CASE REF: LON/00BJ/LSC/2018/0286

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

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

***B E T W E E N*:**

LONDON BOROUGH OF WANDSWORTH **Applicant**

-and-

VARIOUS LEASEHOLDERS **Respondents**

OUTLINE SUBMISSIONS ON BEHALF OF THE RESPONDENTS LISTED IN THE SCHEDULE HERETO

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

1. These Outline Submissions are filed on behalf of the Represented Respondents listed in the Schedule hereto ('the Represented Respondents'). Given the nature of the hearing for which they have been prepared, they are slightly more full than a traditional Skeleton Argument would be.

INTRODUCTION

2. When something as horrific as the Grenfell Tower fire occurs, there is an understandable urge to do something to ensure that it never happens again. The Council makes this application pursuant to s. 27A(3) on the basis that it says (this is not, in fact, accepted) it has made a decision to install sprinklers in all rooms (save for bathrooms) of all flats in all blocks of more than 10 storeys of which it is the freeholder. The Council has not considered the blocks concerned individually; there are no fire-safety surveys or risk assessments of individual blocks. There are no details of the composition of any cladding on any of the buildings, or the integrity (or lack thereof)

of any fire compartmentation. If a decision to install sprinklers has been taken at all, it has been taken simply on the basis that each of the blocks concerned has more than 10 storeys.

3. The Represented Respondents wish to stress that their opposition to this application is not predicated upon a desire to "stick their heads in the sand" and oppose any required fire-safety works; they do not want to live in (or to let out) buildings that are unsafe. Nor is their opposition to this application political in any way. Rather, they object to the "one size fits all" approach being taken by the Council. They want the blocks in which they own flats to be considered individually on their own merits. They want the findings of Phase 2 of the Grenfell Tower Inquiry to be considered. For some blocks sprinklers might, indeed, be necessary; for others, however, they might not. None of the Represented Respondents know whether the blocks in which they own flats will fall within the former or the latter categories. All of them object, however, to being required to pay many thousands of pounds without it even being determined whether their block actually requires such a system.

4. That is important because the finding that the Council seeks will be used to require the Represented Respondents (and all the other long-leaseholders in the buildings concerned) to pay a sum, that the Council currently and very approximately estimates to be something between £3,500 and £5,000 per flat. Realistically, that figure will inevitably rise once the buildings and/or flats are surveyed and the real construction and configuration of the buildings concerned start to be considered. The Council seeks a determination that the costs of installing sprinkler systems in all the blocks of more than 10 storeys in the borough will be payable by the long-leaseholders concerned. That would be a determination on contractual liability (albeit it in the broadest possible terms). If that determination is made, the only meaningful question left will be as to the reasonableness of the *quantum*: "How much?"

5. The Represented Respondents therefore fear that this application is being pursued by the Council in order to avoid their obligations as landlords to consider the needs of each block individually whilst at the same time boxing the long-leaseholders into a corner from which the only argument will then be how much they must each pay (for works that might not be necessary).

PRELIMINARY THOUGHTS

6. There is no evidence (or any suggestion) that any of the blocks that will be affected by the Council's proposal have been the subject of any enforcement notices under Part 3 of the Regulatory Reform (Fire Safety) Order 2005 for the want of a sprinkler system.

THIS APPLICATION BY THE REPRESENTED RESPONDENTS

7. By this application, the Represented Respondents seek to strike out the Council's case pursuant to Rule 9(2) and/or 3(d) and/or (e) on the grounds that the Tribunal has no jurisdiction to make the determination sought by the Council; alternatively that the Council's application is an abuse of process or has no reasonable prospect of success. In the further alternative, the Represented Respondents seek a stay of the application under Rule 6(3)(m) until such time as the Council has made a proper decision.

8. It is understood that other lessees have made their own applications to strike out the Council's Statement of Case. The Represented Respondents make no submissions on those other applications.

OUTLINE SUBMISSIONS

(i) The Jurisdiction of the F-tT

9. It is uncontroversial that the F-tT, being a statutory creation, has no inherent jurisdiction; it cannot resolve a point of contractual construction with a declaration – *RB Kensington & Chelsea v Lessees of 1-124 Pond House* [2015] UKUT 395 (LC), para [67].

