

IN THE INNER SOUTH DISTRICT OF GREATER LONDON CORONER'S COURT

IN THE MATTER OF INQUESTS TOUCHING THE DEATHS OF

CATHERINE HICKMAN
DAYANA FRANCISQUINI
FELIPE FRANCISQUINI CERVI
THAIS FRANCISQUINI
HELEN UDOAKA
MICHELLE UDOAKA

Before Her Honour Frances Kirkham sitting as Assistant Deputy Coroner

Requirement that composite panels in window sets be Class O but not fire resistant

1. During the course of the hearing, I received written submissions on the question whether any conditions imposed pursuant to section 20 London Building Acts (Amendment) Act 1939 ("the 1939 Act") continued to have effect at the time of the substantial refurbishment of Lakanal House undertaken in 2006/07. Mr Hendy QC and Mr Edwards, on behalf of bereaved families, submit that section 20 conditions remained in place in relation to Lakanal House, with the consequence that the composite panels below the bedroom windows in the maisonettes of Lakanal House ("the panels") installed as part of the 2006/07 refurbishment should have been fire-resistant to 60 minutes ("FR60"). Their submissions are supported by Ms Al Tai and Mr Dowden, also acting for the bereaved.
2. Mr Matthews QC and Ms Sanderson (for London Borough of Southwark) Mr Compton QC (for Apollo Property Services Group Ltd) and Ms Canby (for SAPA Building Systems Ltd) submit that there was no legal requirement for the panels installed in 2006/07 to have been FR60.
3. I thank all for their helpful submissions.
4. On Wednesday 20 March 2013 (day 44 of the hearing) I said that I had concluded that there was no legal requirement for the panels to be FR60, that I would be directing the jury on that basis, and that I would in due course provide my reasons for that decision. I now set out those reasons.
5. Lakanal House was constructed in the late 1950s. In 1978/79 work was undertaken including window replacement. In 2006/07 substantial refurbishment work was carried out, including installation of the panels. Before 1985, building control issues were governed, broadly, by the London Building Acts and byelaws, including the 1939 Act.
6. Relevant provisions of section 20 of the 1939 Act provide as follows:

"20 (1) Unless the Council otherwise consent
(a) no building shall be erected with a storey or part of a storey at a greater height than—
(i) one hundred feet; or
(ii) eighty feet if the area of the building exceeds ten thousand square feet;
(b) no building of the warehouse class and no building or part of a building used for purposes of trade or manufacture shall be of a

cubical extent exceeding two hundred and fifty thousand cubic feet unless it is divided by division walls in such manner that no division of the building or part of the building as the case may be is of a cubical extent exceeding two hundred and fifty thousand cubic feet: Provided that the Council shall not withhold consent under paragraph (a) of this subsection if they are satisfied that having regard to the proposed use to which the building is to be put proper arrangements will be made and maintained for lessening so far as is reasonably practicable danger from fire in the building.

(2) In granting consent under this section the Council may without prejudice to any other power to attach terms and conditions to the consent give the consent subject to conditions restricting the user of the building or part of the building or relating to the provision and maintenance of proper arrangements for lessening so far as is reasonably practicable danger from fire in the building or part of the building."

