



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

Case Reference : **CAM/42UD/LDC/2021/0054**

HMCTS Code : **P:PAPERREMOTE**

Property : **Focus Apartments, Eastgate House,
45 Carr Street, Ipswich IP4 1HA**

Applicant : **Grey GR Limited Partnership**

Respondents : **The leaseholders**

Type of Application : **For dispensation of the
consultation requirements under
section 20ZA**

Tribunal Member : **Judge Wayte**

Date of Decision : **1 March 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers. A face-to-face hearing was not held because all issues could be determined on paper and no hearing was requested. The documents are in a bundle of 281 pages and a separate email, the contents of which I have noted. The order made is described below.

The Tribunal determines that:

- (1) under section 20ZA of the Landlord and Tenant Act 1985, all of the consultation requirements are dispensed with in respect of: (a) the interim works to install a common fire alarm; and (b) the major works to remove and replace the external wall systems, combustible cladding/insulation and any other works deemed necessary to ensure the safety of the premises.**
- (2) Dispensation in respect of the major works is subject to the conditions (which do not require disclosure of any document which is subject to legal professional privilege) that:**
 - a. the leaseholders must be provided with: (i) an up to date statement and access to information about the progress of the landlord's claim against the Building Safety Fund, together with (ii) a summary of the steps/action taken against the original developer and/or their consultants or contractors, within 28 days of the date of this decision and at reasonable intervals thereafter (not less than every six months) until resolution; and**
 - b. the leaseholders must also be informed about decisions made in relation to the extent of the works and progress with the works themselves, within 28 days of the date of this decision and at reasonable intervals thereafter (not less than every six months) until completion.**

The application

1. The applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") for the dispensation of any or all of the consultation requirements in respect of "interim works" to install a common fire alarm to remove the need for (and cost to the leaseholders of) a waking watch and "major works" to remove and replace the external wall systems, combustible cladding/insulation and other works necessary to ensure the safety of the premises.
2. The respondents are the leaseholders of the 25 apartments within the block who are potentially responsible for the cost of the works under their lease, subject to the outcome of the landlord's application to the Building Safety Fund and any other successful action against third parties such as the developer and its consultants/contractors.
3. The issue in this case is only whether the consultation requirements of section 20 of the 1985 Act and the Service Charges (Consultation etc) (England) Regulations 2003 should be dispensed with. Any issue as to

the cost of the works may be the subject of a separate application under section 27A of the Landlord and Tenant Act 1985 to determine the payability of any service charge demanded under the lease.

The background

4. The property was originally constructed as an office building in or about 1965 but converted into residential use between 2015/16. It is a 5 storey residential tower block with a total of 25 one and two bedroom apartments, located above commercial premises. The top storey measures approximately 22m above ground level.
5. On 14 June 2017 a fire broke out in the 24 storey Grenfell Tower in West London. The fire spread quickly, exacerbated by newly installed and flammable exterior cladding on the building. 72 people died.
6. The landlord became the registered proprietor of the head lease of the property on 10 January 2018. A Fire Risk Assessment carried out on its behalf on 21 February 2018 confirmed that a “stay put” policy was appropriate, in line with the pre-Grenfell approach for tower blocks, subject to further investigation in several relatively minor areas.
7. In the wake of the Grenfell Tragedy, it became clear that there was an urgent need to check the safety of tower blocks, particularly those in excess of 18 metres high. The initial concern was in relation to Aluminium Composite Material (ACM) cladding, of the type used at Grenfell and a Government Building Safety Fund was set up to help pay for necessary works. On 31 July 2020 the Government extended the scheme to include funding for non-ACM remediation costs.
8. On 1 October 2020 the National Fire Chiefs Council (NFCC) published guidance on moving from stay put to simultaneous evacuation in blocks with safety concerns. This was intended to be an interim measure while any unsafe cladding was removed and other fire safety works carried out. Common fire alarms would be required to alert occupants to the need to evacuate, with a “waking watch” installed beforehand.
9. On 21 October 2020 a Stage 1 Notice of Intention in respect of the major works was sent to the leaseholders.
10. On 23 November 2020 Wintech Facades Engineering Consultancy (Wintech) carried out an intrusive survey of the property. Their report dated 18 December 2020 found potentially large amounts of combustible material forming part of the external wall system and a lack of cavity barriers/fire stopping.
11. Following the Wintech report, the applicant instructed Jeremy Gardner Associates to carry out a further Fire Risk Assessment. Their report,

dated 22 January 2021, adopted the recommendations of the NFCC to move to simultaneous evacuation with immediate effect and confirmed the findings of the Wintech report in relation to the remediation works.

12. Planning permission for the cladding remediation works was received in February 2021 and the major works went out to tender via a Design & Build procurement route, in which a main/supervising consultant is appointed to facilitate the design and construction of the works. The ADI Group is the intended consultant, with an estimate for the contract of just under £4m, exclusive of contingency, professional fees and VAT. An application has been made to the Building Safety Fund for the full cost of the remedial works, although the final outcome is not yet known.
13. In the meantime, a waking watch had been implemented at an annual cost of just under £300k (according to the statement of claim). Tenders were also sent out in respect of a common fire alarm system and 1st Class Fire Protection was chosen with a tender of £31,450 excluding VAT and professional fees. A Notice of Intention was sent out to the leaseholders in respect of these works on 19 April 2021 and a second notice following the change in managing agents on 22 June 2021. The alarm was installed on 6 August 2021 and the applicant has confirmed that the cost of that work will be covered in full following a successful application to the Waking Watch Relief Fund.
14. This application was received on 6 December 2021 and directions were ordered on 20 December 2021. Those directions required the applicant to write to the respondents informing them of the application and the timetable for any objections.
15. The applicant's bundle contains a copy email dated 17 January 2022 confirming that the application form, statement of case and directions were served on all leaseholders by first class post. The covering letter provided a link to all of the documents attached to the statement of case. Confirmation was also received that hard copies had been placed in the common parts as ordered.
16. A statement of objection on behalf of 9 leaseholders was received on 30 January 2022. The applicant responded to those objections on 14 February 2022 and Chris Battle, the lead leaseholder, replied by email on 15 February 2022. No other objections were received by the applicant or by the tribunal.
17. The directions provided that this matter would be considered by way of a paper determination unless a hearing was requested. A hearing was not requested and accordingly the application was considered on the papers.

18. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act and the Regulations.

The Applicant's case

19. The applicant's Statement of Case submitted that the leaseholders would be liable for the cost of the works pursuant to paragraphs 3 (a), (c), (d), (f), 29 and 32 of the Sixth Schedule and conceded that consultation would be required under section 20 of the 1985 Act where any contribution would exceed £250.
20. In respect of the Interim Works, an initial Notice of Intention was served of 19 April 2021 and again on 22 June 2021, with a covering letter indicating the applicant's intention to seek dispensation of the formal consultation requirements. As set out above, a decision was made to proceed with the works due to the ongoing costs of the waking watch which far outweighed the relatively modest cost of the common alarm. Dispensation was therefore being sought for this element retrospectively. That said, the applicant has stated that there should be no service charge levied in respect of the interim works as the costs have been approved in full by the Waking Watch Relief Fund, albeit as yet only part payment had actually been received by the applicant.
21. In respect of the main Works, an initial Notice of Intention was served on 21 October 2020. The applicant's statement of case submits that a Design & Build procurement route, as recommended by its consultants, does not fit with the standard section 20 procedure as the contract is let to a main consultant who will themselves select sub-contractors and other relevant specialists to assist with the design and construction process.
22. The applicant relied on the Supreme Court decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 in support of its application, which confirmed that the key question for the Tribunal is whether the tenants would be prejudiced by a lack of consultation. They submitted that the leaseholders would not be prejudiced by the grant of dispensation as the Works are required and are necessary to ensure the safety of the residents and their property. In fact, given the requirements of the Building Safety Fund for the prompt commencement of works, there was a risk that Government funding would be prejudiced by the delay which would be caused by the statutory consultation process.
23. The applicant argued that in the absence of prejudice, dispensation should be unconditional, although agreed to provide details of the Building Safety Fund portal to the leaseholders and a summary of the actions/steps they have taken in respect of third-party recovery within a reasonable period of time.

The Respondents' position

24. As stated above, the only response received by the applicant and the Tribunal was a statement of objection produced by Chris Battle on behalf of 9 leaseholders, including himself. That objection was clarified in the light of the applicant's response in the email dated 15 February 2022. On the basis that the leaseholders would not be liable for any of the costs of the Interim Works he queried the need for dispensation but withdrew his objection to that part of the application. The real concern in respect of those works was the delay which pushed up the costs to the leaseholders of the waking watch. As previously indicated, those costs are not part of this application and the leaseholders will have the opportunity to challenge any service charge levied in respect of the waking watch by way of an application under section 27A of the 1985 Act.
25. Mr Battle stated that in relation to the main Works, the leaseholders requested the tribunal to consider "suitable conditions", including: "A. *Full transparency of the project and access to files to assess whether any actions were taken to the detriment of the leaseholders' interests, in the event that leaseholders are expected to contribute any sum above GBP 250 each and B. Regular updates on any actions or application made to the Building Safety Fund and/or the contractor or design team responsible for the renovation works in 2015.*"
26. As set out above, the applicant argued that no conditions were appropriate, as the leaseholders could not demonstrate any prejudice, although some information was promised as set out in paragraph 23 above. In his email dated 15 February 2022, Mr Battle stated such a vague and unenforceable promise was not acceptable to the leaseholders, given the previous failure of the applicant to provide meaningful updates for over a year. He submitted that a timeline needed to be set out to give the leaseholders comfort that the question of third-party liability was being properly managed.

The Tribunal's decision

27. 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*".
28. As Mr Battle pointed out, it may be that dispensation is not actually required for the Interim Works but in the absence of any opposition, the tribunal does consider it reasonable to make that order. It clearly made sense to fit a common alarm as soon as the building was identified as unsafe. Any dispute about whether that work should have been carried out earlier is for argument in respect of the waking watch costs as identified above.
29. In terms of the major Works, the understandable focus of the leaseholders is the eventual cost to them, rather than the way the

contract is let. The tribunal accepts the applicant's case that a Design & Build procurement approach conflicts with the simple process anticipated by section 20 and also that it is unlikely to be in the leaseholders' best interests to insist on such consultation where there may be a conflict with the Building Safety Fund rules. It is unfortunate that the Government did not consider this issue when devising the application process. That said, there are obvious risks with such a flexible procurement approach in terms of the extent of the works expanding without proper regard to the cost and the leaseholders must therefore be kept informed at all reasonable stages of the decisions which are being taken on their behalf.

30. The applicant had agreed to provide the other information sought by the leaseholders but the tribunal considers that it is appropriate to make that provision of information a further condition of dispensation given the dissatisfaction expressed by Mr Battle and the potential prejudice to the leaseholders.

Application under s.20C Landlord and Tenant Act 1985

31. There was no application for any order under section 20C (limiting the ability of the landlord to seek their costs of the dispensation application as part of the service charge) before the tribunal. Again, this could be the subject of a future application in the event that any costs are charged to the leaseholders.

Name: Judge Wayte

Date: 1 March 2022

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).