10. A s. 27A(3) application is therefore not a purely academic or conceptual exercise; it must be grounded in the hard fact of a particular proposal to incur costs for "*services, repairs, maintenance, improvements, insurance or management of a specified description*". That grounding then enables the F-tT to consider the specific proposal and the terms of the lease concerned and to determine whether, if the proposed costs were to be incurred, "*a service charge would be payable*". In this case, the Council does not seek a determination of the amount which would be payable; the question asked of the F-tT therefore demands a binary choice between, on the one hand, "something would be payable" and, on the one hand, and "nothing would be payable".

(If the F-tT is unable to decide upon either answer, then it would have to decline to make any determination at all – and, in fact, it is the Represented Respondents' case that the F-tT will have to decline to make any determination on the application brought by the Council.)

11. The terms of the lease upon which the Council relies are those particularised at paragraphs 51-59, 60-63 and 64-71 of its Statement of Case. Those are:

    11.1. A clause, to be found in all types of lease, obliging the Council "*To do such things as the Council may decide are necessary and to ensure the efficient maintenance administration and security of the Block*"; and/or

    11.2. A clause to be found in the Type 2A leases only, entitling the Council "*To do such things as the Council may decide are necessary and to enhance the quality of life within the Block due regard being given to the wishes or aspirations of the majority of the tenants in the Block.*"

12. Accordingly, in order to persuade the F-tT that "something" rather than "nothing" will, in any event, be payable, the Council must show (1) that it has made a decision; (2) rationally; (3) that it is "necessary"; (4) to carry out the proposed works; in order either (5) "*to ensure the efficient maintenance administration or security of the Block*"; or (6) "*to enhance the quality of life within the Block due regard being given to the wishes and aspirations of the majority of the residents in the Block*"; and in any event (7) that the tenants would not be able to argue at a later date on receipt of demands for payment that "nothing" would be payable because carrying out the proposed works was objectively and fundamentally unreasonable.

13. Each element will be considered in turn – but all with a view to demonstrating why this particular application brought by the Council seeks from the F-tT a determination that it lacks jurisdiction to make; or has no real prospect of success; or is an abuse of process.

14. The central thrust of the submissions being the same, there is inevitably an element of unavoidable overlap.

(ii) Has the Council made a Decision?

15. The Application made on behalf of the Represented Respondents criticised the Council's Statement of Case for failing to identify the decision on which it relied and, instead, for setting out a narrative of how and why it came to make the application to the F-tT. In response, the Council has clarified:

    15.1. That it contends that the decision was made on 29 June 2017 by the Council's Finance and Corporate Resources Overview and Scrutiny Committee ('FCROSC'); and

    15.2. That it proposes to rely on its Constitution.

16. The Council's constitution is over 500 pages long. By email dated 22-10-2019 and letter dated 25-10-2019, Mr Eaton of the Housing and Property Law Partnership, solicitors for the Represented Respondents, asked the Council's legal representatives, the South London Legal Partnership, to identify the particular provisions of the Constitution upon which it relied, but no response has been received. What can be established without the assistance of the Council is, however, that the Overview and Scrutiny Committees do not have the authority to make any decisions – see Art 6 of Part 2 of the Council's constitution.

17. However, turning to the suggestion that the operative decision was made on 29 June 2017 by the Council's FCROSC,

    17.1. It is clear from the Minutes of that meeting that the Committee considered the Paper number 17-243, "Fire Safety in High Rise Blocks";

    17.2. Paper 17-243 made recommendations in para 3:

        17.2.1. That the Executive (which is undoubtedly a body capable of making Council decisions) should instruct the preparation of an urgent procurement plan for the installation of sprinklers; and

        17.2.2. That the FCROSC should support that recommendation, on the basis that any further views, comments or additional recommendations that

the FCROSC might have would be submitted to the Executive for consideration.

17.3. The FCROSC meeting on 29 June 2017 resolved unanimously "*That the recommendations to the Executive in paragraph 3 of Paper no 17-243 be supported.*" It may therefore be inferred that, whether or not the FCROSC had the authority to make the decision, it did not do so and instead referred the matter to the Executive.