7. The London Building Acts and byelaws remained in place until 1985, when the national system of building regulations was introduced in London. The byelaws were repealed by the Building (Inner London) Regulations 1985 SI No. 1936 ("the 1985 Regulations"). Section 20 of the 1939 Act was amended by Schedule 3 of the 1985 Regulations. Section 20, as amended, remained in force until 9 January 2013. Section 144 of the 1939 Act had been concerned, amongst other matters, with the power to impose conditions to consents. Section 144 (1) (2) and (3) were amended by paragraph 16 of schedule 3 of the 1985 Regulations.
8. Mr Hendy QC and Mr Edwards make a number of assumptions as to conditions and waivers applicable to consent for the original design and construction of Lakanal House, and as to conditions applicable to the 1978/79 work. So far as the original design and construction are concerned, they assume that consent under section 20 is likely to have had conditions attached, namely that there should be compliance with relevant byelaws – in this case, the 1952 byelaws. Mr Hendy QC and Mr Edwards assume that section 20 consent would have been granted for the 1978/79 work by reference to the 1972 byelaws; these would have required the replacement window sets to be Class IIC, which requires FR60. Accordingly, they say, there was a requirement that external walls be FR60, at the time both of original construction in the late 1950s and of work undertaken in 1978/79. Mr Hendy QC and Mr Edwards also assume that no application was made to revoke or vary any section 20 conditions which applied to Lakanal House.
9. Although those assumptions have not been challenged, the evidence has not been examined. I make no findings but proceed on the basis that those assumptions are correct.
10. The issue here is whether (1) any conditions imposed under section 20 of the 1939 Act were swept away by the 1985 Regulations, with the consequence that the panels were subject to the requirements of the post 1985 regime which did not require panels to be FR60 or (2) any conditions were preserved until expressly revoked or varied, with the consequence that the panels should have been FR60.
11. It is common ground that the effect of the 1985 Regulations was to amend section 20 of the 1939 Act, to remove reference to compliance with any byelaws made in pursuance of the London Building Acts and to remove the power to impose conditions on buildings over 100ft "relating to the provision and maintenance of proper arrangements for lessening so far as is reasonably practicable danger from fire in the building or part of the building."

12. The effect of the amendment to section 20 was to restrict the application of that section in effect to the provision and maintenance of fire alarms, automatic fire detection systems, fire extinguishing appliances and installations, effective means of removing smoke in case of fire, and adequate means of access for fire brigade personnel and appliances.
13. Mr Hendy QC and Mr Edwards submit that there is a valid distinction to be made between (1) the byelaws which (they accept) were swept away by the 1985 Regulations and (2) conditions imposed under section 20. They submit that the 1985 Regulations are explicitly prospective and contain no provision for retrospective application; there is no provision revoking existing conditions imposed in reliance on section 20. Their case is that although the byelaws were swept away by the 1985 Regulations, the section 20 conditions imposed in 1978/79 were never varied. These conditions were made "in reference" to the 1972 byelaws. The fact that the 1972 byelaws were subsequently revoked does not mean that any section 20 conditions imposed in reference to them became a nullity.
14. I am not persuaded by those submissions.
15. Section 20 as amended by the 1985 Regulations made no requirements in relation to fire resistance or fire performance of external walls
16. The purpose and effect of the amendment to section 144 of the 1939 Act was to permit the continuation of conditions of consent imposed directly under section 20 but not the continuation of any conditions imposed pursuant to byelaws. The conditions assumed by Mr Hendy QC and Mr Edwards all related to the 1952 or 1972 byelaws; they were not conditions imposed directly by section 20. I am not persuaded that conditions imposed "in reference" to the 1972 byelaws (as Mr Hendy QC and Mr Edwards put it) were not swept away by the 1985 Regulations. The requirement to comply with those byelaws was removed by the 1985 Regulations. Any conditions imposed pursuant to byelaws prior to 1985 ceased to have effect after the 1985 Regulations came into effect.
17. Subject to exemptions irrelevant to this issue, regulation 2(1) of the 1985 Regulations provides: "The Building Regulations 1985 shall apply in Inner London." It thus provides in the clearest of terms for the general application of the Building Regulations to Inner London. Since then the relevant applicable legislation has been the Building Act 1984, which is the enabling Act for preparation, by the Secretary of State, of the Building Regulations. After 1985, requirements as to fire resistance or fire performance of external walls were governed solely by the Building Regulations and the guidance offered by Approved Document B.
18. By the time of the 2006/07 refurbishment work at Lakanal House, the relevant applicable legislation was the Building Act 1984 and Building Regulations 2000. The requirement for the panels was that they be Class 0 but not fire resistant. It was on that basis that I directed the jury.

Frances Kirkham
Assistant Deputy Coroner

4 April 2013