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.