

## **GRENFELL ORAL OPENING STATEMENT OF RBKC**

Mr Chairman, I, together with Katie Sage, represent the Royal Borough of Kensington & Chelsea instructed by DWF solicitors.

The Grenfell Tower fire was a terrible and tragic disaster which must never happen again. The fire was a human tragedy. But it was also a man-made tragedy. What I mean by this is that it started accidentally in a kitchen in a flat and spread with devastating speed and intensity through a building designed, constructed and refurbished by men and women. The ultimate achievement of this Inquiry will hopefully be to ensure that when people design, construct and refurbish buildings in future, a disaster like this never happens again.

The council is totally committed to that aim.

In December 2017, the Full Council unanimously adopted a resolution affirming the Council's commitment to the Hillsborough Charter 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.

We welcome the Inquiry. We welcome the Prime Minister's decision to appoint two additional panel members to support your chairmanship. We will do all that we can to assist you and your team in your important work. As an example of this I can tell you that on Monday we wrote to your team in order to help them to identify specific documents of potential importance to your experts from within the large number of documents previously disclosed by the council. I will say more about this later in this opening statement.

I, members of the council's legal team and the council's Leader and Deputy Leader attended the commemoration hearings. The intensity of emotion that we experienced will ensure that we do not forget the human face of the disaster and the importance of searching for the truth and providing justice for the Bereaved, Survivors and Residents. That emotion and passion must energise and sustain this Inquiry's desire to search for the truth. The search itself must be dispassionate. We welcome the fact that the Inquiry will provide an opportunity for careful and objective analysis of the evidence in the search for the truth.

We welcome the Inquiry's wide Terms of Reference. In particular the inclusion of the following - "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".

These wide terms of reference will allow lessons to be learned at a national level as well as at a local level. We note the comments in the Final Report of the Hackitt Review about the current regulatory system for ensuring fire safety in high-rise and complex buildings not being fit for purpose. We agree with Dame Judith that there is a need for a radical rethink of the whole system and how it works. The Hackitt Review highlights the likelihood that lessons need to be learned on a national level as well as on a local level. The reception of the final report, and developments since it was published, suggest that this is a widely shared view.

The council is determined to learn the lessons that it can apply at a local level. The Royal Borough of Kensington & Chelsea is a comparatively small local authority. It covers an area of approximately 12 square km. It has approximately 150,000 residents. It employs approximately 1,700 full-time employees. It is one of 32 London Boroughs; one of 125 unitary councils; one of 418 principal councils in the United Kingdom.

The council welcomes the fact that the Inquiry's wide terms of reference will allow lessons to be learned by other local authorities, by central government and by those in the construction industry, hopefully as soon as possible.

Mr Chairman I imagine that it is no coincidence that you have called on the council to be the first Core Participant to speak after those representing the Bereaved, Survivors and Residents. There can be no doubt from the coverage in both the mainstream media and social media that the council is seen as the public face of those assumed to be responsible for the Grenfell Tower disaster. That the council should be seen as the public face of the disaster is entirely understandable. The residents were tenants and leaseholders of the council. The council is, and always has been, the owner of Grenfell Tower. The residents lived in the borough. They voted in local elections for councillors to represent them in the council. So the council recognises that it is seen as the public face of the disaster and understands why this is so.

The council is very sorry that its residents suffered the terrible tragedy of the Grenfell Tower fire. It agrees with your statement on the first day of the commemoration hearings that it is so important that the truth be laid bare. The council knows that what its councillors and officials did, knew, did not do and did not know will be exposed to intense scrutiny in an inquisitorial process which has as its goal justice for the living and a lasting tribute to the dead. This is how it will be and this is how it should be.

On the first day of the commemoration hearings, Mr Millett observed that “the truth is not usually one big thing, but comprises many tiny fragments”. Based on my own experiences as Counsel to the Inquest following the Lakanal House fire, I would agree.

Mr Chairman although you have only recently started hearing evidence, your investigation has been running full-time for over 9 months. You will therefore already appreciate that whilst the council funded the refurbishment of the tower which was completed shortly before the fire, a huge number of organisations with different specialisms were involved in a variety of ways in that project. This is a theme that I will return to.

The narrative locally, nationally and indeed internationally has tended to focus on the fact that the Grenfell Tower fire occurred in a borough which has been held by the same political party for many years. A borough with many wealthy residents and some of the highest property prices in the world. The unspoken, and at times spoken, assumption has been that these facts are somehow relevant to the cause of the fire. In other words, that the fire could not have happened in a different borough.

One of the purposes of an Article 2 compliant investigation is to confirm or disprove rumour and speculation. This very point was made by Lord Bingham in the case of Amin in 2003.

