

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

Case Reference: LON/OOBI/LSC/2018/0286

Applicant: The London Borough of Wandsworth

Respondents: Various Leaseholders

From: Councillor Claire Gilbert

C/O Wandsworth Town Hall,

Wandsworth High Street SW15 2PU

Email: Cllr.c.gilbert@wandsworth.gov.uk

Date: Monday 25th February 2019

Dear Sir/Madam,

I am writing on behalf of a number of Residents' Associations and individual Leaseholders in Wandsworth in relation to the Application which has been made by The London Borough of Wandsworth (the "Council") with reference LON/OOBI/LSC/2018/0286 dated 26th July 2018. I am one of the ward Councillors for Roehampton & Putney Heath, where 42 of the 100 affected blocks are located.

Support for Letter

The following Residents' Groups have approved the content of this letter:

- Alton Leaseholders Association
- Hersham Close Residents' Association
- Kimpton House Residents' Association
- Cadnam Point Residents' Association
- Battersea High Street Residents' Association
- Ethelburga Tower Committee

Groups of residents and/or individuals from the following affected blocks have approved the content of this letter:

- Whitgift House (Surrey Lane Estate)
- Castlemaine Tower
- Woodcott House
- Oatlands Court
- Swaythling House
- Winchfield House
- Charcot House
- Tatchbury House
- St George's House
- Sarah House (Lennox Estate)
- Rushmere House
- Eashing House

- Lyndhurst House
- Hindhead Point
- Castlecombe Drive

The letter also has the support of the Borough Residents' Forum Joint Vice-Chair (Mr R. Bishop).

Summary

The Council clarified the scope of its application in December 2018 in its revised Statement of Case. The clarity now provided in relation to (i) the global nature of the Council's current policy, and (ii) Council's alleged right of access to enforce retrofitting of sprinklers, as well as further information on how the Council's policy was formed, are welcomed.

This letter does not seek to make any submissions on any substantive points regarding the Council's application. Rather, this letter seeks to make the applications set out below under the Tribunal's Case Management Powers as set out in Rule 6 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 (the "Tribunal Rules"), namely for a stay of the proceedings, or in the alternative, an extension of the deadlines set out in the Directions of 5th November and 5th December 2018.

This letter and the applications set out below are without prejudice to any application which may be made by other Leaseholders to Strike Out the Council's application and/or to transfer this matter to the Upper Tribunal.

Background

The Tribunal issued Case Management Directions in November and December 2018. As the Tribunal process has progressed, the Council has also now clarified a number of matters of policy.

One such clarification is that the Council will not take any steps to implement its decision to retrofit sprinklers in the 100 10+ storey blocks in Wandsworth until after the relevant recommendations of the Grenfell Tower Inquiry are available.

One of the key steps in relation to this clarification came in September 2018 when the Council's Housing & Regeneration Overview and Scrutiny Committee passed the following amendment to Council paper 18-279 – *"to 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"*. This policy development was then approved and adopted by the Council's Executive on 17th September 2018.¹

The above policy position requires that the Council does not progress its programme of retrofitting of sprinklers in the 100 10+storey blocks until after the Grenfell Tower Inquiry has made its recommendations. By extension, it would also appear to require that the Council does not progress its programme until after the Wandsworth Council Housing &

¹ See Wandsworth Council Executive Statement of Decisions – <https://democracy.wandsworth.gov.uk/documents/s60449/Statement%20of%20Decisions%2017-09-18.pdf>

Regeneration Overview and Scrutiny Committee has had sight of those recommendations and had time to consider and vote upon any programme put forward based on those recommendations, with such an issue going to Full Council if necessary. (The Tribunal will also be aware that Central Government is likely to respond to the findings of the Grenfell Tower Inquiry, which could mean that certain fire safety measures become the subject of national legislation).

As the Tribunal will know, Phase 1 of the Grenfell Tower Inquiry focused on “the factual narrative of the events on 14 June 2017”. Phase 2 will look at issues around fire safety.² We have appended to this letter the most recent statement from the Grenfell Tower Inquiry as to the likely timeframe for Phase 2.³ (In summary, the statement says that the Inquiry does not expect to complete disclosure of its over 200,000 documents until the autumn of 2019, and in light of the scale of preparations for the hearings in Phase 2, it is unlikely that it will be possible to start such hearings before the end of 2019).

The clear implication of this information from the Inquiry is that recommendations from Phase 2 will not be available until some time in 2020, if not significantly later, i.e. at least one year from now. The Council’s Officers would then require some additional time to review the Council’s policy recommendations based on what comes back from the Inquiry, most likely adding several months of scrutiny under the Wandsworth Council’s democratic procedures.

