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

IN THE MATTER OF INQUESTS TOUCHING UPON THE DEATHS OF

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

RESPONSE ON BEHALF OF THE FAMILIES

TO THE NOTE

BY RICHARD MATTHEWS QC AND ELEANOR SANDERSON

ON THE APPLICATION OF BUILDING (INNER LONDON) REGS 1985

TO LONDON BUILDING ACTS (AMENDMENT) ACT 1939

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1. Mr Matthews' Note fails to get to grips with the Revised Submissions on behalf of the families dated 14 March 2013. The Building (Inner London) Regulations 1985 SI 1936 amended the London Building Acts (Amendment) Act 1939 by restricting the scope of future conditions which could be imposed under s.20 and by (amongst other things) sweeping away many by-laws.

2. Put shortly, the Note fails to distinguish between the conditions imposed under s.20 which were not swept away and the by-laws which were. The conditions which were imposed under s. 20 in 1978/9 were never subsequently varied. These conditions were simply imposed *in reference* to the 1972 By-laws. The fact that the 1972 By-laws were subsequently revoked does *not* mean that any s.

20 conditions imposed in reference to them suddenly became a nullity.

3. For convenience we repeat the content of our email of yesterday in response to that of Mr Martin of the same date, with the correction of the reference to reg.16 of the 1985 Regulations which should have been, as Mr Matthews correctly notes, to para.16 of sched 3 of the 1985 Regulations. The correction makes no difference to the point advanced. We said:

> We agree with Mr Martin that in 1985 s.20 of the 1939 Act was amended, references to by-laws were deleted and (so far as is material) the power was removed to impose conditions on buildings of over 100 feet '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.' However, the Building (Inner London) Regs 1985 SI 1936 are explicitly prospective and contain no provisions for retrospective application. There is no provision revoking existing conditions imposed in reliance on s.20. Indeed, para.16 of Sched 3, whilst removing reference to by-laws in s.144 of the 1939 Act, specifically preserves conditions made pursuant to s.20 as being binding on the owner (s.144(2)). Such preserved conditions are not restricted only to those which could be and were imposed pursuant to s.20 as amended, i.e. those conditions which originated after the 1985 Regs took effect.
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> In consequence s.20 conditions (whenever imposed and irrespective of the nature of the condition) remained in place in respect of the buildings to which they were directed, unless and until revoked or varied. They continued in effect therefore in 2005-7. There was no application at or before that time to revoke or vary the s.20 conditions that applied to Lakanal House. Whether any such application would have been granted is unknown.

4. Mr Matthews cites reg.2 of the 1985 Regulations but this does not appear to either advance nor detract from the point made; it simply applies various provisions of the Building Act 1984 to the GLC and certain Regulations to Inner London.

5. Schedule 3 set out modifications to enactments, including specifying a new scope for conditions which could be imposed under s.20 of the 1939 Act. 7. Mr Matthews states in his paragraph 7:

> Paragraph 16 of the Schedule amended section 144 of London Building Acts (Amendment) Act 1939 in a great number of ways, so that section 144 only applied to continuing conditions of consent imposed directly under section 20 and it removed reference to and any requirement for compliance with "any byelaws made in pursuance" of the London Building Acts: all of the conditions referred to in Mr Hendy's original submissions related to the 1952 or 1972 byelaws; none was an original section 20 condition to the section 20 consent. (See the attached hand amended section 144)

6. It is correct that paragraph 16 of Schedule 3 of the 1985 Regulations "applied to continuing conditions of consent imposed directly under section 20". Here Mr Matthews recognises, as we submitted, that pre-existing conditions continued to have effect. We agree that with the revocation of the various by-laws, future works had to conform not with those by-laws but with the Building Regulations (applied by Regulation 2) but this did not remove the additional obligation to comply with any pre-existing conditions which both Mr Matthews and we agree continued in effect.

