

GRENFELL TOWER INQUIRY
WRITTEN OPENING STATEMENT ON BEHALF OF
THE ROYAL BOROUGH OF KENSINGTON & CHELSEA

Introduction

1. The Grenfell Tower fire was a terrible and tragic disaster, which must never be repeated. The ultimate achievement of the Inquiry will hopefully be to ensure that when people design, construct and refurbish buildings in future, a disaster like this does not happen again. The Council is totally committed to that aim.

2. In December 2017, the Full Council unanimously adopted a resolution affirming the Council's commitment to the Hillsborough Charter¹ and the Council's determination to live by the letter and spirit of the Charter's commitments. In line with the report's recommendations, the Council reaffirmed its commitment to be open, transparent and fully co-operative with the Public Inquiry into the Grenfell Tower fire and to assist the search for the truth. That remains the Council's approach to this Inquiry.

3. The Council welcomes the Inquiry. It and its legal team will do all that they can to assist the Inquiry in its important work.

4. The Council welcomes the Inquiry's wide Terms of Reference ("ToR"). Paragraph (i)(c) in particular is worth noting. It covers:

"The scope and adequacy of building regulations, fire regulations and other legislation, guidance and industry practice relating to the design, construction, equipping and management of high-rise residential buildings".

5. This underlines the fact that the Inquiry has a wider remit than a Coroner would have because a Coroner's powers would be derived from, and limited by, the Coroners and

¹ Charter for Families Bereaved through Public Tragedy – see Chapter 5 of “‘The patronising disposition of unaccountable power’ - A report to ensure the pain and suffering of the Hillsborough families is not repeated” by the Rt. Rev. James Jones KBE (HC 511)

Justice Act 2009. The Inquiry's wide ToR will make it easier for it to address its work and recommendations to a national audience rather than a local audience. This is fitting given that the Grenfell Tower fire has rightly been described as a national tragedy.

6. The Council is keen to learn the lessons that it can apply within Kensington and Chelsea. It is also pleased that the ToR will enable any lessons that apply more widely to be learned, as necessary, in other boroughs and nationally. We note the comments by Dame Judith Hackitt in the Final Report of the Independent Review of Building Regulations and Fire Safety published on 17 May 2018 that (i) the current regulatory system for ensuring fire safety in high-rise and complex buildings is not fit for purpose and (ii) there is a need for a radical rethink of the whole system and how it works. They highlight the likelihood that lessons need to be learned on a national level in addition to on a local level.

The role of the Council

7. It may assist to outline the principal ways in which the Council was involved with Grenfell Tower and its residents both before and after the fire.
8. First, the Council was at all relevant times the owner of the tower, the construction of which was completed in 1974.
9. Secondly, most of the occupants of the tower were social housing tenants of the Council. As at 14 June 2017, there were 14 leaseholders of flats within Grenfell Tower. The remaining flats in the tower were provided to social housing tenants.
10. Thirdly, the Council worked closely with the Kensington & Chelsea Tenant Management Organisation Ltd ("the TMO") and monitored the TMO's performance of its obligations under the detailed Modular Management Agreement ("MMA"), which governed the relationship between the Council and the TMO.
11. Whilst the Council and the TMO worked closely together, the TMO was at all relevant times a separate legal entity from the Council. At all relevant times, the TMO's Constitution provided that the majority of its Board members must be made up of tenants

and leaseholders and that Council appointed Board members must be in the minority. At the time that the Kensington & Chelsea TMO was established, the creation of TMOs, and the delegation of functions to them, was considered to be a positive and progressive move. In a 1991 White Paper², the government of the day, as part of a broader package of proposed social housing reform, pledged to increase opportunities for tenants to transfer away from local authority control and to encourage more local authorities to delegate management to tenant bodies. It achieved this by, in 1993, creating a ‘right to manage’ and amending the Housing Act 1985 so that local authorities would be obliged to transfer their housing management functions to a TMO where a majority of tenants were in favour of such a transfer and certain other conditions were met.³ The Kensington & Chelsea TMO was amongst the vanguard of organisations established under the new rules. In the years thereafter, successive governments continued to promote the transfer of functions to TMOs as a key means of improving tenant participation in the management of their homes. New statutory instruments were enacted in 2008⁴ and again in 2012⁵ in order to simplify the process of transferring housing functions to tenant-led bodies.