1. Application for Stay of Proceedings

In light of the above, we hereby request that the Tribunal uses its power under Rule 6(3)(m) to **stay** these proceedings until, at the earliest, the recommendations of the Grenfell Tower Inquiry Phase 2 have been published and considered and voted upon under the Council’s democratic procedures.

The reasons for this request are as follows:

- (i) A great number of residents very strongly feel that the Council’s policy was decided upon in undue haste and without sufficient consideration or information about what happened at Grenfell Tower, the similarity or otherwise of individual blocks in Wandsworth, and the fire safety measures which are appropriate for each of the 100 blocks. (The Tribunal will recall that the first decision in this matter was taken by the Council at its Finance and Corporate Resources Overview & Scrutiny Committee on 29th June 2017, i.e. just over two weeks following the terrible fire at Grenfell Tower on 14th June 2017).
- (ii) A significant number of residents report that the Council’s application has caused them great anxiety and distress. They are specifically asking for formal clarity from the Tribunal that no steps may be taken in the Tribunal process until after the recommendations of the Grenfell Tower Inquiry Phase 2 have been released and given due consideration.

² See Grenfell Inquiry “List of Issues for Phase 2”. Point 5 includes “The fire and safety measures within the building at the time of the fire” which, we submit, would tend to include sprinklers alongside other related fire safety systems.

³ See Grenfell Tower Inquiry – Chairman’s Statement dated Wednesday 12th December 2018 – as provided to the author on 22 February 2019 by the clerk to the Inquiry

- (iii) As a Councillor I have been approached by many residents who report effects such as sleeplessness and feelings of panic about the Court process as well as the Council's underlying policy position on imposing sprinklers in their homes. Residents strongly feel that they should not have to take steps in this litigation, or have it "hanging over them", while the issue of fire safety (including sprinklers) remains an open question and the subject of a major public inquiry.
- (iv) We would further note that the Council has (recently) clarified that the retrofitting of sprinklers in the relevant blocks is not a matter of urgency in terms of their safety. Council Officers are now telling residents that the Council is comfortable with the current safety measures in place, subject to the usual maintenance and inspections. As such, there is no necessity or other reason we are aware of to press forward with the Tribunal process at this time.
- (v) We respectfully submit that the Tribunal process should now allow for the Council to pause this matter, and review and consider the recommendations of the Grenfell Inquiry Phase 2 when they are available. Such a review may need to include the possibility of the Council withdrawing its application to the Tribunal in due course, and/or reshape its policy on retrofitting of sprinklers or other fire safety measures. Such a review could be prejudiced if the Tribunal proceedings continue and findings are made on submissions from the Council which may need to change.
- (vi) As the Tribunal may be aware, a group of residents from across wards in Wandsworth have gone to significant expense and effort already in this matter, having instructed a private solicitor, junior barrister and senior Counsel. Those efforts are commended by many other residents. However, it has been very difficult for residents outside the "represented group" to negotiate the terms upon which that represented group might be expanded.
- (vii) We would add that hundreds of residents have made very great efforts to fundraise and to find affordable and suitable legal advice from various sources in order to put their views in the best possible way to the Tribunal. While it is accepted in this letter that the Tribunal does not require residents to be legally represented, it is also the case that many residents feel that they must seek legal advice to ensure that their rights are protected as far as possible. It would be an enormous relief to these residents to know that no more steps must be taken by them in this matter until the recommendations around safety are clear from the Inquiry, and the Council's response (and likely Government response) to those recommendations have been put forward.
- (viii) We further submit that it would also appear to be a waste of the Council's (i.e. residents') money, a waste of the Tribunal's time and resources, and an unnecessary strain on residents if an application - which may require substantial amendment or even withdrawal - is proceeded with at this time, with all the

attendant resident participation, correspondence, meetings etc which are necessary in ensuring that this process is fair and accessible.

- (ix) Finally, we would ask the Tribunal to note that the scope and nature of this matter - including the very large number of residents affected, its complexity and the number of affected blocks - has posed great difficulties for residents in coming together to share information and form groups.

Detailed efforts are being made to this end, particularly by many Residents' Associations and individuals in Roehampton, Battersea and West Hill. However, this process has been very difficult and time consuming, particularly because information about Leaseholder's addresses and Lease Types (as directed by the Tribunal) has been only recently released due to an error in the disclosure produced by the Council.

I can avow that Leaseholders are trying very hard to come together, but that the mixed messages (and a notable lack of information and support) coming from the Council, make this particularly hard. Thus, it would be very helpful for the residents who wish to group together and support each other to have clarity that nothing can happen in the litigation process for the period of a stay. If a stay were granted as sought, Leaseholders could stop being concerned about the Tribunal process until if/when the process recommences around clear recommendations from Grenfell Phase 2, and clarity from the Council as to the basis for its position.

