

**IN THE FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Ref: LON/00BJ/LSC/0286

In the Matter of: The Landlord and Tenant Act 1985
 section 27A

B E T W E E N:

**THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF WANDSWORTH**

Applicant/ Landlord

and

**VARIOUS LEASEHOLDERS OF
100 HIGH-RISE RESIDENTIAL BLOCKS
IN THE LONDON BOROUGH OF WANDSWORTH**

Respondents/ Leaseholders

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

Introduction

The Parties to the Council's Application

1. The London Borough of Wandsworth ("**the Council**") issued these proceedings by an Application ("**the Council's Application**") to the First-tier Tribunal ("**the Tribunal**").
2. The Council's Application concerns the Council's decision to install sprinkler systems in all blocks of flats of ten or more storeys which are owned by the Council. These blocks of flats are referred to herein collectively as "**the Blocks**".
3. The Respondents to the Council's Application are the leaseholders of flats in the Blocks, collectively referred to herein as "**the Leaseholders**".

HPLP Application to Strike-Out the Council's Application

The HPLP Strike Out Application

4. A group of Leaseholders represented by Housing & Property Law Partnership applied on 25.3.2019 to strike out or stay the Council's Application ("**the HPLP Strike-Out Application**"¹)
5. The HPLP Strike-Out Application is made on three bases:
 - 5.1 That the Tribunal does not have jurisdiction to determine the Council's Application ("**the Jurisdiction Argument**");
 - 5.2 That the Application has no real prospects of success ("**the Prospects Argument**"); and
 - 5.3 That the application is so premature that it amounts to an abuse of process ("**the Abuse Argument**").
6. Alternatively, the Strike-Out Application asserts that the proceedings should be stayed.

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

7. The Council provided a written response to the HPLP Strike-Out Application in a document dated 3.6.2019: 'Initial Response' to an Application to Strike-Out/Stay the Proceedings Pursuant' ("**the Council's Initial Response**")².
8. The Council's Initial Response was filed at the Tribunal and served pursuant to Directions issued by the Tribunal by an email dated 7.5.2019.

Directions Issued by the Tribunal on 16.9.2019

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

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

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

Further Strike-Out Applications

10. Under the heading 'Background' paragraph B of the September Directions lists 7 additional applications to strike-out the Council's Application that the Tribunal has received from Respondent Leaseholders.
11. The 7 further strike-out applications have been made by:
 - 11.1 Elenora Van den Haute;
 - 11.2 Steve Fannon;
 - 11.3 Andrew Hirons;
 - 11.4 Nigel Summerley;
 - 11.5 James Burgess;
 - 11.6 The Alton Leaseholders' Association (purportedly); and
 - 11.7 Paddy Keane.
12. The Council's response to these 7 further applications to strike-out the Council's Application are set out herein below at paragraphs 22 to 78 (inclusive).

Directions

13. By the September Directions³, para. 6, the Tribunal ordered the Council to:

By 2 October the Council must prepare any further response that it wishes to make to the applications for strike out and up load a copy of that further response onto the website and provide a copy to each of the locations identified in Direction 2 above.
14. This document has been prepared by the Council to comply with paragraph 6 of the September Directions.
15. In this Written Response the Council sets out the following:
 - 15.1 That it does not consider it necessary to expand upon the Initial Response in relation to its opposition to the HPLP Strike-Out Application; and

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

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

The HPLP Strike-Out Application

16. The 14 Leaseholders who have issued the HPLP Strike-Out Application (“**the HPLP Leaseholders**”) are represented by Housing & Property Law Partnership (“**HPLP**”). HPLP is a firm of solicitors holding itself out as experts in the field of landlord and tenant law.
17. The HPLP Application was drafted on behalf of the HPLP Leaseholders by HPLP.
18. The Council responded, as directed by the Tribunal, to the HPLP Application by the Council’s Initial Response (see para. 7 above).
19. In the Council’s Initial Response, the Council reserved the right (pursuant to the Tribunal’s Directions) to file and serve a further written response to the HPLP Strike-Out Application.
20. The HPLP Leaseholders have not produced any substantive written argument in reply to the Council’s Initial Response.
21. Having regard to the length and comprehensiveness of its Initial Response and the lack of any response from the HPLP Leaseholders the Council has decided that no further clarification of its position is required.
22. The Council will expand on the written arguments in its Initial Response at the hearing of the HPLP Strike-Out Application and the other 7 strike-out applications.