7. The flaw in Mr Matthews argument is his assertion in paragraph 7 that "all of the conditions referred to in Mr Hendy's original submissions related to the 1952 or 1972 by-laws, none was an original section 20 condition to the section 20 consent." That is not so. Whilst waivers were granted from various provisions of the By-laws, the conditions (so far as the evidence survives) were to build in accordance with the plans which the District Surveyor evidently considered fulfilled the then requirement of s.20. The conditions could not have been of a lesser standard than the By-laws (unless a waiver was granted) but the conditions were done under the authority of s.20

not under the By-laws. For ease of reference we said this in our Revised Submissions:

> 14. Consent was granted by the Borough Architect dated 14th August 1957 [recent disclosure p 27-36], which provided for certain conditions of approval and waivers. But note paragraph 14 [p 31]: '*the blocks shall be otherwise erected and retained without any addition thereto and in exact accordance with the application and the said plan and particulars submitted in connection with such application*' [p 35 again stresses compliance with section 20 and the 1952 By-laws].
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> 15. Consent for waiver of by-law 5.24(2)(a) appears to have been initially omitted by accident but was granted on 13th September 1957 [p 37]. It permitted waiver of 5.24(2)(a) '*to be constructed as shown in the plans submitted in lieu of the requirements of such By-law*'; this can only refer to plan 46/165. This waiver stressed that the requirements of the 1930-39 Acts and By-laws in force must be otherwise complied with to the satisfaction of the District Surveyor. Thus the only waiver of by-law 5.24(2)(a) for the bedroom panels was to provide for plasterboard, glass, and thermalite or breezeblock walls a total of 5 ½" thick under the bedroom windows.
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> 16. Approval was also subject to '*attached standard condition (Form C.3) be complied with: - Item (1)(a) – Standard of fire resistance*' etc [p 27; this echoes the initial recommendation p 19]. Form C.3 does not appear to be with the recently disclosed documents and it is not known what these conditions might have been. It is inconceivable that such conditions would be less than those required by part XI of By-laws (which would in any event have required an express waiver).
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> …

And in relation to the alterations in 1978-9:

> 43. The evidence strongly suggests Class IIC: on a letter of 24th April 1978 from LBS housing department to the GLC [page 16 of the chronological bundle] somebody has written in manuscript '*class IIC? enclosures'*. This is supported by the words '*to be class 2C enclosures in maisonettes*' on the Progress Sheet, an apparently official document [chronological bundle p 22, half way down left hand box]. Consent under section 20 of the 1939 Act was granted that insulation panels would be constructed '*as proposed*' [chronological bundle p 24]. This proposal must have been for Class IIC enclosures as nothing else is referred to in the limited documents except occasional references to '*class B fire retardant*' [p 16, 28], which is a separate issue (akin to class 0 etc used in later years).

8. The s.20 conditions therefore remained extant in 2006.

9. Finally, Mr Matthews is wrong to assert in paragraph 8 that Section 144 of the 1939 Act had to be amended by the 1985 Regulations "otherwise it would be in conflict with the terms and effect of Regulation 2 which brought both the application and standard of the Building Regulations to apply to all 'building work' within the meaning of the Building Regulations i.e. material alterations, to section 20 buildings in Inner London." There is and could be no conflict in preserving pre-existing conditions requiring a higher protective standard than that which was to come into effect for buildings and work to which there no pre-existing s.20 condition applied. Indeed, there was good reason to preserve pre-existing higher standards since by definition they applied to older buildings which might not have some of the modern fire protections (double staircases, sprinklers etc).

10. To preserve pre-existing higher standards is also entirely in accordance with the spirit of the Building Regulations 2000 No. 2531, which provides at schedule 1:

> **External fire spread**
> B4. —
> (1) The external walls of the building shall adequately resist the spread of fire over the walls and from one building to another, having regard to the height, use and position of the building.

11. It is the clear and concise wording of the 2000 Regulations which is the law and not the dense and impenetrable guidance issued under Approved Document B.

John Hendy QC
Christopher Edwards
Old Square Chambers
19 March 2013