

**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

and

**VARIOUS LESSEES OF LEASES GRANTED BY
THE LONDON BOROUGH OF WANDSWORTH**

Respondents

**CASE SUMMARY ON BEHALF OF THE
LONDON BOROUGH OF WANDSWORTH
("the Council")**

Introduction

This Case Summary

1. This Case Summary is intended to provide a non-technical explanation of this Application for the lessees who are the Respondents to the Application. Before the substantive hearing of the Application the Council will set out its case in more detail.
2. This Application is made by the Council for a determination as to whether, under the terms of the leases it has granted of flats in high-rise blocks of flats, it can recover as service charges the lessee's relevant proportion of the Council's costs of installing sprinkler systems in these buildings (referred to herein as 'Blocks')?
3. This Case Summary sets out the following:
 - The background to the Application;
 - The purpose of the Application;
 - The power the Tribunal has to decide the issue in the Application;
 - That the Lessees' other rights to challenge service charges are unaffected
 - The terms in the different forms of lease upon which the Council relies.

Background

4. After the Grenfell Tower disaster in June 2017 the Applicant (“the Council”) has explored what measures it can take to protect the safety of the residents of high-rise¹ multi-occupancy residential buildings (“Blocks”) of which the Council is the owner.
5. The Council owns 99 such Blocks.
6. The Council has been investigating the feasibility of installing sprinkler systems in the flats in each of these Blocks.
7. The flats and/or maisonettes (“Flats”) in the Blocks are let on different tenures: the most common tenures are (i) secure tenancies (i.e. tenancies governed by the Housing Act 1985) and (ii) long leases.
8. The leases of Flats have been granted between 1982 and 2018. They have been granted pursuant to different statutory provisions, although predominantly pursuant to the Right to Buy under the Housing Acts 1980 (HA 1980) and 1985 (HA 1985) and the Housing Act 1957.
9. The Council has used a pro-forma as the template for the leases it has granted. As one would expect the pro-forma has evolved (been amended) over time.

Purpose of this Application

10. The Council has a fiduciary (financial) duty to Council Tax and Business Rates payers to investigate whether, and if so how, it can recover the costs of its expenditure from other sources. Furthermore, where the Council has a lawful right of recovery of any such expenditure it has a duty exercise its rights of recovery.
11. This Application to the First-tier Tribunal (“The Tribunal”) is made only to determine whether, under the terms of the different leases the Council has granted since 1982, it has a contractual right to recover service charges from the lessees for the relevant proportion of the prospective costs of installing sprinkler systems in the Blocks?

¹ For these purposes ‘high-rise’ means ten storeys or more

12. The Council recognises that the costs of installing sprinkler systems in the Blocks will be significant and therefore that the service charges payable by any lessee could also be substantial.

Power of the Tribunal to Decide the Issue

13. The Application is made under the Landlord and Tenant Act 1985, section 27A 'Liability to pay service charge' ("LTA 85") which provides that the Tribunal has jurisdiction to decide whether or not any items of expenditure are recoverable under the terms of a lease, or leases. The relevant parts of ss. 27A(3) state as follows:

(3) An application may also be made to [the 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,

14. The question for the Tribunal is whether:
under the terms of the leases the service charges can include the relevant proportion of the costs of installation of sprinkler systems.
15. This question depends on the terms of the leases. As set out above, the relevant terms of the leases to which this application applies are not the same across all of those leases.
16. For this reason, this Application has separated the leases into three types: Type 1, Type 2A and Type 2B. The categorisation of any lease is determined by the relevant terms of that lease. This is explained in more detail below.: see paragraphs 24 to 35 below.

Other Rights of the Lessees in relation to service charges

17. If, in respect of any of the leases, the Tribunal holds that the Council is entitled to recover as service charges, the relevant proportion of the costs of installation of sprinkler systems in the Blocks, that decision will not affect the other statutory rights of the lessees in relation to the recovery by the Council of service charges.

18. The other statutory limitations on service charges under LTA 85 are:
- ‘reasonableness’: see LTA 85, s. 19;
 - ‘consultation’: LTA 85, s. 20; and
 - ‘demand within 18 months’: LTA 85, s. 20B.
19. So that the lessees are reassured, these limitations are set out in slightly more detail below; they are set out in the order in which they would arise i.e. ‘consultation’; ‘reasonableness’ and ‘limitation period of 18 months’.

Consultation

20. Given the anticipated costs of the installation of sprinkler systems it is overwhelmingly likely that any service charges will exceed the amounts which trigger the Council’s obligation to consult on the works.
21. The Council will, therefore, carry out consultation prior to the commencement of the works in accordance with the provisions of LTA 85, s. 20 and the Consultation Regulations².

Reasonableness

22. The effect of LTA 85, s. 19 is that service charges are not recoverable by a landlord, even if under the terms of the lease the lessee is obliged to pay them, insofar as they are unreasonably incurred or unreasonable in amount.