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

Elenora Van den Haute's Application

23. Elenora Van den Haute ("**EVdH**") is the lessee of a flat in Atkinson House.
24. EVdH's strike-out application is contained in a 3-page document dated 21.3.2019 ("**EVdH's Application**"). Her substantive reasons why the Council's Application should be struck-out are set out in four numbered paragraphs.
25. In summary EVdH's reasons why the Council's Application should be struck-out are as follows:
 - 25.1 Para. '1': Because the Council's Fire Risk Assessment, conducted in 2016, and valid until 2020, makes no reference to any requirement for sprinklers in Atkinson House;
 - 25.2 Para. '2': Raises the issue of the construction of the words '*maintenance*'; '*administration*' and '*security*' and seek to argue that retro-fitting sprinklers does not come within the definition of those words;
 - 25.3 Para. '3': States that the retro-fitting of sprinklers is not cost-effective by reference to a comparison between the cost of retro-fitting sprinklers and the increase in the cost of insurance caused by the absence of sprinklers; and
 - 25.4 Para. '4': Refers to the terms of EVdH's lease and states that 'as retro-fitting sprinklers is not covered by the terms of her lease the Council should not be allowed access to her flat to carry out such work.

The Council's Response to EVdH's Application

Fire Risk Assessment

26. The issue of the 2016 Fire Risk Assessment in relation to Atkinson House does not go to the Tribunal's jurisdiction to hear the Council's Application.
27. The 2016 Fire Risk Assessment of Atkinson House was carried out before the Grenfell Tower disaster.

Construction of the Leases and Terms of the Lease

28. The Council's response to the propositions in paras 2 and 4 of the EVdH Application both relate to the construction of the Leases.
29. The terms '*maintenance*', '*administration*' and '*security*' are words in the Leases outlining the extent of the Council's obligations and/or rights in relation to the upkeep etc. of the Blocks. In Type 2A and Type 2B Leases the Council's repairing covenants include an obligation/right to: '*ensure the efficient maintenance and administration and security of the Block ...*'
30. It is the Council's case that having regard to the terms of the leases as a whole and the factual background pertaining at the time that the leases were granted these words are sufficient to include the retro-fitting of sprinklers.
31. Unless the Council's case is clearly unarguable then this is not a basis for striking-out the Council's Application.
32. If the Council's case that its obligations and/or rights in the Leases in relation to the upkeep etc. of the Blocks includes the retro-fitting of sprinklers it does not matter that the precise words 'the retro-fitting of sprinklers' are not included in the Leases.
33. It is notable that the HPLP Strike-Out application does not seek to argue that the Council's construction of the extent of its repairing obligations/rights by reference to the words '*maintenance*', '*administration*' and '*security*' does not include the right to retro-fit sprinkler systems where the Council considers that that step is appropriate.
34. The issue of access to EVdH's flat turns on a construction of her lease.

Cost Effectiveness

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

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

Steve Fannon's Application

37. Steve Fannon's Application is contained in an undated 25-page document ("SF's Strike-Out Application").
38. It is difficult to ascertain from SF's Strike-Out Application what SF's main arguments are for the striking-out of the Council's Application.
39. SF's Strike-Out Application, para. 4.0 refers to the Council's Statement of Case ("**the SoC**") para. 47 which deals with the construction (or interpretation) of the Council's right under the Leases to '*... do such things as the Council may decide are necessary to ensure the efficient maintenance and administration ... of the Block ...*'.
40. The SoC, between paras. 40 and 50 (inclusive), deals with the legal position in relation to the construction of a contractual right (or power) by reference to the decision of the Supreme Court in *Braganza v BP Shipping Ltd* [2015] 1 WLR 1661: i.e. a decision to rely on a right under a contract can only be challenged if it the decision was made unreasonably in public law terms.
41. Section 5 of the SoC (paras 82 to 106 (inclusive)) sets out the Council's case why its decision to retro-fit sprinklers in the Blocks is not 'unreasonable'.
42. 'Section 4' of SF's Strike-Out Application is divided into four parts, each part dealing with one of public law principles; i.e. that the decision (presumably to retro-fit sprinklers) is one that:
- 42.1 Was 'Not made in 'good faith' (para. 4.1);
 - 42.2 'No reasonable person could have come to' (para. 4.2);
 - 42.3 Was 'Made Ignoring obviously relevant factors' (para 4.3); and
 - 42.4 Was 'Made having regard to irrelevant factors' (para. 4.4).

