



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

Case reference : **LON/00AL/LDC/2020/0071**

HMCTS code : **V: CVPREMOTE**

Property : **Blenheim Court, 20 Denham Street,
London SE10 0SJ**

Applicant : **Blenheim Court Residents RTM
Company Limited**

Representative : **Roger McElroy, Canonbury
Management**
(ref: TX1601960)
(mail@canonburymanagement.co.uk)

Respondent : **The long leaseholders of Blenheim
Court**

Interested person : **Property Liaisons Developments
Limited (freeholder)**

Application : **Dispensation – s 20ZA**

Tribunal members : **Judge Tagliavini
Mr. T Harris LLM FRICS FCI Arb
Mrs L West MBA**

Date of hearing : **6 August 2020**
Date of decision : **7 August 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination using the Cloud Video Platform which has not been objected to by the parties. The form of remote hearing was V: CVPREMOTE and a face-to-face hearing was not held because it was not practicable during the current pandemic, no-one requested one and all issues could be determined in audio hearing. The documents that I was referred to are in a bundle of 226 pages from the applicant. The order made is described immediately hereafter, with reasons. The parties made no comment about the process.

I. The tribunal's summary decision

- (i) The tribunal grants dispensation from the statutory consultation requirements in respect of the reasonable costs to be incurred by the applicant for the instruction of Fulkers Bailey Russell (the Fulkers Group) or other suitably qualified surveyors, to prepare a specification or specifications of the works that are necessary to effect roof repairs, for the removal and replacement of cladding, and for any other necessary works to Blenheim Court.
- (ii) The tribunal grants dispensation from the statutory consultation requirements in respect of the reasonable costs to be incurred by the applicant for the instruction of a fire marshal service and/or the installation of a fire alarm system as set out in the quote provided by Banham Security dated 23 June 2020.

The background

1. In a decision dated 22 January 2020 in an earlier application under case reference LON/00AL/LDC/2019/0160 ("Dispensation 1"), the tribunal granted the applicant RTM company limited dispensation from the statutory consultation requirements for certain urgent works at Blenheim Court, relating to roof leaks, defective balconies, external cladding, fire safety and insurance.
2. In this current application, originally dated 21 May 2020 but superseded by an application dated 9 June 2020 ("Dispensation 2"), the applicant RTM company seeks further dispensation under section 20ZA of the Landlord and Tenant Act 1985 from the statutory consultation requirements in respect of various works to be carried out and costs incurred, or to be incurred, at Blenheim Court. The building is said to be in significant disrepair because of defects to the roof and balconies and clad in dangerous and flammable materials.

The issues

3. In a consolidation of the application form, the applicant's Statement of Case and the tribunal's directions dated 22 June 2020 the tribunal identified that the applicant was seeking dispensation for the following requirements:
 - The future costs of waking watch fire marshals (estimated to cost £13,000 per month for 24-hour cover);
 - The future costs of installing a fire alarm system (estimated to cost around £75,000);
 - The pre-tender costs for the contractors, the Fulkers' Group (Fulkers Bailey Russell) and the management company fees to date (about £12,120 plus VAT and £6,744, respectively) in respect of the removal of cladding and roof repairs.

- The future costs of fire stopping risers in the building (costing from between £1,600 and £6,400);
 - The reasonable cost of the works to repair a number of balconies at the premises.
 - Management company fees to date and ongoing.
 - Legal costs to date and ongoing.
 - D&O Cover for Directors of the RTM company.
5. The application is said to be urgent because:
- There is a time limit on the current insurance of the building, then 30 June 2020, but recently extended by insurers to 31 August 2020, by which time a contract must have been entered into for removal of the cladding;
 - There is also now an obligation to provide a waking watch as a necessity which, it is said is being performed by leaseholders now, but which will require a substitute fire alarm shortly to replace it, as people return to work; and
 - A section of the roof has collapsed and an urgent repair is required as part of the building is exposed to the elements.
6. Objections were made by five respondents/leaseholders Julian Jarvis, John Appelquist (unit 10) Jane Wells (unit 11 and Flat 187), Docklife Trading Limited (Flat 197) and Property for London (Flat 199) due to an alleged lack of transparency as to the works, their scope and their costs. Concerns were also raised in respect of the applicant's ability to make an immediate collection of service charges under the terms of the leases in order to fund the proposed works for which dispensation was being sought.
7. However, the only issue for the tribunal to determine in this application is whether it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.