2. Application for Extension of Time

In the event that the Tribunal is not minded to grant a stay of these proceedings, and in the alternative, we hereby request that the Tribunal uses its power under Rule 6(3)(a) to **extend** the time for responding to the Council's revised Statement of Case i.e. an extension of the deadlines set out in the Tribunal's Directions dated 5th December 2018 by **6 months** to 5th September 2019 (deadline for Strike Out Application and/or Application to Transfer to Upper Tribunal) and 19th September 2019 (deadline for Response to Council's Statement of Case) respectively.

The reasons for this request are as follows:

- (i) The Council's Statement of Case was received the week of Christmas and therefore the subsequent holiday period meant that it was challenging for residents to work together on this matter for some weeks.
- (ii) A great number of residents strongly feel that the Council's Statement of Case, and the large amount of disclosure evidence, are very complex and have been very difficult and time consuming to grapple with. For example, I have received reports that there have been specific difficulties in accessing the information in the "data rooms", which is by appointment only. The residents therefore are asking for substantial further time to review the information they have received before they will be able to proceed.

- (iii) Residents strongly feel that there has been minimal communication and support offered by the Council as to what Leaseholders should expect from the Tribunal process, what might be required of them, and sources of support. Many of the requests for communication which have been put forward by residents and Councillors (such as using the Council's publications e.g. Brightside Magazine and/or Home Life Magazine) have been refused by the Council. While certain ward Councillors have worked very hard to bring residents together and try to share information on sources of advice and support, it is extremely difficult to reach all Leaseholders and any direct mail/leafleting incurs cost and time. Thus one of the clear purposes of the request for further time is in order to group together and identify suitable advisors and sources of support before being required to submit any written submissions.
- (iv) Some residents (believed to be a small number) did not receive the Council's Statement of Case. They have been encouraged to raise this directly with the Tribunal and the Council. Those residents will certainly require additional time, as they will have had significantly less time than was intended by the Tribunal to read the documents and decide how to respond.
- (v) Finally, residents are very keen to point out in this letter that some of the information offered by the Council to date about how its policy will affect them is, in their view, misleading and/or confusing. For example, Residents Association leaders report having had to go back and forth to the Council to elicit accurate information, and this has taken up significant time and hampered their ability to communicate the facts to their members. Examples provided include:
 - (a) The photograph which appeared in Home Life Magazine in October 2018 of a sprinkler installed in a show flat, which residents note shows only a small part of the apparatus, and does not show the piping and housing which is in fact proposed.⁴
 - (b) Information provided about the cost of the apparatus itself, and the ongoing cost to Leaseholders for maintenance of the apparatus have changed since this matter began; and
 - (c) Information provided about the time which would be required for installation, has changed since this matter began.

Overriding Objective

The applications set out in this letter are respectfully submitted to be in keeping with the purpose and intention of the Tribunal Rules, including the Overriding Objective to deal with each case fairly and justly.

We respectfully draw the Tribunal's attention in the exercise of its Case Management powers and discretion to its obligation under the Tribunal Rules to avoid unnecessary formality and

⁴ See photographs in Wandsworth Home Life Magazine dated October 2018, by comparison with piping and apparatus installed in show flat in Lyndhurst House. http://www.wandsworth.gov.uk/downloads/file/13697/october_2018

seek flexibility in the proceedings. We also refer the duty to ensure so far as practicable that the parties are able to participate fully in the proceedings.

We do not believe that if the Tribunal is minded to grant either of these requests that the consequent delay is incompatible with the proper consideration of the issues in the circumstances. Rather, we submit that such delay is proportionate in the circumstances to the importance of the case, the complexity of the issues for the relevant respondents, and the anticipated costs and resources of the respondents and the Tribunal in this matter – see Rule 3(1) and Rule 3(2) of the Tribunal Rules.

Finally, we understand that the Tribunal will seek to balance the interests of the parties. We do not believe that there would be any prejudice to the Council if either of the request(s) above were to be granted. On the contrary, we submit that there could be a substantial saving to the Council and thereby residents of Wandsworth, including but not limited to the avoidance of unnecessary legal fees and other costs, and the reduction of Council Officers' time in managing these Tribunal proceedings.

We look forward to hearing from the Tribunal please as soon as possible. This letter has been copied to the Council's representatives and to representatives of the Residents' Associations.

Please can the email address set out above be used for all correspondence on this matter.

Yours faithfully,



Councillor Claire Gilbert

For and on behalf of residents of Wandsworth

CC: Wandsworth Borough Council, via Mark Cooper, South London Legal Partnership, Gifford House, 67c St Helier Avenue, Morden SM4 6HY or via email to mark.cooper@merton.gov.uk