



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

Case reference : **LON/00AG/LBC/2020/0040**

HMCTS Code : **P:Paper remote**

Property : **23-27 Hatton Wall, London, EC1N
8JE**

Applicant : **PPR Hatton Wall LLP**

Representative : **Alexander Reece Thompson LLP,
Managing Agent**

Respondents : **M N Nook (Flat 1)
P M & K A Larrett (Flat 2)
M & U K Almqvist (Flat 3)
B T & R Irvine (Flat 4)
A S McLaren (Flat 5)**

Representative : **In person**

Type of application : **For dispensation under section
20ZA of the Landlord & Tenant Act
1985**

Tribunal member : **Tribunal Judge I Mohabir
Mr C Gowman MCIEH MCM BSc**

Date of determination : **5 October 2020**

Date of decision : **5 October 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has been consented to by the Applicant and not objected to by the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and no one requested the same.

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for dispensation from the consultation requirements imposed by section 20 of the Act.
2. 23-27 Hatton Wall, London, EC1N 8JE (“the property”) is described as a building comprised of 5 flats and 1 commercial unit over 5 storeys.
3. It has been identified by a Surveyor that the cladding on the balconies of the property is potentially ACM (aluminium composite materials), a combustible material used in the past for construction, which requires further investigation. The Applicant considers that an urgent full intrusive survey is required to ensure the health and safety of the residents of the property and member of the public is not put at risk.
4. The qualifying works consist of carrying out an External Wall Fire Review Survey (EWS1). A potential issue has been identified by a third party surveyor when on an inspection. It seems that the material of the cladding must undergo a full intrusive survey as a matter of urgency to ensure it is compliant with Health and Safety Regulations.
5. The Applicant has received a quote from Orsa Consulting Engineers for £3,000 + VAT, a quote from MAF Associates for £3,600 + VAT and a quote from W M Compliance for £3,180 + VAT. The Applicant intends to instruct Orsa Consulting Engineers as they have provided the most competitive quote and are able to complete the survey within the shortest timeframe. The works have not yet been carried out. The Applicant intends to undertake these works as soon as the application has been determined by the Tribunal.
6. On 25 August 2020, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. Pursuant to the Tribunal’s directions, on the same day a copy of the application was served on the lessees by the managing agent by email, hand delivery and first class post. In addition, a copy was displayed in the entrance hallway of the property on 28 August 2020. The Tribunal also directed that this application be determined on the basis of written representations only.
7. No Respondent has filed any objection to the application.

Relevant Law

8. This is set out in the Appendix annexed hereto.

Decision

9. The determination of the application took place on % October 2020 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant. No evidence was filed by any of the Respondents.
10. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
11. The issue before the Tribunal was whether dispensation should be granted in relation to the requirement to carry out statutory consultation with the leaseholders regarding the proposed survey costs. It should be noted that the Tribunal is not concerned about the actual cost that has or will be incurred, as that is not within the scope of this application.
12. The Tribunal granted the application for the following reasons:
 - (a) the fact that each of the leaseholders has been kept informed of the potential health and safety risk posed by the cladding on the building and the requirement to carry out a more intrusive survey to identify the actual risk(s) posed by the cladding.
 - (b) the fact that each of the leaseholders had been served with a copy of the application and documents in support.
 - (c) no leaseholder has objected to the application.
 - (d) the Tribunal was satisfied that the potential health and safety risk(s) posed by the cladding since the Grenfell incident obliged landlords to carry out such an investigation sooner rather than later.
 - (e) importantly, any prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred.
13. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.

14. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act in the event that this becomes necessary.

Name: Tribunal Judge I
Mohabir

Date: 5 October 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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) the appropriate 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.

Section 20ZA

(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.