The applicant's case

8. The applicant provided the tribunal with a bundle of documents on which it relied as well as a Statement of Case dated 28 July 2020. At the video hearing, Mr. Elroy appeared on behalf of the applicant and told the tribunal that the removal of the cladding was an urgent matter as the building could not be re-insured after 30 August 2020 with it still in situ, unless the insurance company could be persuaded to extend the insurance cover on the basis that work to remove the cladding was reasonably imminent. Mr. McElroy also told the

tribunal that the tin roof covering over Flat 16 had been torn away by high winds after the fixing rivets had sheared and that the temporary covering that had been installed had also been destroyed, thereby leaving the flat open to the elements.

9. Mr. McElroy told the tribunal that currently there is an unpaid voluntary system of accredited fire marshals provided in the form of the lessees themselves. However, the availability of these lessees was likely to diminish as more people returned to their place of employment. If and when that eventuality occurred, a paid marshal service would be required for as long as the flammable cladding remained in situ. On the basis that the cladding could not be removed for an extended period, Mr. McElroy told the tribunal that it would be more cost effective to install a fire alarm system. However, once the cladding had been removed and the building made watertight there would be no requirement for either a fire marshal service or a fire alarm system as the property was a 4 and 5 storey block of flats with live work unit and a commercial unit and the NFCC Guidance on the requirement of a waking watch dated 1 May 2018 would no longer apply. However, as it was not known when the cladding would be removed, or what system would be the most cost effective the applicant was seeking dispensation in respect of both of the fire marshal service and the installation of a fire alarm system.
10. Mr. McElroy told the tribunal that he no longer wished to seek dispensation in respect of the Management company fees, the legal costs, or the fire stopping as advised by BB7 Fire Risk assessment.

The respondents' case

11. At the audio hearing the five leaseholders objecting to this application were represent by Mr. Barker who told the tribunal that the respondents were no longer seeking an adjournment. Mr. Barker told the tribunal that the respondents accepted the need for the fire alarm system to be installed as set out the Banham quote (as these contractors had been suggested by the leaseholders). Mr. Barker accepted that a fire marshal service might also be necessary but asked the tribunal to limit any dispensation and costs of this service to 2 or 3 months or until the fire alarm system is installed.
12. Mr. Barker also accepted that in principle works for the removal of the cladding and the repair of the roof were required and stated that the Interim Order granted by Judge Powell on 30 June 2020 was acceptable. Mr. Barker also stated that the respondents had felt that there was a lack of transparency on the part of the applicants who had failed to provide copies of invoices and costs.

The tribunal's decision

13. In the absence of any objection to the interim order of Judge Powell dated 30 June 2020 the tribunal considers it reasonable and appropriate to confirm this Order granting dispensation to the applicant. Further, in the absence of any objection to the installation of a fire alarm system as set out in the Banham Security quote the tribunal also grants dispensation in respect of these works.

14. In light of the uncertainty as to when the cladding can be removed from the building in light of the apparent difficulties posed by the terms of the lease and the collection of service charges, the tribunal finds it is inappropriate to limit the period of time over which a fire marshal service may be required, if at all. However, on the assumption that leaseholders will, eventually be unable to continue to provide their free voluntary fire marshal service the tribunal considers it appropriate to dispense with consultation for the provision of a paid professional fire marshal service. It is hoped that in accordance with Mr. McElroy's evidence to the tribunal that the most cost effective option will be pursued pending the removal of the cladding.
15. Therefore, the tribunal grants dispensation in the following terms:
 - (i) The tribunal grants dispensation from the statutory consultation requirements in respect of the reasonable costs to be incurred by the applicant for the instruction of the Fulkers Bailey Russell (the Fulkers Group), or other suitably qualified surveyors, to prepare a specification or specifications of the works that are necessary to effect roof repairs, for the removal and replacement of cladding, and for any other necessary works to Blenheim Court.
 - (ii) The tribunal grants dispensation from the statutory consultation requirements in respect of the reasonable costs to be incurred by the applicant for the instruction of a fire marshal service and/or the installation of a fire alarm system as set out in the quote provided by Banham Security dated 23 June 2020.

Signed: Judge Tagliavini

Dated: 7 August 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 might 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, such application must include a request for an extension of time and the reasons 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 these time limits.

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).