting held on 17 September 2018

(Present:- Councillor Govindia (Leader of the Council) (Chairman), Councillors Cook (Deputy Leader of the Council), Councillors Caddy, Ellis, Locker, Mrs. McDermott, O'Broin and Senior.

Apologies were received from Councillors Mrs Sutters

19:30pm

Agenda Item	Paper No.	(1) Matter considered	(2) Decision and reasons	(3) Any alternative options considered and rejected
1.	-	**Declarations of interest**	No declarations were made.	
2.	18-310	**Executive functions – matters for decision**		
		ADULT CARE AND HEALTH		
		OS Committee Paper No. Subject matter of report		

		18-272: This report sets out the Council's proposed approach to transforming adult social care through a focussed initiative to promote independence. The Promoting Independence Programme supports the Directorate's approach to managing demand by enabling people to remain, gain or regain independence, targeting resources at those in most need and ensuring Value for Money in Adult Social Services, in the context of increasing demand for services and budget pressures in adult social care. The Director of Resources comments that this report is recommending how the Adult Social Services Directorate will manage its services to achieve a balanced budget in 2020/21 from the current base budget pressure of £5.8million.	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered.
2. (cont'd)	18-310	**HOUSING AND REGENERATION MATTERS**		
		OS Committee Paper No. Subject matter of report		
		18-279: Fire Safety Update	Recommendations adopted as amended for the reasons given in the report	See report for any alternative options considered
		18-282: Housing and Homelessness Strategy: Options Paper	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered

		18-284: Re-tendering of the lift servicing and maintenance services to domestic dwellings at various properties Borough-wide (Contracts A and B)	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered
2. (cont'd)	18-310	18-285: Re-tendering the Boroughwide district and communal domestic gas servicing, maintenance, and inspection contracts	Recommendations adopted for the reasons given in the report.	See report for any alternative options considered

Issued in accordance with Regulation 12 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (Statutory Instrument No. 2012/2089)

Davena Palmer
Democratic Services Manager
Town Hall
Wandsworth
SW18 2PU

17th September 2018

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Tab 21

Mark Cooper

From: Nigel Summerley <nigel_summerley@yahoo.co.uk>
Sent: 14 October 2019 14:46
To: Mark Cooper
Cc: Stuart Tancred
Subject: Re: LON/00BJ/LSC/2018/0286

Dear Sir

I haven't heard back from you – but it seems that you are acting for Wandsworth.

Here is a copy of my reply to Wandsworth's response, as sent to Stuart Tancred at the First Tier Tribunal.

Can you please confirm that you have received this?

Yours sincerely
Nigel Summerley

Dear Mr Tancred

As requested, here is my reply to the response made by Wandsworth (due by 16th October). Can you please confirm that you have received it.

Best wishes
Nigel Summerley

- Wandsworth's latest response says that Nigel Summerley's strike-out application is contained in a five-page email – which "contains a critique of certain paragraphs of the Council's Statement of Case". In fact, those many pages contain arguments against most of the Council's Statement of Case, not "certain paragraphs".

- Wandsworth finds it "difficult to ascertain from NS's Strike-Out Application what his main arguments are for the striking-out of the Council's Application". Why so difficult? The whole document is written in the plainest language and cross-referred meticulously to the Council's original document.

- Wandsworth not only has "difficulty" understanding a longish list of arguments in plain language, it also manages to reduce five pages down to the eight words that it chooses to respond to.

- It says: "Mr Summerley's main arguments appear to relate to the construction of the words: 'to *ensure the efficient maintenance administration and security*' of the Blocks, which he states clearly cannot bear the construction the Council has given them." But every word of the five-page document is an argument as to why this application is misguided, misinformed and inappropriate – and has caused tremendous dismay and despair among leaseholders. And Wandsworth responds to just eight words that it has picked out.

- One could be tempted to say that the double negative jargon of "Unless the Council's position as to the construction of the words '*to ensure the efficient maintenance administration and security*' is clearly unarguable, then 10 this is not a basis for striking out the Council's Application" is difficult to understand. What it appears to mean is certainly difficult to understand.

- The genuine and passionately held concerns of the leaseholders involved in this strike-out application deserve to be heard and dealt with fully and with some respect for our justifiable and – to most people – understandable concerns.
- Wandsworth's response is hardly a response to what I wrote. Apart from repeating my original submission, I have nothing else to add.

ENDS

On Monday, 14 October 2019, 09:32:53 BST, Nigel Summerley <nigel_summerley@yahoo.co.uk> wrote:

Dear Sir

Thank you for your email. Are you acting for the Council or the Tribunal? And can you please tell me the email addresses to which I need to send my response.

Best wishes
Nigel Summerley

On Wednesday, 2 October 2019, 17:09:42 BST, Mark Cooper <Mark.Cooper@merton.gov.uk> wrote:

Dear Sir

Further to your application to seek a strike out before the First Tier Tribunal, and, further to the Tribunal's Directions dated 5th September 2019, please find enclosed, by way of service, a copy of the Council's Further Response filed with the Tribunal today.

Kind regards

Mark J. Cooper

Assistant Head of Law

Communities & Environment Team

Housing · Debt · Litigation · Enforcement · Planning & Highways · Licensing

South London Legal Partnership

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