



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

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| Case Reference | : | LON/OOBG/LDC/2020/0108 |
| Property | : | The Horizon Building , 15 Hertsmere Road, London E14 4 AW ("The Building") |
| Applicant | : | The Horizon Building RTM Company Limited ("the Landlord") |
| Representative | : | Warwick Estates, Unit 7 Astra Centre , Harlow, Essex, CM202BN |
| Respondents | : | All leaseholders of the premises ("the tenants") |
| Representative | : | N/A |
| Type of Application | : | For dispensation from the consultation requirements under section 20ZA Landlord & Tenant Act 1985 |
| Tribunal Member | : | Judge Jim Shepherd Mr Trevor Sennett FCIEH |
| Date of Decision | : | 30th November 2020 |

DECISION

The Applicant is given dispensation from the consultation requirements contained in s.20 Landlord and Tenant Act 1985 in order to carry out essential fire safety works detailed in their application dated 6th August 2020.

The application

1. The applicant through their agents seek an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for dispensation from all or part of the consultation requirements imposed on them by section 20 of the 1985 Act¹.
2. The applicant is the freeholder of premises at The Horizon Building, 15 Hertsmere Road, London E14 4 AW (“The Building”). The building consists of forty residential flats and 2 commercial units. The Respondents are the residents of the premises.
3. The applicant seeks dispensation for fire safety works. The automatic opening venting (AOV) systems in the building are defective in that various smoke vents and doors are not operating properly. The present AOV system is no longer supported by the manufacturer and has been discontinued. The AOV control panels also need to be relocated and each floor needs new AOV panels, automatic detections and fireman’s override. In addition some of the cladding on the building is inadequate and needs to be removed and replaced in accordance with the guidance issued by the MHCLG.
4. The applicant says that a meeting was held with residents and it was agreed that an application for dispensation would be made for these proposed works. In directions given by this Tribunal on 25th August 2020 the Applicant was required to write to all of the tenants in the building telling them about the application and confirming to the tribunal that this had been done. It does not appear that the confirmation was given. The Tribunal hopes and expects that this direction was complied with. If it was not the tenants are reminded that the application relates solely to the question of dispensation and the Tribunal’s decision does not in any way determine the payability or reasonableness of the sums sought. In the event there was an initial objection by email from Emmanuel Idowu of JKD Properties Limited dated 29th September 2020 but this objection was subsequently withdrawn on 1st October 2020.
5. The applicant relies on a report from Black Sheep Engineering Ltd, fire and electrical contractors, dated 17th April 2020 recommending an urgent upgrade of the AOV system and quoting for the work. They also rely on an External Façade Report produced by FRC on 19th March 2020 recommending replacement of the panelling with a suitable alternative and the installation of required fire stopping to the floor slabs. A further report by Tri Fire on 30th June 2020 reinforced the fact that the fire safety

¹ See **Service Charges (Consultation Requirements) (England) Regulations 2003 (SI2003/1987) Schedule 4, Part 2.**

in the building was inadequate by reference to the Ministry of Housing , Communities and Local Government (MHCLG) guidance as a result of the presence of high pressure laminate cladding. The report largely supported the one carried out by FRC.

6. The landlord seeks dispensation from the statutory consultation requirements on the basis of urgency.
7. The tribunal did not consider that an inspection of the Building was necessary, nor would it have been proportionate to the issues in dispute.
8. The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act. **It is repeated that this application does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Tribunal's decision

9. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the fire safety works outlined above and as set out in the application notice.

Reasons for the Tribunal's decision

10. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act *“if satisfied that it is reasonable to dispense with the requirements”*.
11. In making its decision the tribunal had regard to the fact that the applicant has apparently sought to carry out some consultation and kept the tenants informed of their intentions. It appears that save for the withdrawn objection mentioned above the tenants have not objected to the works.
12. It is not considered that the lessees have suffered any particular prejudice as a result of the failure to follow the correct consultation procedure (see *Daejan Investments Ltd v Benson* [2013] UKSC 14.) The Tribunal accepts that the landlord's intentions to carry out the works as soon as possible for reasons of health and safety are laudable particularly in light of the Grenfell Tower disaster.

13. Again the parties should note that this decision does not concern the issue of whether any service charge costs will be reasonable or payable. The tenants have the right to challenge such costs by way of a separate application if they so wish.

Name: Jim Shepherd

Date: 30th November 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).