18. The face of Paper 17-243 suggests that its recommendations were to be considered by the Executive (no doubt together with other papers) on 3 July 2017. In this context, it must be emphasised that the Council does not maintain the decision was taken by the Executive on 3 July 2017. The Council says nothing about that meeting at all (if it took even took place).

19. The Council's Statement of Case, together with its Initial Response to the Application to Strike Out, then goes on to explain that the decision said to have been taken on 29 June 2017 was endorsed on 14 September 2017 and that an attempt to have the decision reconsidered on 18 January 2018 was rejected. In fact, looking at the documents provided by the Council:

19.1. On 6 September 2017 Paper no 17-269 "Report by the Director of Housing and Regeneration updating on fire safety arrangements in Wandsworth Council's Housing Stock was prepared by Brian Reilly, the Director of Housing and Regeneration;

19.2. Whilst the Summary of the Report stated that the Council "*has now committed to retro-fit sprinklers to all blocks ten storeys or higher*", it was clear that the approval of the Executive was still sought – see in particular paras 3(b) and 25.

19.3. On 14 September 2017, the Housing and Regeneration Overview and Scrutiny Committee ('HROSC') met and considered Paper 17-269. It resolved that "*The Executive be informed that the Committee supports the recommendations in para 3 of Paper 17-269.*" It may therefore be inferred:

19.3.1. That, whether or not the HROSC had the authority to make the decision, it did not do so and instead referred the matter to the Executive; and

19.3.2. The Executive had still not taken a decision.

19.4. On 9 January 2018, Mr Reilly prepared a further paper for the Executive – Paper 18-12. By now, the Council was beginning to experience some opposition from some of the residents affected. At least some of them were arguing that it was not necessary to retro-fit sprinklers in their flats because of the design of their blocks, and the Council appeared to accept that "*some of these points are valid*" – see para 7. Mr Reilly therefore proposed a "Way Forward" to make an application to the F-tT to determine "*if and how the programme is implemented*". It would allow "*time for further innovations ... to be progressed*". In that latter context, the Report noted that it was looking "*increasingly likely*" that "*misting systems*" (rather than sprinkler systems) "*may offer a viable and effective and less intrusive alternative*". The Report urges the executive to approve the making of a pro-active application to the F-tT to seek a clear decision "*on the Council's ability to undertake the works*".

19.5. On 18 January 2018 the HROSC resolved that the Executive be informed that the Committee supported the recommendations in para 3 of Paper no 18-17.

20. Those documents disclosed by the Council simply do not support the Council's position that a decision was taken on 29 June 2017 to proceed with the retro-fitting of sprinklers into all blocks of over 10 storeys. It is important to appreciate that it is not for the Represented Respondents to show that there was no or no valid decision; not only is a party not (usually) required to prove a negative,

20.1. It is the Council who asserts that a decision has been made and those who assert must then prove; and

20.2. The documents by which the fact of such a decision may be proved are all within the Council's own possession, custody and/or control.

21. In fact, the Represented Respondents have obtained from concerned Councillors further documents that demonstrate:

21.1. That on 13 September 2018, the HROSC approved an amendment to a recommendation in a paper for the Executive (paper no 18-279) that the Executive should "*Allow directions from the First Tier Property Tribunal and recommendations made by the Grenfell Tower Inquiry to shape whether, and how, the programme [to retro-fit sprinklers] is progressed across the Council's high-rise stock.*"; and

21.2. On 17 September 2018, the Executive adopted the recommendations as amended for the reasons given in the Report (paper number 18-279).

22. Far from supporting the Council's case that a decision has been taken to proceed, that decision of the Executive clearly suggests that – whatever might previously have been decided – the current position is that a decision whether or not to proceed and, if to proceed, how to proceed, will not be taken until after (a) this s. 27A(3) application has been determined; and (b) the Grenfell Tower Inquiry has reported. The Executive proposes to consider the results of both in order to determine what decision to make on the proposal to retro-fit sprinkler systems. Were this application to proceed to final determination, therefore, it would essentially be a moot; and thereby an abuse of the Tribunal's process.

23. One can of course understand why the Council might want financial considerations as to the recoverability of some of the costs involved to feed into its decision as to whether it will install sprinkler systems into all the flats in its high-rise stock. However, whether that installation is necessary – and in particular whether the decision to proceed with that work is rational and satisfies the s.19 requirements of reasonableness – does not turn on whether a service charge would be payable in respect of those installation works.