12. Fourthly, the Council played a leading role in the decision to refurbish Grenfell Tower. It had received a substantial lump sum from the sale of certain property assets. The Council, together with the TMO, took the view that the refurbishment of Grenfell Tower was a suitable project for the investment of that money. The purpose of the refurbishment project was to benefit the residents of Grenfell Tower and the local community by, amongst other things, upgrading the communal heating system which served approximately 650 properties including all the flats in the tower, installing new windows in the tower and improving external thermal efficiency and weathertightness in the tower.

² “The Citizen’s Charter: Raising the Standard”, July 1991, p. 15.

³ Sections 27 and 27AB of the Housing Act 1985 as amended by the Leasehold Reform, Housing and Urban Development Act 1993, and the Housing (Right to Manage) Regulations 1994/627.

⁴ See “Strong and prosperous communities: the Local Government White Paper”, DCLG, October 2006 at para. 2.47. Following public consultation, the Government enacted the Housing (Right to Manage) (England) Regulations 2008/2361.

⁵ See “Giving Tenants Control: Right to Transfer and Right to Manage Regulations Consultation”, DCLG, March 2012. This was followed by the enactment of the Housing (Right to Manage) (England) Regulations 2012/1821.

13. Fifthly, the Council provided the funding for the refurbishment project. Under the Council's Constitution at the time, the most important decision making body was Cabinet⁶. The refurbishment project was considered by Cabinet on 3 occasions.

- 2 May 2012 when the decision was made to proceed with the project - at that time the estimated budget for the project was £6m;
- 18 July 2013 when the budget was increased to £9.7m;
- 19 June 2014 when the budget was further increased to £10.3m.

14. The funding was provided to the TMO. Under the MMA, responsibilities for "Major Works" were delegated to the TMO. The refurbishment of Grenfell Tower constituted "Major Works". The TMO engaged Rydon Maintenance Ltd ("Rydon") to carry out the refurbishment and entered into a contract with Rydon. The TMO also engaged a number of specialist advisers (e.g. Studio E Architects Ltd) and entered into contracts with them. The refurbishment project was a notifiable project for the purposes of the Construction (Design and Management) Regulations 2007 and 2015. For the purposes of those Regulations, the TMO was "the Client" and Rydon was "the principal contractor".

15. Sixthly, the Council's Executive Director, Planning and Borough Development, acting under delegated powers, granted planning permission for the refurbishment project subject to certain conditions. Planning is a statutory function of local authorities that applies irrespective of the identity of the owner of the building or the applicant for planning permission. In the case of this project, the planning application was submitted by IBI Taylor Young Ltd on behalf of the TMO.

⁶ Cabinet met approximately 10 times per year. At all relevant times, Cabinet was defined in Part 2 Article 7.01 of RBKC's Constitution which provided: "7.01 **The Executive** (a) The Executive is responsible for undertaking all of the Council's functions, except for those functions (specified in Article 4 and Part 3 of the Constitution) that are reserved to the Council and that are undertaken by the full Council or delegated by the Council to committees, sub-committees (if any) or officers. When the Executive meet collectively, it is known as 'the Cabinet'. Individual Councillors that are members of the Executive are known as 'Cabinet Members'. (b) The Cabinet currently comprises eight Councillors (including the Executive Leader) but can comprise up to a maximum of ten if the Leader so decides."

16. Personnel from the Council were involved in (i) the choice of the colour of the cladding and (ii) the choice between a cassette fixing system and a riveted fixing system for the cladding. Visual appearance is a material planning consideration.
17. Seventhly, the Council maintained an overview of the refurbishment project by, for example, monitoring the TMO's performance of its obligations under the MMA. The Housing and Property Scrutiny Committee⁷ regularly received updates on a wide range of issues including the Grenfell Tower refurbishment project and the performance of the TMO.
18. Eighthly, the Council's Building Control Manager issued a Completion Certificate under the Building Regulations 2010; the Certificate gave a final inspection date of 7 July 2016. This followed the issuing, by Artelia Projects UK on 4 July 2016, of a Certificate of Practical Completion. In the case of this project, a full plans application was submitted by Studio E Architects Ltd.
19. Although the Inquiry is yet to hear any evidence on the point, based on what is now known about the fire it seems likely that the Inquiry will find that the cladding, as installed in the refurbishment, did not satisfy the functional requirement of Schedule 1, Part B4 of the Building Regulations 2010. Again based on what is now known about the fire, it is likely that a number of specific failures to comply with the provisions of Approved Document B (2013) will also be identified by the Inquiry. However, it may well be that the absence of a full building fire alarm system and the absence of a sprinkler system are ultimately not regarded as matters that warrant criticism.
20. The Council understands and respects the rationale behind the submission (made by the G5 legal team representing a group of BSRs) that:

