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

Case Reference: LON/00BJ/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

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Date: Tuesday 12th March 2019

Dear Sir/Madam,

I am writing further to my letter dated 25th February, and in reply to the letter of today's date from the Council's solicitors.

I write on behalf of a number of Residents' Associations and individual Leaseholders in Wandsworth, and as one of the ward Councillors for Roehampton & Putney Heath, where 42 of the 100 affected blocks are located.

This letter relates to three important points which I believe the Tribunal should be aware of in relation to certain events since the applications of 25th February, namely:

1. To notify the Tribunal of communication issues regarding the Council's letter to Leaseholders dated 6th March;
2. To address the Council's response to the request for a Stay – as provided by the Leader of the Council to Members of the Council on 6th March; and
3. To address the Council's response to the request for a Stay – as provided by the Council's solicitors today.

1. Communication Issues

The Council sent a letter to Leaseholders dated 6th March, a copy of which can be read here:

file:///C:/Users/TLA%20-%20CGil/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/letter_to_leaseholders_06_03_19%20(3).pdf

(i) Ward Councillors in several parts of the Borough of Wandsworth have been contacted by a number of residents who did not understand the Council's letter nor what it was asking them to do. (I note that the Tribunal has received a number of emails from residents who make this point directly, particularly regarding the very important deadline of 22nd March). I would respectfully ask the Council and the Tribunal to put themselves in the shoes of a resident receiving the letter of 6th

March without a legal advisor to explain the various references, dates and legal terms contained therein.

(ii) Residents have also pointed out that the letter of 6th March offers an extremely short deadline, namely 12th March i.e. 6 days from the date of the letter. (Again, I note that a number of residents have made this point directly to the Tribunal).

(iii) Finally, Councillors Ireland and I have been contacted by a large number of Leaseholders who did not receive the letter of 6th March *at all*. (These residents were alerted to the fact that the letter should be coming by their ward Councillors, as we try to support them through this complex matter).

These points go to the very important issues of fairness and justice, including ensuring full participation in this matter. They also go to the impact that these proceedings are having on the affected residents, such impact being exacerbated by these significant communication problems.

2. The Council's Position on a Stay – as at 6th March

On 6th March the Leader of Wandsworth Council responded to a question regarding the application for a Stay. In that response the Leader of the Council stated, "... *it is believed that interim recommendations from the [Grenfell Tower] inquiry are imminent and these may well touch on the issue of sprinkler provision in high rise blocks*".

The points which I would make to the Tribunal regarding that statement are as follows:

(a) Recommendations from the Grenfell Tower Inquiry which directly address the issue of sprinklers in high rise blocks would be welcomed;

(b) However, we note the contingent nature of the Council's statement – it is not yet clear that any such recommendations are in fact likely to arrive, nor what any likely timescale is. The Council is invited to clarify the information behind this statement as soon as possible please in the interest of openness and full disclosure;

(c) Nor is it clear that any recommendations would be directly relevant to this case – noting that Phase 1 of the Grenfell Tower Inquiry was tasked with a review of the events of 14th June 2017, rather than looking at fire safety measures more generally;

(d) I therefore respectfully refer the Council and the Tribunal back to the rationale for the original applications.

(e) Officers of the Council, *and* Members of the Majority Group on the Council, have repeatedly stated that the Council will not take any steps to implement their sprinkler policy until the end of 2019 or possibly later. (This refrain has been repeated publicly on several occasions, including at various public meetings within the Council's democratic procedures relating to Housing policy and Fire Safety).

(f) However, these reassurances sit very uncomfortably with the fact that residents are being required to take important steps in these proceedings. This is particularly the case when residents are struggling with the implications of this complex matter, and the vast majority of residents are not legally represented.

(g) I must add that it is very difficult to identify *any* support which has been offered by the Council to assist residents with the management of their part in these

proceedings. The communication from the Council to residents appears to consist of legal letters, postings on its website from time to time, and an article in October 2018 in Home Life about the policy of sprinklers – an article which barely mentioned the Tribunal proceedings.[1] The challenge for residents to know how best to move forward is very significant, and this issue is at the centre of my correspondence with the Tribunal to date.

(h) The Leaseholders whom I have spoken to understand that the Tribunal is not in a position to make any order in respect of legal costs at this time. However, it is relevant to mention the financial cost and other barriers to obtaining expert professional legal advice, so that the Tribunal may fully understand the position of Leaseholders and therefore the circumstances and sentiments behind the applications of 25th February.