(iii) Was the decision (if there is one) a rational one?

24. Sums are only contractually payable as service charges if the decision of the landlord to incur costs and to seek to recover those costs as relevant costs is a rational decision – see *Waaler v Hounslow LBC* [2017] 1 WLR 2817, at paras [20] to [25]. Lewison LJ explained that rationality "*...imports a requirement of good faith, a requirement that there should be some logical connection between the evidence and the ostensible reasons for the decision, and (which will usually amount to the same thing) an absence*

of arbitrariness, of capriciousness or of reasoning so outrageous in its defiance of logic as to be perverse."

25. As explained in section (ii) above, it is impossible to determine whether a decision has been made. In those circumstances, it is impossible to be satisfied that the decision to proceed (if there was one) was a rational one. That is significant given that the proposed works are out of the ordinary. In contrast, the decision that we know was made by the Executive on 17 September 2018 to await the findings of the Grenfell Tower Inquiry before deciding whether anything should be done and, if so, what, makes obvious sense: it is plainly rational from a commercial perspective and, in the absence of any block-specific considerations, from a property management perspective.

(iv) The meaning of "Necessary"

26. "Necessary" is an ordinary word. Something is necessary if it is *compulsory* or *essential* for a particular purpose or result. Something that may be regarded as merely "*optional*" or "*desirable*" or "*useful*" or "*helpful*" is not necessary. The hurdle is a high one; and it therefore requires a focus on detail.

(v) [Necessary] "to ensure the efficient maintenance administration or security of the Block"

27. The focus of this particular limb upon which the Council relies is "the Block". It cannot be determined whether or not this limb applies considered in the abstract. The Council cannot, therefore, show that any particular tenant of a particular block is obliged to contribute to works carried out to that block on the ground that those works ensure the efficient maintenance administration or security of that block, without considering the works and their effect on the block concerned.

28. Accordingly, the Applicant's Statement of Case should be struck out. The Tribunal simply cannot determine that works that have been specified in only the loosest sense would "*ensure the efficient maintenance administration or security of*" any or all of the blocks affected – let alone whether those works are "necessary" to do so – without considering the blocks in turn and a more detailed specification of proposed works. If that is the application that the Council brings then it must fail.

29. On the other hand, if the determination that the Council seeks is that its proposed works might (and not would), as a matter of dry construction of the lease, be necessary to "*ensure the efficient maintenance administration or security of*" any or all of the blocks affected, but that it would remain an issue in relation to each block whether, in fact, any particular works (once a proper specification has been drawn up) were actually necessary to ensure the efficient maintenance administration or security of their particular block, then:

29.1. the determination sought is, in truth, little more than a declaration as to the meaning of the lease provisions – and the F-tT has no jurisdiction to make such a determination; and

29.2. the entire exercise would, in any event, be an extremely expensive waste of time and money, being little more than an academic moot.

30. For the avoidance of all doubt, should this strike out application fail, the Represented Respondents reserve their rights to argue in due course that:

30.1. The installation of sprinklers cannot be said be necessary to ensure the efficient maintenance of their particular blocks. Maintenance "*generally involves the following characteristics: firstly, an element of repetition, because the object is to keep the building in the condition in which it started; secondly, that the work is generally speaking foreseeable …; thirdly, again generally speaking, that the work is of a minor character and habitual, although naturally there are exceptions as in the case of roof works; fourthly, that generally speaking in maintenance one does not add something substantial which is new; and, lastly, that you do not in ordinary maintenance make a substantial improvement to that which you maintain.*" – see Ackner LJ in *ACT Construction Ltd v Customs & Excise Commissioners* [1981] 1 WLR 49, at 58 F-H The installation of a sprinkler system will make no difference to the minor and habitual things that must be done to a block of flats by way of ongoing maintenance.

30.2. The installation of sprinklers cannot be said be necessary to ensure the efficient administration of their blocks.

30.3. The installation of sprinklers cannot be said be necessary to ensure the efficient security of their block. The works that this limb envisages would be the installation of CCTV security cameras, video door entry systems and so on; things that make it easier to ensure that intruders are kept out.