“If it is obvious (or otherwise accepted) that the specified and/or actual design of the building works were non-compliant [with the Building Regulations] then the Chair should not wait for Phase 2 to say so. Phase 2 will then examine the reasons,

⁷ The Housing and Property Scrutiny Committee met approximately 6 times per year. As a Scrutiny Committee, it had no executive decision making power. Full details of the Scrutiny Committee's powers were set out in Part 2 Article 6 of RBKC's Constitution. These included powers to review, scrutinise, recommend and report.

responsibility and policy implications, and broader regulatory, governance and management questions.”⁸

21. The Council will make detailed submissions on this issue in its Closing Statement to Phase 1 of the Inquiry. However, it may assist to make the following observations at this stage about the role of Building Control. Building Control is a statutory function of local authorities that applies irrespective of the identity of the owner of the building or the applicant for Building Control approval. It is a highly technical function. The officials who work in Building Control and grant Building Control approvals are not, and do not become, “designers” of the projects that they approve. It is well understood in the construction industry that the fact that local authorities have a Building Control function does not remove the duties on those paid to design buildings. Whilst this Inquiry is not directly concerned with issues of civil liability, it is well understood in the construction industry that those who suffer the financial consequences of a poorly designed building cannot bring a compensation claim against a local authority by reason of the fact that it granted Building Control approval. It is no doubt for this reason that the advice from the Royal Institute of British Architects (“RIBA”) that was current at the time of the fire was that: “the architect may produce design documentation that is approved by the building control service, but the architect must still comply with the requirements of the Building Regulations themselves and not rely solely on this approval”⁹. Prior to the Grenfell Tower fire, the construction industry operated on, and was structured on, the common understanding that designers were responsible for producing designs that complied with the Building Regulations and that, if they failed to do so, those financially affected should look to designers, rather than local authority Building Control departments, for compensation.

22. Ninthly, following the completion of the refurbishment project, the Council continued to work closely with the TMO. At all relevant times, the TMO’s housing management functions included housing management functions in respect of Grenfell Tower. As previously stated, the Council monitored the TMO’s performance of its obligations under the detailed MMA, which governed the relationship between the Council and the TMO.

⁸ G5 submission dated 7.3.18 @ para 19

⁹ Law in Practice – The RIBA Legal Handbook, 2nd edition, 2013 @ para 7.5.1

23. Tenthly, the Council was involved in attempting to assist the Bereaved, Survivors and Residents both in the days immediately following the fire (a topic which falls within the Inquiry's ToR) and thereafter up to the present day (a topic which falls outside the Inquiry's ToR).

24. The unprecedented nature and scale of the fire posed an extraordinary challenge for any local authority. It would be wrong to think that the Council did not care about those affected or did not attempt to help them; it did. Over 340 Council staff (including staff from other boroughs which shared services with the Council) were mobilised in the response on 14 June. This included officers from the following services:

- Contingency / Emergency Planning who mobilised the Council's emergency response.
- Dangerous Structures, who assisted the London Fire Brigade by, for example, assessing the structural safety of the tower.
- Public and Environmental Health who, for example, were involved in providing factual information to the London Resilience Scientific and Technical Advice Cell.
- Children's Services, including both educational psychologists and social workers, who, for example, were dispatched to the site of the fire, schools, hospitals and rest centres to provide an emergency social work service to children and families and support to schools.
- Adult Social Care, who, for example, identified vulnerable adults and arranged for the collection of urgent medication and prescriptions.
- Housing Services, who, for example, sourced and provided emergency accommodation for residents of the tower and the surrounding area.
- Finance, who enabled the work of Housing Services and other departments by ensuring money was made available to support the response.

25. However, the fact remains that, as the Leader of the Council stated on 19 July 2017, the Council did not cope well enough in its initial response to the tragedy; the Council is deeply sorry that it did not do more to help when help was most needed.

Concluding remarks

26. We hope that this Opening Statement will assist the Inquiry, and all those interested in its work, to understand some of the ways in which the Council was involved in the management of Grenfell Tower, and of the refurbishment project, and of how its involvement fits in with the involvement of others. Nothing said in it is intended in any way to detract from the fact that the Grenfell Tower fire was a terrible disaster, which tragically resulted in great human loss and suffering.
27. The Council, and its legal team, extend their profound sympathies to each and every Bereaved person, Survivor and Resident.

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Crown Office Chambers

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