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

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| **Case Reference** | **:** | **LON/00BK/LDC/2021/0067** |
| **HMCTS Code** | **:** | **P:PAPERREMOTE** |
| **Property** | **:** | **61 St Martins Lane, London WC2N 4JS** |
| **Applicant** | **:** | **HB St Martins PTE Ltd** |
| **Respondents** | **:** | **(1) Mr Nigel Wright**<br>**(2) Ms Katie Bradford** |
| **Type of Application** | **:** | **Application under section 20ZA to dispense with consultation requirements for a scheme of Major work** |
| **Tribunal Members** | **:** | **Judge Daley** |
| **Date and venue of Paper Determination** | **:** | **11 May 2021, heard remotely and decided on the papers** |
| **Date of Decision** | **:** | **11 May 2021** |

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**DECISION**

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Covid-19 pandemic: description of hearing:
This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper.

**Decision of the tribunal**

I. **The tribunal grants dispensation in respect of the major works relating to the residential premises 61 St Martin's Lane. As set out in the improvement notice served by The City of Westminster dated 21 January 2021.**

II. **The Tribunal makes an order under Section 20C in respect of the cost so that none of the cost occasioned by the making of the application shall be payable as a service charge.**

III. **The Tribunal orders that further details of the commencement of the work shall be provide to the respondents, as set out in the decision within 28 days.**

**1.The application**

a. By an application, dated 12 March 2021, sought dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("The 1985 Act") from some of the consultation requirements imposed on the landlord by section 20 of the 1985 Act[1].

**b.** The building which is the subject of the application comprises two purpose, built flats situated above an office block situated on St Martin's lane, Central London.

**2. The Background**

3. On 21 January 2021, the local authority, The City of Westminster served an Improvement Notice( "The Notice") on the Applicant in respect of works to the premises, which had been identified as a category 2 Hazard under Section 12 of the Housing Act 2004.

4. The works required the Applicant to amongst other things, remove non-fire resisting Aluminium Composite Material (ACM) and to attend to other matters which had been identified as posing a potential fire hazard at the premises.

5. The Notice was suspended until 1 June 2021, the Notice, dated 21 January 2021, stated that under Section 14 of the Housing Act 2004, the notice was suspended. However Section 12(2) of the 2004 Act, required the works to begin not later than 21 days from the date the suspension of the Notice ended.

6. Following the receipt of the Application, Directions were given in writing on 29 March 2021, for the progress of this case.

7. The Directions at paragraph (E) stated that -: "…The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does <u>not</u> concern the issue of whether any service charge costs will be reasonable or payable."**

8. The Directions also provided that -: " 2. The leaseholders who oppose the application shall by 12 April 2021: i. Complete the attached reply form and send it to the Tribunal by email at London.Rap@justice.gov.uk and to the Applicant and ii. Send to the Applicant a statement in response to the application with a copy of the reply form, by post and by email where possible. They should send with their statement copies of any documents upon which they wish to rely".

9. The Directions stated that unless requested by the parties the application could be determined on the basis of written representations during the 7 days commencing 10 May 2021. However the parties were given the option of making a request for a hearing by 26 April 2021. Neither the Applicant nor the Respondents have requested a hearing, and the Tribunal are satisfied that there is sufficient information before it to enable it to decide this matter without injustice to any party without a hearing.

10. Emails dated 25 February 2021, were enclosed in the hearing bundle which confirmed that both Respondents had been provided with a Notice of Intention to undertake works in compliancy with Section 20 of the 1985 Act. The second Respondent, Ms Bradford raised a number of queries in respect of the Notice, her email setting out her queries and the Applicant's response was included within the Hearing bundle.

## The Applicant's case

11. The Applicant's case is set out in their Application of 12 March 2021. In the Application the Applicant stated as follows-: The applicant proposes to carry out the qualifying works to the Building as outlined at Schedule 2 of the Notice … to include: a. replacing the Aluminium Composite Material (ACM) cladding and timber infill panels; b. replacing timber infill panels with timber-effect cladding; c. replacing existing insulation, membranes, etc; d. additional investigatory works regarding the existing sheathing board to confirm that it is a fire rated board.