(vi) [Necessary] "to enhance the quality of life within the Block due regard being given to the wishes and aspirations of the majority of the residents in the Block"

31. Again, the focus of this particular limb upon which the Council relies is "the Block". Again, it cannot be determined whether or not this limb applies considered in the abstract. The Council cannot, therefore, show that any particular tenant of a particular block, is obliged to contribute to works carried out to that block because those works are necessary to enhance the quality of life within that block, without considering the works and their effect on the block concerned and the quality of the lives of the residents therein. As in section (v) above,

31.1. If the Council seeks a determination that the cost of works that have been specified in only the loosest sense are and will be recoverable under this head, without in fact considering the construction or condition of any particular block, then the application is doomed to failure; and/or

31.2. If the Council seeks a determination that the cost of works that have been specified in only the loosest sense might (depending on the facts on the ground at each block) be recoverable under this head, then:

31.2.1. The determination sought is, in truth, little more than a declaration as to the meaning of the lease provisions – and the F-tT has no jurisdiction to make such a determination; and

31.2.2. The entire exercise would, in any event, be an extremely expensive waste of time and money, being little more than an academic moot.

32. As and when the Represented Respondents are given the opportunity to argue whether, in fact, this limb applies to works that are proposed to their particular blocks, they intend (and reserve the right) to argue:

32.1. That there has been no attempt at all to canvass – let alone give due regard to – the wishes and aspirations of the majority of the residents in any of the blocks concerned; and/or

32.2. That the installation of sprinklers into flats is not necessary to enhance the quality of life within the block. This limb is directed towards works or services that provide facilities that will make residents' lives better on a day to day level: faster broadband, or a roof-garden, for example, or a lift where previously there had not been one. These are all things that the residents will actually use or appreciate – which is why the lease requires the landlord to take into account the what the residents of each block actually want. The installation of sprinklers that it is hoped will never be used and, in any event, are not used or enjoyed by the residents does not fit within this limb comfortably or at all.

(vii) The Proposed Works

33. In order for the F-tT to consider whether the proposed works are "necessary" for either of the limbs upon which the Council relies, it must know what the proposed works are with sufficient precision to make its determination. This is not a novel point. In their application, the Represented Respondents indicated that they would rely on:

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

33.2. In *RB Kensington & Chelsea v Lessees of 1-124 Pond House* [2015] UKUT 395 (LC) at [82], where on an application under s.27A(3) and despite evidence of considerably greater detail than that provided by the Council here, Judge McGrath in the Upper Tribunal was unable to make a determination as to whether a service charge would be payable for the major works in relation to which the application was made.

34. The Council responds that the *Southwark* case was considering a hypothetical s. 27A(3) application which was intended to confirm compliance with the consultation

regulations – and that it is therefore unsurprising that a proper understanding of the works would be required before such a determination could be made. Similarly, the Council say, in *Pond House*, the council made a s.27A(3) application contending that a framework agreement was a QLTA requiring limited consultation requirements with which it had complied. It therefore sought a determination that, if works were carried out pursuant to that framework agreement, the tenants would be liable to contribute to the full cost of those works through their service charges – and their liability would not be limited to £100 per flat per service charge year. Again, the focus was on compliance with the consultation regulations – which themselves required the tenants to be given information about what is proposed. In contrast, says the Council, this case does not require the F-tT to consider compliance with the consultation requirements; and so both the *Southwark* case and *Pond House* are irrelevant.

35. The Council is correct about the context in which both the *Southwark* case and *Pond House* came before the Tribunal, but it is wrong to dismiss so breezily what was said in those cases because they are statements of broad principle based upon the jurisdiction of the F-tT and the scope of s.27A(3) LTA1985. In the circumstances, the entirety of para [82] of Judge McGrath's judgment in *Pond House* is set out below. It is emphasised that this paragraph follows her conclusion that the Council had complied with its consultation requirements.

