



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **CAM/22UF/LDC/2020/0016**

**HMCTS code  
(paper, video, audio)** : **P:PAPERREMOTE**

**Property** : **Mulberry Mews, Chelmer Rd,  
Chelmsford, CM2 6DY**

**Applicant** : **Rockwell (FC100) Limited**

**Applicant's  
representative** : **Warwick Estates**

**Respondents** : **The leaseholders named in the  
application**

**Type of application** : **For dispensation from consultation  
requirements - Section 20ZA of the  
Landlord and Tenant Act 1985**

**Tribunal members** : **Mary Hardman FRICS IRRV(Hons)**

**Date of decision** : **15 September 2020**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote determination on the papers which the parties are taken to have consented to. The form of determination was P:PAPERREMOTE. A hearing was not held because it was not necessary and all issues could be determined on paper. The documents that I was referred to are in an unpaginated bundle produced by the Applicant together with the copy specimen lease provided with the application form. I have noted the contents and my decision is below.

## **The tribunal's decision**

The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in relation to testing the external wall covering of the building for combustible materials as described in the application form.

## **Reasons for the tribunal's decision**

### **The application**

1. The landlord applied for dispensation from the statutory consultation requirements in respect of testing the external wall covering of the building for combustible materials.
2. The application is said to be urgent on the grounds of health and safety and fire risk.
3. The landlord served the application for dispensation on 21 May 2020.
4. Case management directions were given on 10 August 2020, requiring the Applicant to serve on the Respondents copies of the application form, with enclosures, and the directions.
5. The Applicant has through its representative confirmed to the tribunal that these documents were served on 13 August 2020.
6. The directions included a reply form for any leaseholder to indicate whether they objected to the application and whether they wished to have an oral hearing. Any such objecting leaseholder was required to respond by 4 September 2020.
7. The directions further provided that this matter would be determined on or after 14 September 2020 based on the documents, without a hearing, unless any party requested an oral hearing.
8. No leaseholder has responded and no party has requested an oral hearing.
9. Accordingly, this application has been determined based on the documents produced by the Applicant. On reviewing these documents, the tribunal considered that an inspection of the Property was not required and that a hearing was not necessary.

### **The Law**

10. The relevant contributions of leaseholders through the service charge towards the costs of these works would be limited to a fixed sum unless

the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the “**1985 Act**”) and the Service Charges (Consultation etc) (England) Regulations 2003:

- (i) were complied with; or
  - (ii) are dispensed with by the tribunal.
11. In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
  12. The only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements.
  13. **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable.**

#### **The Property and the parties**

14. The Property is described by the Applicant as 2 blocks of purpose built flats (Stonham and Langford).
15. The application was made against the leaseholders of those flats (the “Respondents”). The Applicant is the landlord under the leases of the flats at the property.

#### **The Applicant’s case**

16. In the application form (as served on the Respondents), the Applicant states that they are proposing to carry out an external wall covering/cladding test to determine whether they contain flammable materials and it could be classed as a high-risk building.
17. The work was originally proposed for 27 May 2020 but did not take place at that time. The estimate of the cost was originally notified to leaseholders to be £27,588.
18. Subsequently the tribunal is informed that the landlord agreed to move away from the approved supplier and proceed with cheaper quotes. Quotes for £3,850 for each block were provided which appear to have been accepted and the work has been completed

#### **The Respondents’ position**

19. As mentioned above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply

form attached to the directions and send it to the tribunal and the Applicant.

20. The tribunal has not received any response or statement of case opposing the application, or comments on the Applicant's statements in the application form. In the circumstances, the tribunal concluded that the application was unopposed.

### **The tribunal's decision**

21. Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the Tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
22. This application for retrospective dispensation from the consultation requirements was not opposed by the Respondents, who have not challenged the information provided by the Applicant in the application form, identified any prejudice which they might suffer because of the non-compliance with the consultation requirements, nor asked to be provided with any other information.
23. Accordingly, in the circumstances set out in this decision, the tribunal is satisfied that it is reasonable to dispense with the consultation requirements in relation to the works.
24. For the purposes of this application, the tribunal determines under section 20ZA of the 1985 Act to dispense with all the consultation requirements in relation to testing the external wall covering of the building for combustible materials as described in the application form.
25. This is not an application for the tribunal to approve the reasonableness of the works or the reasonableness, apportionment or payability of the service charge demand. I make no finding in that regard and the leaseholders will continue to enjoy the protection of section 27A of the Act.
26. There was no application to the tribunal for an order under section 20C of the 1985 Act.
27. The Applicant management company shall be responsible for serving a copy of this decision on all leaseholders.

**Mary Hardman FRICS IRRV(Hons)**  
**15 September 2020**

### **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).