I would therefore ask the Tribunal to please note the following important points by way of background as to how Leaseholders have tried to ensure that they can participate fully in this matter:

- Leaseholders asked the Council in September 2018 (Paper 18-280) to make available a sum of money from the Housing Revenue Account equal to that being spent by the Council on its legal advice on the liability of Leaseholders to pay for sprinklers under the Service Charge. (The Council had previously refused to share its legal advice with residents). The rationale for the request for funding was so that Leaseholders would be on an equal footing with the Council in terms of access to expert professional legal advice. This request was also refused.
- The estimates provided to date for legal advice from lawyers who are involved in this matter are very significant, and have been a shock to many Leaseholders. Such costs were only confirmed in early 2019 following the Council having submitted its re-written application - it was only at that stage that lawyers could appraise the issues in the matter and the approximate scale of disclosure.
- As noted previously, many Leaseholders have worked very hard to try to raise funds for legal advice. They are continuing to work on this, and on the process of forming groups for the purpose of responding to the Council.

(i) As the Tribunal is aware, the applications which were made in the letter of 25th February relate to *case management matters* in these proceedings, arising out of the current circumstances, including the Council's statements about waiting for recommendations from the Grenfell Tower Inquiry, the evolution of the case including its scale, timetable and complexity, and the position at this time of the Leaseholders as a diverse group of respondents;

(j) However, the letter of 12th March does not address the latter two points at all.

(k) To reconfirm - A large number of residents across the Borough asked me to convey to the Tribunal that they are simply not yet in a position to make complex legal arguments in relation to issues such as Strike Out and/or Transfer to the Upper Tribunal. They are also not yet in a position to set out a written reply to the Council's application shortly thereafter.

[1] Wandsworth Council Home Life Magazine – October 2018 - http://www.wandsworth.gov.uk/downloads/file/13697/october_2018

(l) In the interest of addressing what may be Councillor Govindia's concern as per his statement in Full Council, it may be helpful to clarify the terms of the Stay application as follows:

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

(m) In the event that the terms set out above cause any concern to the Tribunal and/or the parties, we invite the Tribunal to make its own suggestion as to the most appropriate terms for a Stay of these proceedings, in light of all the circumstances. The Tribunal will of course recall that the original application of 25th February stated that if the Tribunal is not minded to order a Stay, the application is submitted in the alternative for an extension of time of 6 months for respondents to apply for Strike Out and/or a Transfer to the Upper Tribunal.

3. The Council's Position on a Stay – as at 12th March

(i) I would ask the Tribunal to note the divergence between the words of the Leader of the Council on 6th March, and the position as set out in the Council's solicitor's letter today. While there is no intention in this letter to call upon the Tribunal to arbitrate or involve itself at all in any political matter, I would simply ask the Tribunal to please consider how difficult it is for any resident, or indeed Councillor or observer, to put these various positions into context, and thereby understand how best to respond.

(ii) Noting the final paragraph of the 12th March letter - the "linkage" between future recommendations of the Grenfell Tower Inquiry, and actions taken by the Council, was offered by Councillors from the Majority Group by way of an amendment to recommendations before the Housing & Regeneration OSC in September 2018. The linkage was subsequently accepted by the Committee, and then was subsequently accepted by the Council's Executive. [2] The fact of the acceptance by the Executive was checked and verified with Council Officers following the Committee, and checked in writing again within recent weeks. The citation which I was given by Council Officers in order to be able to formally refer to the Council's Executive decision is set out in footnote 2. below.

(iii) Thus, the statements in today's letter from the Council's solicitors about a purported distinction between a "*decision of the Council*", and an "*operational decision within the Director's delegated authority*" are entirely new, extremely surprising, and would appear not to be distinctions of which the Council's own Officers were aware until now. I would also add that it is surprising that this purported distinction was not referred to by the Leader of the Council in Full Council last week, nor by his colleagues or Council Officers at any of the various meetings about this issue over the past 9

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

months. It would be most helpful for the Council or its solicitors to now provide documentary evidence and further explanation for the theory it has set out in today's letter, and to address the Council's interpretation of the Executive Statement of Decisions at footnote 2.

(iv) Finally, I would ask the Tribunal to note that the letter of 12th March does not address at all the position and views of the respondent Leaseholders, the balance of prejudice to the parties were the application to be granted, or the obligations of the Tribunal under the Tribunal Rules, including the Overriding Objective.

Tribunal Rules & Overriding Objective

The applications set out in this letter are respectfully submitted to be in keeping with the purpose and intention of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, 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 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 a Stay of proceedings, or an Extension of Time, 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. This letter has been copied to the Council's representatives and to representatives of Residents' Associations.

Yours faithfully,

Councillor Claire Gilbert

For and on behalf of residents of Wandsworth

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