> "*Having found for the applicant on the s.20 issue, the Tribunal is nonetheless unable to find for it on the substantive application. In particular, although a schedule of proposed works was provided with the application, this has been significantly undermined in the evidence of Mr Gould. Section 27A(3) requires a Tribunal to make a specific determination of payability. Since a determination under s.27A(3) is made before works are carried out it cannot be determinative of the standard of the work when finally completed. However, precision as to the extent of the works, the duration of the works and the terms of the lease which support the obligation to carry out the work is still required to support a s.27A(3) determination. On the information before it, the Tribunal cannot be satisfied of any of those matters. Mr Bhose conceded that there was insufficient evidence to support the estimate in respect of*

window repairs. In our view Mr Gould's evidence put into doubt the detail of most of the proposed works. As a result it is impossible to say whether any of works fall under the terms of the lease and we certainly cannot be satisfied that the estimated costs are reasonable. Also, although the evidence of the leaseholders about the manner in which historic works had been carried out cannot be determinative about the conduct of future works, we think that the information is sufficient to give us pause and we would require very persuasive evidence before we could feel able to make a determination of payability. Evidence of that quality is simply not available in this case. Accordingly the application fails and the Tribunal declines to make the determination sought under s.27A(3)."

36. Judge McGrath had already explained at para [67] that neither the F-tT or the UT can grant declarations on the construction of a lease. It is in that context that she emphasises that a s.27A(3) application requires the Tribunal to make a specific determination of payability. What she meant by that was payability by specified tenants under specified terms of specified leases towards the cost of specified works to specified premises or parts of premises. That is why "*precision as to the extent of the works, the duration of the works and the terms of the lease which support the obligation to carry out the work is still required to support a s.27A(3) determination*"; and that is why the deficiencies in the council's evidence in *Pond House* were such a problem for the council.

37. That is also why the then President, George Bartlett QC, doubted in the *Southwark* case whether a s.27A application could be used to give the council comfort that its paragraph 4 proposal would comply with the consultation obligations that bind landlords who propose to enter into a QLTA. The reason why the president considered that a s.27A(3) application would not work was that "*no specific description of the works to be carried out to each of the many premises was available*" – and a s.27A(3) application, *because it is a determination of payability*, by its very nature requires such detail whatever the motive of the applicant might be for making the application. And, because the council would at that stage have only the most general proposals of the works involved, it would not be able to satisfy the requirements of precision and detail that are necessary for a s. 27A(3) application.

(viii) Whether the tenants would or would not be able to argue that "nothing" would be payable because carrying out the proposed works was objectively and fundamentally unreasonable

38. It is when considering this question that the practical effect of the points made in all of sections (i) and (iii) to (vii) of these Outline Submissions falls into sharp focus and it becomes clear that the Council's s. 27A application is either an entirely academic attempt to obtain what is, in truth a declaration of the construction of various types of leases; or is entirely hopeless as currently advanced.

39. The Council's Case Summary and Statement of Case plainly state that, whatever the Tribunal might decide on this application, a challenge to the recoverability of service charges on the grounds of reasonableness under s. 19 LTA1985 would remain open to the residents affected.

40. However, as Lewison LJ pointed out in *Waaler* at para [17], s.19 LTA1985 must entitle a tenant to argue that *nothing at all* is payable for proposed works because the entirety of the cost of the works was unreasonably incurred and/or because the works themselves were entirely unnecessary. The considerations involved in a determination of s.19 reasonableness go beyond mere rationality into and require an objective consideration of outcome.

41. That being the case, the Council's Case Summary and Statement of Case – which state in terms that the tenants' s. 19 rights will remain – appear to suggest that the Council seeks a determination to the effect that, if it proceeded to install sprinkler systems in all the flats in all blocks over 10 storeys high, the long-lessees of those flats would be obliged to contribute "something" to the costs of such installation pursuant to their service charges <u>*unless it transpired that the works were entirely unnecessary taking into account the construction and condition of the particular block concerned*</u>.

42. But such a determination would, in truth, be in the nature of a declaration as to the construction of leases. Significantly, it would not resolve the question as to "payability" because it would not determine conclusively whether "something" or "nothing" would be payable. The F-tT has no jurisdiction to make such a determination. The Council's application should be struck out.

43. The Represented Respondents suspect that such a determination is not the determination which the Council seeks. Not only is it a determination that the F-tT cannot make, but such a determination would permit long-leaseholders in the affected blocks to resist in the future any liability to contribute towards to the cost of the works by reason of a detailed consideration of the construction and condition of their particular blocks; and that is something that they believe the Council is trying to avoid. In practice, such a determination would have cost everyone a fortune for little practical benefit.