The Council's Response to SF's Application

43. It would appear from SF's Application that Mr Fannon accepts (or does not dispute) the Council's legal analysis of when the exercise of a contractual right would be a breach of contract; i.e. only if it is exercised unreasonably.
44. In *R (Clarke) v Birmingham City Council* [2019] EWHC 1728 (Admin) the Court dismissed an application for Judicial Review of Birmingham CC's decision to retro-fit sprinklers. In that case the Court clearly considered the evidence. A copy of that case is attached hereto.
45. Whether or not the Council's decision to retro-fit sprinklers is one that was reasonable or unreasonable is a matter for evidence and therefore not a basis on which the Tribunal could strike-out the Council's Application.

Andrew Hiron's Application

46. Andrew Hiron's strike-out application ("**AH's Application**") is contained in a 4-page document, dated 11.3.2019. AH asks the Tribunal either to strike-out the Council's Application, or to transfer it to the Upper Tribunal ("**the UT**").
47. AH's Application is set out in four substantive sections, starting at the top of page 2 under the heading 'B Respondent's Argument'. Those four sections are, in summary, as follows:
- 47.1 That the Council's arguments in relation to the construction of the Leases are based on a 'very disingenuous and wide interpretation of the word "security"';
- 47.2 It is very difficult to see how the Council could install sprinklers without breaching the lessees' right of quiet enjoyment;
- 47.3 That the installation of sprinklers will have an adverse impact on the value of the leasehold interests; and
- 47.4 That the installation of sprinkler systems is a landlord's improvement or alternatively the remedy of an inherent defect.

The Council's Response to AH's Application

Construction of the word 'security'

48. Unless the Council's position as to the construction of the word '*security*' is clearly unarguable, then this is not a basis for striking out the Council's Application.
49. The Council's case as to the meaning of the relevant phrase in the Leases is set out in the SoC at paras. 60 to 63; this is clearly arguable.
50. In any event the Council also relies on its obligation/right to *ensure the efficient 'maintenance'* and '*administration*' of the Blocks.

Covenant of Quiet Enjoyment

51. As a matter of law, a landlord does not interfere with its tenant covenant of quiet enjoyment if it reasonably exercises its rights under the lease: See *Goldmile Properties Ltd v Lechouritis* [2003] 2 P&CR 1 (a copy of which is attached hereto).
52. It follows that provided that the Council takes reasonable precautions the installation of sprinkler systems is not a breach of the lessees' covenant of quiet enjoyment.

Adverse Impact on Value

53. Whether or not the installation of sprinklers would have an adverse impact on the value of the leasehold interests of flats in the Blocks is not relevant to the construction of the Leases and not relevant to the Tribunal's jurisdiction to determine the issue raised by the Council's Application.
54. For the avoidance of doubt, the Council does not accept that the value of the leasehold interests of flats in the Blocks would be adversely affected by the installation of sprinkler systems in those Blocks. The Council notes that Mr Hirons produces no evidence to support this proposition.

Improvement or Inherent Defect?

55. The Council's Application is that on a construction of the Leases the installation of sprinkler systems in the Blocks is within the Council's rights under the Council's covenant in relation to the upkeep etc. of the Blocks.
56. It follows that whether or not the installation of sprinkler systems is also an improvement or the remedy of an inherent defect is not relevant to the Council's Application.

Transfer to the UT

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

Nigel Summerley's Application

58. Nigel Summerley's strike-out application ("NS's Application") is contained in a 5-page email, dated 3.3.2019. NS's Application contains a critique of certain paragraphs of the Council's Statement of Case ("**the SoC**").
59. Again, it is difficult to ascertain from NS's Strike-Out Application what his main arguments are for the striking-out of the Council's Application.
60. Mr Summerley's main arguments appear to relate to the construction of the words: '*to ensure the efficient maintenance administration and security*' of the Blocks, which he states clearly cannot bear the construction the Council has given them. These are set out in paragraphs '32' to '63' of NS's Application (the paragraph numbering is not consecutive because Mr Summerley has used the numbering of the SoC).

