Highgate New Town Leaseholders Association

Meric Apak and Gavin Haynes
Camden Council

December 5, 2022

Dear Councillor Apak and Mr Haynes:

On 7 March, 2022, Highgate New Town Leaseholders Association registered a Notice of Dispute with Camden regarding the heating and hot water system installed in 2016–17 at Highgate New Town.

This letter provides the grounds on which we believe that leaseholders on the estate are entitled to:

- a reduction of the charges set out in the "Final Account" of 3 February, 2022;
- reimbursement for those who have paid the amounts apportioned to them;
- a deduction of the amounts invoiced to those who have not paid in full or in part.

The grounds for financial compensation rest on the following four principal grounds:

1. Failure to meet a "reasonable standard"

In response to a Freedom of Information request, Camden provided data showing the number of Works Order References on the estate in the past several years. The figures confirm what leaseholders on the estate know: the system is not and has never been fit for purpose. The number of Works Order References have increased in the last two years, suggesting that the system may be deteriorating. It does not meet the standards of functionality that Alex Maguire, the designer of the heating and hot water system, said are characteristic of a serviceable community heating system. (Please see attachment.)

The deficiencies give rise to a claim under Section 19 of the Landlord and Tenant Act (1985) that the system does not meet the "reasonable standard" required in law. In these circumstances the costs charged to leaseholders (or "tenants") may be "limited", i.e., reduced. There is ample precedent in tribunal cases for service charge reductions and reimbursements in such cases.

Under the terms of Section 27A (5) of the 1985 Act, all leaseholders on the estate are entitled to compensation. As the statute establishes, "the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment." Leaseholders who have paid up cannot be construed on that ground to have agreed or admitted the justifiability of the charges.

Further to the broad claim under Sections 19 and 27A, the following factors may be considered.

- The character of the repair work, with the need to retrofit actuators and pressure-reducing valves across the estate, speaks to fundamental flaws in some or all of the system's design, manufacture, and/or installation, for which leaseholders bear no responsibility. There is a circumstantial case for a presumptive finding that such flaws exist, in the absence of contrary evidence. Camden has withheld material that might substantiate or refute such a finding.

- Camden has not introduced a programme of routine maintenance for the Heat Interface Units (HIUs) installed in every property but one (where the HIU was installed in a nearby garage). The manufacturer recommends regular preventive maintenance. That may explain the apparent deterioration in the system demonstrated by Camden's data.

- In the February 2012 Options Appraisal, the responsibility to service tenants' boilers annually loaded the dice against the use of combi boilers in each property, and purported to justify the adoption of the HIU/central boiler scheme on economic grounds. There was a basic flaw in the reasoning: the document made no equivalent provision for the servicing of HIUs in tenants' properties. That inconsistent approach to whole-life costing artificially tilted the calculus in favour of the HIU/central boiler scheme, but it left a void where a plan for regular preventive maintenance should have been. The Options Appraisal said that leaseholders would be responsible for servicing combi boilers, had that option been chosen. The document was silent on who was responsible for regularly servicing the HIUs in leaseholders' property. Camden has the sole responsibility for maintaining its HIUs in good repair but has made no provision for regular preventive maintenance. The neglect of this maintenance requirement is not accidental but is rooted in Camden's distorted planning, with its prejudice in favour of the HIUs.

- While there is a *prima facie* case that the system is fundamentally flawed and that it has not enjoyed adequate preventive maintenance, leaseholders do not need to prove any of that in order to justify a claim for compensation. A case for compensation under the law rests on the deficient performance of the system, demonstrated by Camden's own records, and augmented by the following aggravating factors.

2. <u>Unjustified charges in the 3 February 2022 "Final Account"</u>

In the period since the installation of the heating and hot water system, Camden has rightly assumed responsibility for remedial works to correct defects in the system, which are not to be charged to leaseholders. Leaseholders have had repeatedly to challenge items listed as "rechargeable repairs" in their accounts, which should properly have been identified as remedial works. The "Final Account" includes a number of items that ought not to be on the list. A corrected list must be agreed as the baseline for further proportionate compensation under the terms of 1, above.

3. <u>Savings supposed to accrue from the use of heat meters</u>

The Options Appraisal of November 2011 estimated energy savings of 46% through the use of heat meters, because of the expectation that residents would lower their energy use. The Options Appraisal of February 2012 estimated a more modest 15% savings. Such savings have not been realised because of Camden's failure to activate the heat meters.

Despite the case Camden made in favour of the activation of the heat meters, tenants expressed reluctance to assume individualised responsibility for energy costs, as against a flat fee, given the amount of heat escaping through their draughty, poorly maintained, single-glazed windows. When Camden tried this year to encourage leaseholders to allow their meters to be activated, Camden bungled the task by employing a contractor that lacked the parts required for the work, and which then cancelled appointments, many without advance notice. The responsibility for the failure to activate heat meters and to achieve the promised savings is Camden's alone. Depending on which estimate one believes, leaseholders have been paying some 17% or 78% more than they should for their energy, an aggregate figure that is calculable based on the annual energy costs in our service charges since 2016–

17. (Forgoing a saving of 15% translates into an excess payment of 17% over the amount that would have been paid; so too with the 46% and 78% figures.) Leaseholders have a claim for the reimbursement of the cost of the wasted energy costs, which augments the reimbursement claim in 1, above.