12. The reasons for the proposed works, where stated to be that "The Landlord is required by statutory notice to carry out the works and faces criminal or civil sanctions." In the event that the work was not undertaken. The Applicant stated that they were unable to comply with the full statutory consultation process prior to the 21 June 2021.

13. The Applicant also set out that-: "The procurement exercise outlines the complexity of the project and suggests that nature of the works may not be suitable for the s.20 consultation process in any event. Out of a total of 14 contractors who were invited to tender, only three eventually submitted tenders."

14. The Tribunal was informed that on more than one occasion, during the tender process, in order to provide a competitive tender price, additional contractors were invited to submit tenders. However, in the application it was stated that due to the protracted tender process, the complexity of the work and the time scale in which the work was required to be undertaken, and the uncertainty with insurance arrangements to cover the cost, were unwilling to undertake the work.

15. The Tribunal was provided with the Tender Report from Baqus Construction & Property Consultancy dated 4 March 2021, which enclosed details of the tender process and their summary of recommendations. Three firms had submitted tenders, Conneely Group in the sum of £673,615, Dean Roofing and Cladding Limited in the sum of £858,982 and Stoneguard Projects Limited in the sum of £513,325.

16. The Tender Report included the recommendation to award the work to Stoneguard Projects Limited, due to the fact that they had submitted the lowest tender, and the fact that they were available within the time needed to commence the work. The report also recommended a contingency to cover any additional work in the sum of £51,000.

17. The Applicant sent a further Section 20 notice to the Respondent tenants, setting out the results of the tender exercise, and indicating the additional costs, including professional fees and VAT which took the total estimated costs to £948,857.37.

**18.** In their application, the Applicant stated that they intended to apply for available government grants with the potential that this would reduce the costs of the work to the Respondent tenants so that this meant that nothing would be payable by the Respondent tenants.

**The Respondents' case**

19. On 11 April 2021, the Second Respondent on receipt of the directions sent an email to the Tribunal that indicated that although she was not opposing the application for dispensation, there were a number of matters upon which she expressed reservations. These concerned the level of information provided concerning the works, the scope and the timing of the work.

**20.** In her email she stated-: *I do not object to the Application provided the Applicant does not seek to recover any of its costs of the Application, including professional fees and disbursements, through the service charges or otherwise from the residential tenants (the Respondents). I understand the Tribunal has jurisdiction to make the order on these terms. I add that I raise no objection to the Application, on the basis that I understand I will still have the right to take issue in due course with any claim made on me by the Applicant in relation to the works referred to in the Application, or their costs, and I reserve my rights fully in those respects. In support of my request, I say that the Applicant should not have been necessary, or could have been made in short form by consent, and that in any event, the Applicant is seeking the Tribunal's assistance to enable it to reduce my statutory rights.*

*My grounds include: 1. The Applicant did not include a description of the works in the s20 Notice, nor within the Application, sufficient for me to identify and consider the works proposed.*

*2. This was despite my requests for details of the works proposed, dating back to 2019.*

*3. The Applicant only supplied details on 7 April 2021, following my request on 25 March 2021 on receipt of the Application. Only at that stage was I in a position to seek legal and surveying advice (which I have done).*

*4. Had the Applicant supplied sufficient details earlier, I would have been in a position to consent, and would have consented to dispensation, avoiding the need for any or any detailed Application.*

*5. The Applicant has had a substantial period to plan the works incorporating the statutory consultation process. The cladding problem was identified back in 2018; in October 2019 the City of Westminster (WCC) served a Hazard Awareness Notice giving the landlord 3 months for a plan of action including a timetable for the works: by November 2019 the landlord had a full specification and at least 1 tender, and in December 2019 it asked me to complete an application to the Remediation Fund. In February 2020 the landlord served a s20 Notice for the cladding works. The landlord now tells me that in the following 12 months it negotiated with WCC to reduce the works required, however I note that the estimated timescale and costs of the works have almost doubled in that period. Had the consultation procedure been taken forward in 2020, there would have been no need for the Application.*

*6. The Applicant cannot in fact currently undertake the works, let alone with the urgency it relies upon since it has been informed by WCC that it needs planning permission for the works. As far as I am aware, it has not yet made application for planning consent. It appears likely the deadline in the Suspended Improvement Notice will be deferred.*

*7. The Applicant did not seek to agree with me a dispensation under s20ZA before making application to the Tribunal.*

21. On 14 April 2021, the First Respondent Mr Nigel Wright sent an email to the Tribunal indicating that he did not oppose the application.