The Council's Response to NS's Application

Construction of the word 'security'

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

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

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

James Burgess' Application

63. James Burgess' strike-out application ("JB's Application") comprises of a single paragraph on an email dated 20.3.2019.
64. The basis of JB's Application is that he does not consider that the installation of sprinklers in the Block in which his flat is situated; i.e. Dresden House, Dagnall Street, London SW11, is necessary because the block is a brick-built building. Mr Burgess also refers to other fire-safety measures in the Block.

The Council's Response to JB's Application

65. Whether or not Mr Burgess considers the installation of a sprinkler system in Dresden House is not the correct approach to the construction of the Leases.
66. Even if Mr Burgess' opinion as to the necessity of the installation of a sprinkler system in Dresden House is relevant to the construction of the Leases it would not be so conclusive as to allow the Tribunal to strike-out the Council's Application.

The Alton Leaseholders Association's Application

67. The strike-out application stated to have been made by the Alton Leaseholder's Association ("**the ALA Application**") comprises a single paragraph on an email dated 21.3.2019. The email address of the sender of the email has been redacted and the sender is unnamed. There is no confirmation that the application is made by the Alton Leaseholders Association; indeed, the email is drafted in the first person singular, 'I'.

68. The ALA Application is also based on the premise that the installation of a sprinkler system in Egbury House is unnecessary because:
- 68.1 Egbury House has two escape routes;
 - 68.2 Egbury House is not clad in ACM;
 - 68.3 The flats in Egbury House are ‘compartmented’ as illustrated by a fire in 1998/99 to a flat on the 6th floor; and
 - 68.4 The Council has installed fire-doors to the flats in Egbury House.

The Council’s Response to the ALA Application

Installation of a sprinkler system is unnecessary

69. The ALA Application does not address the main issue in the Council’s Application: i.e. whether or not on a construction of the Leases the Council has the right to install sprinkler systems in the Blocks.
70. It follows that the ALA Application contains no ground for striking-out the Council’s Application.

Paddy Keane’s Application

71. Paddy Keane’s Application is contained in a 20-page document, dated 17.2.2019 (“PK’s Application”).
72. PK’s Application states that it is application for a stay of the proceedings, or failing a stay for an extension of time; it does not state that it is an application to strike-out the Council’s Application: see SF’s Application paras 1.1 and 1.2.
73. PK’s Application, para. 3, states that it ‘explains in detail ... why the Council’s Application ... is unreasonable.’
74. PK’s Application has 5 substantive sections in which he sets out his case why the Council’s Application is:
- 74.1 Inconsistent with the contractual purpose of the Lease;
 - 74.2 Not made in good faith;

- 74.3 One that no reasonable person signing the Lease would have assumed;
- 74.4 Made ignoring obviously relevant factors; and
- 74.5 Made having regard to irrelevant factors.

75. In the final paragraph of PK's Application under the heading 'Conclusion', Mr Keane states that in the absence of: *the FTT agreeing to a 'stay' we would like to request an extension of 6 months to prepare a formal submission for a strike-out.*

The Council's Response to PK's Application

76. It is not clear that Mr Keane has applied for the strike-out of the Council's Application; PK's application expressly refers to a 'stay' or alternatively 'an extension of time'.

A reasonable decision?

77. If Mr Keane is applying to strike-out the Council's Application his position is, in many respects, similar to that of Mr Fannon in that he seeks to argue that the Council's decision to install sprinkler systems in the Blocks is one that is clearly not reasonable within the public law sense of the word.
78. For the same reasons that are set out in relation to SF's Application (see paras 43, 44 and 45 above), unless that was clearly and obviously the case (i.e. that the Council's decision to install sprinkler systems in the Blocks is *Wednesbury* unreasonable) Mr Keane's assertion that the decision is not reasonable is not a basis for strike-out of the Council's Application.

Conclusion

79. The 7 further strike-out applications contain no grounds for striking out the Council's Application.

1st October 2019

Nicholas Grundy QC

Ben Maltz