Limitation

23. Unless, within 18 months’ of incurring relevant costs (i.e. costs that can be recovered as service charges) the landlord has served a notice informing the lessee that those costs have been incurred, those costs cannot be recovered as service charges more than 18 months after they are incurred: see LTA 85, s. 20B.

Summary of Terms Relied on by the Council

24. For these purposes the leases are divided into three types ‘Type 1’; ‘Type 2A’ and ‘Type 2B’ Leases.

² The Service Charges (Consultation Requirements) (England) Regulations 2003 SI

All three Types of Lease

25. All of the Leases have the following clauses:
- Clauses defining the 'Flat' (i.e. the demise premises) the 'Block' and the 'Estate'.
 - A Clause defining 'Service Charge'.
 - A Clause requiring the lessee to pay service charges (usually Clause 3b).
 - A Clause setting out the Council's obligations.
26. The Clause requiring the lessee to pay service charge includes two significant terms:
- (1) It states that the service charge payable is in respect of the costs incurred by the Council in performing its obligations in relation to the Block and the Estate; and
 - (2) It sets out the proportion of the Council's costs for which the Lessee is liable; e.g. say 2.50% of the Block Costs and 0.50% of the Estate Costs.
27. The Clause setting out the Council's obligations refers to two Schedules of each lease: i.e. the Council's obligations are set out in two schedules in each lease. These are either the Fifth and Sixth Schedules or, in most but not all new leases granted after 1987, the Fourth and Fifth Schedules.
28. In all cases the first of the two Schedules that applies sets out the Council's obligations in relation to the Block and the latter its obligations in relation to the Estate; i.e. where the relevant Schedules are the Fifth and Sixth Schedules the Council's obligations in relation to the Block are in the Fifth Schedule and those in relation to the Estate in the Sixth Schedule.
29. In this Application the Council relies in every case on the rights it has to recover service charge from performance of its obligations in the relevant Schedule relating to the Block.

Maintenance obligation in all Leases

30. All of the leases impose a repairing obligation on the Council in the following terms (the items in italics are variable):

Subject to the terms of paragraph 6/7 of the *Third/Fourth* 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 and entry phone systems and fences and walls (insofar as the exist in the Block at the date hereof) 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 the lessees of other flats in the Block and all drains watercourses sewers 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.

Type 1 Leases

31. In Type 1 Leases the items of expenditure in relation to the Block for which the Council can recover service charge include the following:
- ‘... do such things as the Council may decide are necessary to ensure the efficient maintenance and administration of the Block...’

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 charge include the following:
- ‘... do such things as the Council may decide are necessary to ensure the efficient maintenance and administration and security of the Block ...’
33. In effect the expenditure for which 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.

The Council's Arguments

36. In order to be entitled under the Leases to recover as service charges the relevant proportions of its costs of the installation any sprinkler system the Council must show that the installation of a sprinkler system is within its obligations in relation to the relevant Block in which each flat is situated.

All Cases

37. In all of the leases the Council's maintenance obligations (and rights) include the right to amend (in whatever way) the conduction media in relation to water courses and pipes.
38. The Council will argue that the installation of a sprinkler system in each Block is such an amendment to the pipes and water courses.

Type 1 Leases

39. In Type 1 Leases the Council's obligations (and rights) include the right to do anything it decides is necessary to ensure the efficient maintenance and administration of the Block.
40. The Council will argue that the installation of a sprinkler system in each Block is something that it (the Council) has decided is necessary for the efficient maintenance and administration of the Block.
41. The installation of sprinkler systems are necessary for the efficient maintenance of each Block because in the absence of a sprinkler system there is a risk that any Block may sustain fire damage and in the worst case burn down and hence require re-building or other repair and maintenance.
42. The installation of sprinkler systems are necessary for the efficient administration of each Block because in the absence of a sprinkler system there is a risk that any Block may sustain fire damage and in the worst case burn down and hence require re-building or other repair and maintenance which has an impact on the following matters of administration:
- The amount of the insurance premium that is payable in respect of the Block
 - The re-housing of the tenants and lessees resident in the Block whilst the Block is re-built.

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

43. In Type 2 Leases the Council's obligations (and rights) include the right to do anything it decides is necessary to ensure the efficient maintenance and administration and security of the Block.
43. In addition to the arguments set out in paragraphs 41 and 42 above as to why the Council considers that the installation of a sprinkler system is necessary to ensure the efficient maintenance and administration of the Blocks the Council will also argue that it reasonably considers that the installation of sprinkler systems are necessary for the security of each Block.
45. The installation of sprinkler systems are necessary for the security of each Block because in the absence of a sprinkler system there is a risk that that any Block may sustain fire damage and in the worst case burn down and thereby cause insecurity to the occupants of the Block.

25 July 2018