## The tribunal's decision

*22.* The Tribunal having considered all of the circumstances in this case, has decided that it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act in relation to the works as set out in Schedule 2 of the improvement notice which amongst other works include-: The Removal of any Category 2 or 3 ACM cladding and any other relevant combustible materials, including the vertical timber cladding, from the external walls of the building. And Replacement in accordance with current Building Regulations with material complying with Euro Class A1 or Euro Class A2-s1, d0. And ensuring associated cavity barriers and fire breaks have been provided as required by the Building Regulations

*23.* The residential premises 61 St Martin's Lane.

**24.** Further the Applicant **shall within 28 days** provide the Respondents with information concerning the commencement and duration of the work.

**25.** And shall keep the Respondent tenants informed of all progress in respect of the award of or non- award of the government grant in respect of the costs of the work. And whether there are any sums to be paid by each leaseholder.

## Reasons for the decision

*26.* The Tribunal, in reaching its decision, had to consider whether it was reasonable to grant dispensation. The relevant statutory provisions are found in subsection 20ZA (1) of the 1985 Act under heading "Consultation Requirements: Supplementary". That subsection reads as follows: *"Where as 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 it is reasonable to dispense with the requirements".*

27. The Tribunal find that the Applicant was unable to consult fully under section 20 due to the urgent nature of the work, the complexity of the work and the difficulty with carrying out the full consultation within the time scale, which was limited due to the need to comply with the Improvement Notice.

28. The Tribunal also noted the limited contractors who are available to undertake this work, which reflects the reality of the situation post Grenfell Towers, that such contractors are in high demand.

29. The Tribunal has noted that the second Respondent has raised issues concerning the scope of the work, and the extent of the consultation and the timing of it, given that she had reportedly raised issues as far back as 2019. However the Tribunal considers, that the scope of this application is limited so that the Second Respondent's concerns, if they remain unaddressed after the work, may be protected by an application for a determination of the reasonableness and payability of the cost of the work, under Section 27A, as this has not been determined as part of this application.

30. The Tribunal has been provided with details of the Government Grant which was referred to in the application form, however the Tribunal has

also not considered the scope of, or any entitlement to a grant as it goes beyond the scope of this application.

**31.** The Tribunal has noted that the works were considered necessary by the Local authority and accorded a category 2 Hazard Rating, this means that a failure to carry them out, could result in a fine, however of more concern is the fact that the state that exists at the premises, could potentially cause a risk to the health and safety of a person within the premises.

**32.** Accordingly the Tribunal is satisfied that the work to be undertaken is urgent and that in these circumstances the consultation procedure ought to be dispensed with. This decision of the Tribunal is limited to the need to consult under section 20 of the Landlord and Tenant Act 1985 for this very limited aspect of the work. **Given this, the parties attention is drawn to the fact that the Tribunal have not made a determination on the reasonableness and payability of the service charges under Section 27 A of the 1985 Act for this work.**

33. The leaseholders will of course enjoy the protection of section 27A of the 1985 Act so that if they consider the costs of the work are not reasonable (on the grounds set out above or any other ground) they may make an application to the tribunal for a determination of their liability to pay the resultant service charge.

34. The Tribunal noted the Application from the Respondents concerning the cost of these proceedings, and is satisfied that it is appropriate to make an order under Section 20C of the Landlord and Tenant Act 1985, so that the costs associated with this application should not be included within the service charges.

**Judge** Daley **Date** 11 May 2021

## 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

### Section 27A

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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) a leasehold valuation 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.]

1. **S20ZA Consultation requirements: supplementary**
(1) 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.
(2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the

Recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. [...]

2. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.