Although the context was different Lord Bingham's observation, that one clear purpose of an Article 2 investigation is to ensure that unjustified suspicion of wrongdoing is allayed, holds true.

So Mr Chairman as the evidence unfolds over the coming months I invite you to ask yourself this question – Was there something unique about the Royal Borough of Kensington & Chelsea which meant that this terrible fire could only have happened there? Or is this something that could have happened in any other borough which contains high rise buildings with external cladding?

Without seeking to prejudge the evidence, I venture to suggest that you will find that there was nothing unique about the Royal Borough of Kensington & Chelsea which meant that the fire was destined to take place within its boundaries rather than somewhere else.

I am now going to return to a theme I mentioned earlier that a huge number of organisations with different specialisms were involved in a variety of ways in the refurbishment project.

The refurbishment of Grenfell Tower which was completed shortly before the fire is at the centre of this Inquiry. In other words, a great deal of this Inquiry's work will involve analysing the dry technical detail of a construction project.

There may have been a time many decades ago when a building, such as Grenfell Tower, could be designed, constructed and refurbished entirely by employees of a local authority.

If that was ever the case, those days have long gone. Whatever recommendations are made in the Inquiry's report it seems inconceivable that one of them would be to reverse the tide of the modern world to the extent that all the complex skills required to design, construct and refurbish a building such as Grenfell Tower should be brought in-house by local authorities. Even if that were considered desirable, and I suggest that it is not, it would be impossible to turn back the clock in that way.

In this country, construction projects are generally subject to the Construction Design and Management Regulations. The Grenfell Tower refurbishment project was no exception. The Construction Design and Management Regulations, as the name suggests, regulate the many different organisations typically involved in a construction project. Where did the council fit into that framework?

The answer is that, for the purposes of the Regulations, the council was not a relevant organisation. It did not enter into the contract with Rydon, the principal contractor. It was the Tenant Management Organisation, the TMO, whose role I will return to later, that entered into that contract and became the employer in the language of the contract. While, the council was the owner, it was the TMO who were the Client for the purposes of the Regulations.

The council did not enter into contracts with the other organisations involved in the refurbishment project, many of whom are Core Participants in this Inquiry. Those commercial organisations were either contractors or subcontractors of the TMO or contractors or subcontractors of Rydon.

None of this is intended to suggest that the council played no role at all, far from it. As you are aware, my written opening statement outlines 10 principal ways in which the Council was involved with Grenfell Tower and its residents both before and after the fire. Before outlining some of the roles that the council did play, may I encourage you to think of the council in terms of its specific relevant functions because that is likely to be both more accurate and more helpful than thinking of it as a single person like a private individual.

The council played a leading role in the decision to refurbish Grenfell Tower. It had received a sum of money but, for reasons which I do not need to go into, the way in which that money could be used was ringfenced. The council, together with the TMO, took the view that the refurbishment of Grenfell Tower was a suitable project into which to invest that money.

It is, for all too obvious reasons, easy to forget that the whole point 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.

The council provided the funding for the refurbishment project.

Under the council's Constitution at the time, the council's most important decision making body was its Cabinet. As explained in my written opening statement (para 13) the refurbishment project was considered by Cabinet on 3 occasions. 2 May 2012 when the project was given the green light with an estimated budget of £6m. 18 July 2013 when the budget was increased to £9.7m. And 19 June 2014 when the budget was further increased to £10.3m. Those are not the decisions of a Council determined to build on the cheap.

This money was used by the TMO who, under the management agreement between it and the council, had full delegated responsibility for all Major Works.

Of course, the council did not simply wash its hands of the project after deciding that it should go ahead. The council kept an eye on what the TMO was doing.

The ins and outs of precisely how it did this will quite properly be the subject of detailed evidence and intense scrutiny in Phase 2 but for present purposes the best single word to describe what the council did is “monitor”. The council monitored the TMO’s performance of its obligations under the management agreement.

Both Councillors and officials played a role in the monitoring of the TMO’s performance but it was not deemed necessary to refer the project back to Cabinet other than on the two occasions already mentioned when, on each occasion, Cabinet voted to increase the budget.

Given the huge political and media interest in the refurbishment project since the fire, it may seem remarkable that it did not attract more Cabinet interest at the time. But may I suggest that there are good reasons why this was so. The project was not a politically controversial or politically high-profile issue. It did not involve cutting services or closing a much loved community asset. At its core it involved a proposal to spend over £10m improving the accommodation of social housing tenants. As such it had, if anything, the potential to unite those of different political persuasions rather than divide them.