4. Responsibility for contractor underperformance, no-shows and same-day cancellations

When Camden and contractor staff have refused to acknowledge Camden's responsibility for remedial works, they have left leasehold properties in a suboptimal condition. That is also the result when contractors adopt inferior solutions to leasehold properties' internal plumbing. Some leaseholders are left unable to use their showers or without an adequate supply of hot water. The properties' substandard condition augments the reimbursement claim in 1, above.

Camden's contractors repeatedly fail to attend repair appointments or cancel them on the day of the appointment, leading to costs and lost time for leaseholders who take time off from work to arrange to attend the appointments. Camden has known about this chronic and recurrent problem for some time. In the summer of 2022, we understand that the two addressees of this letter introduced a supposed solution—Camden's employing someone to make appointments on the contractors' behalf—but that arrangement missed the point. The problem is not who makes the appointments but whether the contractors attend them; the Camden employee appears to lack disciplinary authority over the contractors and has made no discernible contribution to improved performance; quite the opposite.

Soon after the Camden employee was assigned his role, the contractor missed a whole week's worth of appointments, all without advance notice, in the Week Commencing July 25. The contractor knew on the first day of the week that it lacked the parts to do the work, but instead of cancelling all the appointments for the remainder of the week, it cancelled the Monday appointments and left the remainder in place, cancelling them thereafter on a rolling daily basis. The Camden employee was a spectator. The division of responsibilities left no one to inform residents that their appointments had been cancelled. The contractor faced no penalty for this conduct, which demonstrates where the problem lies. Camden encourages the abuse by failing to introduce an effective remedy.

The problem has since then persisted. A leaseholder reports that the Camden employee made an appointment for a recent contractor visit that clashed with a regularly scheduled contractor team meeting, making the engineer's attendance then impossible. We received numerous reports of contractor no-shows in the aftermath of the Camden solicitor's letter at the beginning of November 2022. When the visiting engineers cover up their behaviour by making a false report that the resident was not home, this raises the question whether the contractor is paid for the visits the engineers fail to attend. If so, this amounts to a misappropriation of public money. It sets up a perverse incentive for the contractor to persist in the abuse. The Leaseholders Association chair herself suffered a contractor no-show on 30 November, 2022, without notice.

The facts demonstrate that Camden has not taken effective steps to mitigate the chronic problem of contractor no-shows, same-day cancellations, and dishonest excuses. Leaseholders have made a reasonable request that Camden require its contractors to compensate residents when the contractors failed to attend appointments or made a same-day cancellation. That is the only mechanism that has any likelihood of bringing about an improvement in their performance because it is the only arrangement that shifts the risk of losses and costs away from the residents, appropriately penalises the contractor, and hence incentivises the contractor to improve its reliability.

Leaseholders have no supervisory prerogatives over contractors. We have no statutory or contractual claim against the contractors when they fail to show up for appointments. Only Camden is in a position to demand that the contractors raise their standards and only Camden has the right to introduce an effective contractual mechanism to encourage them to do so. Unless and until Camden commits to introduce an effective system for monitoring and controlling the performance of its contractors, leaseholders will have no alternative but to pursue a claim against Camden to compensate us for the missed appointments, which add to and compound the grounds for compensation under 1 and 3, above.

Conclusion

Camden produced the *Highgate New Town Consultant Brief* on 17 January, 2022. The delivery of the Max Fordham report was promised by 14 June, 2022. We see no reason that the review Camden commissioned from Max Fordham could not have been produced by now. We have had no explanation of the reason for the delay.

Camden has engaged solicitors to issue legal threats against those who withheld payments because the heating and hot water system did not work properly. Camden has failed to provide the material promised in the meeting between Association and Camden representatives on 31 May, 2022, which might further the pursuit of a resolution. The information Camden did provide is variously missing, incomplete (the contract information), or inaccurate and misleading (a bar chart supporting the false claim that the heating and hot water system is operating adequately).

Camden has used threats to try to coerce payments for a system it knows to be deficient, while misrepresenting the extent of the deficiency and withholding or distorting information that might explain the system's shortcomings and clarify their cause.

As far as we are aware, leaseholders who discussed the threatening solicitor letter with us have all responded to it. Some have not yet received replies. We ask that they receive responses without further delay.

We ask that Camden provide the material that was promised on 31 May, 2022, as set out in our reminder message to Thomas Broad of 25 November, 2022. For the removal of doubt, we stipulate that our request for the Max Fordham report includes the Terms of Reference of the Max Fordham review, which we assume will form part of the report.

This letter supplements but does not supersede our original Notice of Dispute, with which its content is consistent. The 7th of March, 2022, remains the effective date of our Notice of Dispute. We ask that Camden provide the requested material and respond to this letter within fourteen days.

Sincerely,

Patrick Hagopian
Secretary, Highgate New Town Leaseholders Association