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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AH/LDC/2017/0130**
Property	:	**Flats 1 – 41 Citiscape and 1 -54 15 Drummond Road, 25 Frith Road Croydon CR0 1TH**
Applicant	:	**Firstport Property Services Limited**
Representative	:	**Mr Azmon Rankohi Legal Department of Applicant**
Respondent	:	**The various Leaseholders of Citiscape**
Representative	:	
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Carr** **Mrs Bowers MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**20th December 2017**

DECISION

The Tribunal determines to allow this application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 in respect of the works, described in the following reasons. The dispensation is subject to conditions set out below.
The Tribunal directs the Applicant to send a copy of the Decision to the Leaseholders and to display a copy in the common parts of the building.

The Application

1. The Applicant made an application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (the Act).

2. The application affects the 95 lessees of two connected blocks, containing flats 1 – 41 Citiscape and flats 1 – 54, 15 Drummond Road (the Premises). The development as a whole is referred to as 'Citiscape'.

3. The application relates to proposed major works comprising the replacement of cladding panels on the two blocks forming the Premises.

4. The application was made jointly with another application relating to the payability of the proposed major works and the payability of charges relating to the fire watch which is currently in place at the premises.

5. The Applicant asserts that works became necessary following the tragic events at Grenfell Tower in June 2017. Following the fire, various guidance and advice was issued by the Department of Communities and Local Government (DCLG). As a result of the advice the Applicant arranged for samples of the cladding of the building, which is ACM cladding, to be tested by the Building Research Establishment testing facility. The cladding failed the test and was found to be cladding which fell into category 3 of the classification set out by DCLG, being ACM cladding with an unmodified polyethylene filler.

6. The Applicant has put a walking fire watch in place to allow for the simultaneous evacuation of the premises in the event of a fire.

7. The Applicant intends to charge the Respondents their proportion of the cost of carrying out the works to remove and replace the cladding. The issue which requires to be determined is whether it is reasonable to dispense with the statutory consultation requirements.

8. **The parties should note that this determination does not concern the issue of whether any service charge costs will be reasonable or indeed payable.**

The Directions

9. The Tribunal issued directions relating to the application on 17th November 2017. In those directions it was decided that the matter should be determined on the basis of written representations and without an oral hearing.

10. The Directions gave an opportunity for any party to request an oral hearing. They also gave an opportunity for any leaseholder who wishes to oppose the application from the landlord to provide a statement to the Tribunal setting out his or her reasons for so doing. No request has been made for an oral hearing. A number of representations have been received from the Leaseholders opposing the application. Those representations are considered at paragraphs 18 – 20 below.

The statutory duty to consult

11. The obligation to consult is imposed by section 20 of the Act. The proposed works are précised as qualifying works. The consultation procedure is prescribed by Schedule 3 to the Service Charge (Consultation Requirements) (England) Regulations 2003. The Leaseholders have a right to make observations and to nominate a contractor under these consultation procedures.

12. The Landlord is obliged to serve Leaseholders and any recognised tenants association with a notice of intention to carry out qualifying works. The notice of intention shall, (1) describe the proposed works, (2) state why the Landlord considers the works to be necessary, and (3) contain a statement of the estimated expenditure.

13. Leaseholders are invited to make observations in writing in relation to the proposed works and expenditure within the relevant period of 30 days. The Landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The Landlord shall respond in writing to any person who makes written representations within 21 days of those observations having been received.

The Applicant's argument

14. The Applicant argues that following the advice received from the DCLG it was clear that the cladding at Citiscape needed to be replaced urgently. The Applicant has also consulted with the London Fire Brigade, its own health and safety advisors, and Quantum Risk Management Limited and leading fire safety experts when deciding upon its course of action.

15. In early August the Applicant asked its Head of Building Surveying to prepare an estimate of the potential costs of replacing the cladding. The costs for budget purposes were estimated at £483,000. The Applicant currently has a surveyor considering the premises in order to prepare a full specification for the replacement of the cladding which will then be tendered.

16. The Applicant wishes to implement an abridged consultation procedure in order to ensure that the cladding is replaced as soon as feasible to do

so. This is because the fire watch is a significant ongoing cost and it is in the best interests of the leaseholders as a whole for the replacement cladding to be carried out urgently. The proposed abridged consultation will comply with the requirements of the full consultation process. However, the periods for response will be shortened – only 7 days will be allowed for responses.