44. So, the determination that the Council must be seeking is one to the effect that, if it proceeded to install sprinkler systems in all the flats in all blocks over 10 storeys high, the long-lessees of those flats would be obliged to contribute "something" to the costs of such installation pursuant to their service charges *without any possibility that the lessees might be able to argue that nothing is payable because the installation works were fundamentally and inherently unreasonable*. If that is the case, however, then the Council must satisfy the Tribunal that, in respect of each block involved, specified works are indeed necessary such that it could never in the future be argued that the installation of sprinkler systems into any particular block was entirely unnecessary and therefore that it was entirely unreasonable to incur the costs involved.

45. But if that is the determination that the Council seeks, then the Council would have to consider the construction and condition of each block in turn; it would have to specify a schedule of works appropriate to each block in turn; it would have to explain to the Represented Respondents and to the Tribunal why the said works were rationally considered necessary and it would have to satisfy the Tribunal that the works were, in fact, necessary from an objective perspective. That is an application that the Council could have made and could still make. It is an application that the Tribunal would have jurisdiction to determine. And it is an application that would involve the individual consideration of the fire-safety of each block to which the Represented Respondents are entitled and which they seek.

46. Unfortunately, it is not the application that the Council appears to be making. And that is why, if that is the determination that the Council seeks, its application is hopeless and should be struck out.

DISPOSAL OF THIS APPLICATION

47. For the reasons set out above, therefore, the Represented Respondents invite the Tribunal:

47.1. To strike out the Council's Statement of Case on the grounds that it seeks a determination in the nature of a declaration as to construction of the leases that the F-tT has no jurisdiction to make;

and/or

47.2. To strike out the Council's Statement of Case as an abuse of process because the Council has not actually made a decision to fit sprinklers and, in fact, is using this application as part of its decision-making process;

and/or

47.3. To strike out the Council's Statement of Case on the grounds that it has no reasonable prospect of success because:

47.3.1. The Council has not actually made a decision to fit sprinklers; and/or

47.3.2. The Council has not considered the construction and/or the condition of any particular block and so is unable to show, and does not intend to show, that its proposed works cannot be said to be wholly and inherently unreasonable (because, for example, they are not "necessary" for the block concerned); and/or

47.3.3. The installation of sprinklers are not "*necessary*" "*to ensure the efficient maintenance administration or security of the Block*" or "*to enhance the quality of life within the Block due regard being given to the wishes and aspirations of the majority of the residents in the Block*"

48. If the Tribunal declines to strike out the Council's Statement of Case for any of the above reasons, then it is invited to stay the proceedings until such time as the Council has actually made a decision which can be subjected to the scrutiny that the Represented Respondents are entitled to bring to decisions that will require them to pay several thousands of pounds per flat.

TIMOTHY POLLI QC

AMANDA GOURLAY

Tanfield Chambers
2 – 5 Warwick Court
London WC1R 5DJ

4 November 2019

LIST OF THE REPRESENTED RESPONDENTS

1) George Papanicola

2) Elaine Michel

3) Alex Giles

4) Glenn and Kako Tusuki-Blakeborough

5) Karly Olsen-Haveland

6) Pauline Grant

7) Chris Kemsley

8) KVR Ltd

9) API Properties

10) Palmyra Properties Ltd

11) Ferryview Partnership

12) Edwyna Grice

13) Katie Standley

14) Nigel Pittam

15) Giles Chapman

16) David Chapman

17) Margaret Taylor

CASE REF: LON/00BJ/LSC/2018/0286

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

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

LONDON BOROUGH OF WANDSWORTH

Applicant

- and -

VARIOUS LEASEHOLDERS

Respondents

OUTLINE SUBMISSIONS ON BEHALF OF THE RESPONDENTS LISTED IN THE SCHEDULE HERETO

***Solicitors instructed by the Represented Respondents*:**

Housing & Property Law Partnership
2 – 5 Warwick Court
London WC1R 5DJ

Tel: 020 7553 9000
Fax: 020 7553 9001

Ref: ME9213