Before I leave the refurbishment project I should mention two specific functions of the council that had an involvement with it. They are first, Planning and, secondly, Building Control. It is important to distinguish between them because they are separate functions. Planning is concerned with a range of considerations including visual appearance, in other words how a building looks. Planning is not concerned with fire precautions or other matters controlled under Building Regulations. Building Control is concerned with such matters.

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, an organisation called IBI Taylor Young Ltd applied on behalf of the TMO for planning permission in the same way that a third party organisation such as a commercial property developer would. And an official of the council acting under delegated powers granted planning permission. In 2014, people from the Council were involved in the final choice of the colour of the cladding and the final choice between a cassette fixing system and a riveted fixing system for the cladding. This involvement came after the decision had been taken in 2012 to proceed with the refurbishment. The opinions expressed in 2014 related to how the exterior of the completed building would look.

As I have already explained, this is a planning issue and there is therefore nothing particularly surprising about people from the council getting involved in this way.

Building Control is another 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, as you will have been learning during your investigation if you did not know it already, a highly technical function, which is not political in nature. In the case of this project, Studio E Architects Ltd made a full plans application in the same way that a third party organisation such as a commercial property developer would. And an official of the council acting under delegated powers issued a Completion Certificate under the Building Regulations. All of this is normal and involved the discharge of a specific statutory function.

The Council recognises that the fact that such a certificate was issued will be the subject of detailed evidence and intense scrutiny in Phase 2 because, based on what is now known about the fire, it is clear that the cladding system, as installed in the refurbishment, did not satisfy the functional requirement of Schedule 1, Part B4 of the Building Regulations. As stated in my written Opening (para 19), 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 will also be identified by the Inquiry.

This raises a number of important questions. These include: What consideration was given to the fire safety of the cladding system? What consideration was given to the smoke ventilation system? What steps were taken by Building Control before the Completion Certificate was issued? The officials who worked in Building Control at the time will be called to give evidence to the Inquiry in Phase 2. That will be the proper time for those questions to be asked and for those officials to give their answers and to explain their thought processes.

However, in recognition of the importance of these issues and in the interests of transparency, the council on Monday sent your team a detailed chronology in relation to Building Control issues which is cross-referenced to specific documents previously disclosed by the council. We welcome the Inquiry's recent instruction of Beryl Menzies to provide expert evidence on Building Control issues. We hope and believe that the chronology and references which we have supplied will assist her to analyse the ways in which officials within Building Control considered fire safety issues. They should also assist your other experts to address a number of the questions which they have identified as outstanding in their reports.

Before leaving Building Control I would add the following important point. 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.

Under a design and build contract, and the refurbishment of Grenfell Tower was a design and build contract, the contractors agree to design and are paid to do so. 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.

Mr Chairman I hope that I have succeeded in outlining the various different ways in which different parts of the council, with different statutory functions to discharge, were involved in the refurbishment project. I hope that I have also dispelled some misunderstandings about the council's role by saying something about the involvement of the many commercial organisations involved in the project, whose involvement was understandably more hidden from view.

I have already mentioned that the council monitored the TMO's performance of its obligations under the management agreement which included delegated responsibilities for day to day management issues as well as for major works. I now turn to say something about that organisation, which was involved not only in the refurbishment project but also in the day to day management of Grenfell Tower.

You will of course be aware of this but some of those following the Inquiry may not be so it is worth repeating – the TMO was at all relevant times a separate legal entity to the council, although they worked closely together. This separation was not some legal device intended to shield the council from its responsibilities.

At the time it was established, the creation of a Tenant Management Organisation, and the delegation of functions to it, was considered to be a positive and progressive move. It was set up to be independent of the Council. And it was independent of the Council.

Its Constitution expressly stated that the majority of its Board members must be tenants and leaseholders. And that Council appointed Board members must be in the minority.

From 1991 onwards, successive governments promoted the transfer of functions to Tenant Management Organisations as a key means of improving tenant participation in the management of their homes.

In 2014, the TMO reported that in a poll of its residents in September 2013, 86% of those who voted said they wanted the Kensington & Chelsea Tenant Management Organisation to continue managing their homes.

Mr Chairman, that brings me to the end of this Opening Statement. Nothing that I have 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 suffering and loss.

We offer our profound sympathies to each and every Bereaved person, Survivor and Resident.

I hope that this Opening has helped you and others 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.

As I said earlier, the council welcomes this Inquiry and will do all that it can to assist you and your team in your important work. We hope that this Inquiry can provide justice for the living, a lasting tribute to the dead and ensure that a disaster like this never happens again.

JAMES MAXWELL-SCOTT QC

6.6.18