17. The Applicant argues that no prejudice will be suffered by the Leaseholders as a result of the abridgment. Tenders will be sought from a number of contractors; all of whom will be unconnected with Firstport and the process will be overseen by an independent surveyor. If full consultation was embarked upon the result would be an increase in the overall costs to the leaseholders because of the requirement to have the fire watch in place.

The responses from the Leaseholders

18. 12 Leaseholders have written to the tribunal in response to the application. In summary their comments are as follows:

    (i) They appreciated the urgent nature of the work and that the Applicant wishes to carry out the work as quickly as possible. There was some concern that the works be carried out properly with no damage caused to the buildings structure or thermal insulation. There was also a concern that at the time of the application the Applicant did not appear to have a very clear plan in mind for the works.

    (ii) More particularly Leaseholders were concerned that reducing the length of time for consultation will in effect exclude them from the process.

    (iii) They were concerned that reducing the consultation time to just 7 days reduces the Leaseholders' ability to assess the specification, identify concerns with the plans, and provides insufficient time to identify and approach any potential contractor as an alternative to the one proposed by the Applicant.

    (iv) They were concerned that there may well be a delay between issue of the notice and it arriving in the post, and that full information may not be provided at the time of the issue of the notice.

19. The Leaseholders who lodged responses suggested that the Applicant should not only provide a paper copy via the post but also provide the section 20ZA notice, including the full information pack, electronically

via email to all Leaseholders where Firstport has their email address on file and be uploaded onto the Firstport YPO website.

20. They also request that as soon as possible and prior to issuing the section 20ZA notice the Applicant should provide the following documentation to allow Leaseholders to fully understand the current situation and seek expert advice on potential options/issues and identify potential contractors to nominate to undertake the work

(i) Result of the tests carried out by BRE/DCLG

(ii) The advice received from the London Fire Brigade in relation to the test result, the potential risks identified in the building and the recommendations to manage the risks.

(iii) The safety audit/reports provided by Quantum Risk Management Limited

(iv) Details of the materials used in the building and full structural plans/specifications

(v) All documentation promised by Firstport at the residents' meeting held on 10th October 2017. This is to include the minutes of the meetings, Q/A and FAQ summaries of what was discussed, cost breakdowns relating to the Fire Marshals and alternative parking and details of the Applicant's plans to reduce costs where possible.

Determination

21. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) provides:

22. "Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination **if satisfied that it is reasonable to dispense with the requirements"** (emphasis added).

The Tribunal's decision

23. The Tribunal determines to exercise its discretion to dispense with the consultation requirements to the extent requested by the Applicant. It

does however impose certain conditions upon the Applicant. These are as follows:

(i) As soon as possible, and in any event before the service of the statutory notices, the Applicant is to provide all leaseholders by post, electronically where the Applicant has the email address and upload onto the Firstport YPO website the following information

(a) Result of the tests carried out by BRE/DCLG

(b) The advice received from the London Fire Brigade in relation to the test result, the potential risks identified in the building and the recommendations to manage the risks.

(c) The safety audit/reports provided by Quantum Risk Management Limited

(d) Details of the materials used in the building and full structural plans/specifications

(e) All documentation promised by Firstport at the residents' meeting held on 10th October 2017. This is to include the minutes of the meetings, Q/A and FAQ summaries of what was discussed, cost breakdowns relating to the Fire Marshals and alternative parking and details of the Applicant's plans to reduce costs where possible.

(ii) The Applicant is to provide paper copies of the statutory notices via post to all Leaseholders together with the full information pack. In addition the same documents must be sent electronically to all Leaseholders for whom the Applicant has an email address and it shall upload all the documentation onto the Firstport YPO website.

Reasons for the Tribunal's decision

24. The Tribunal is satisfied that the works are of an urgent nature and that the existence of the fire watch imposes a significant financial burden on Leaseholders making it even more important that works are completed quickly.

25. The Tribunal is satisfied that the works are for the benefit of and in the interests of both landlord and Leaseholders.

26. The 12 Leaseholders who articulated concerns accepted that the works were required.

27. The Applicant's request for dispensation is limited to abridging the time periods.

28. The Tribunal has imposed conditions upon the dispensation in order to ensure that the leaseholders have the maximum knowledge available to them in the shortest possible time, thus enabling them to participate as fully as possible in the procurement process.

Name: Judge Carr **Date:** 20th December 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).