



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

Case Reference : **LON/00BC/LDC/2020/0003**

Property : **101-2002 Raphael House, 250 High Road, Ilford IG1 1YS**

Applicant : **Brigante Properties Limited**

Representative : **J B Leitch Limited (Solicitors)**

Respondent : **The various leaseholders listed in the schedule to the application**

Representative : **Unrepresented**

Type of Application : **Section 20ZA Landlord and Tenant Act 1985
Dispensation with consultation requirements**

Tribunal Members : **Mr Jeremy Donegan (Tribunal Judge)
Mr Kevin Ridgeway MRICS (Valuation Member)**

Date and venue of Paper Determination : **04 February 2020
10 Alfred Place, London WC1E 7LR**

Date of Decision : **05 February 2020**

DECISION

Decision of the tribunal

- (1) The tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') in respect of the proposed installation of a fire detection and alarm system and the ongoing use of fire marshals (collectively referred to as 'the Works') at 101-2002 Raphael House ('the Property'). No terms are imposed on the grant of dispensation.**
- (2) The applicant must display a copy of this decision in a prominent position in the common parts of the Property.**

The application

1. The tribunal received an application for dispensation under section 20ZA of the 1985 Act on 20 December 2019. The application relates to the external cladding system at the Property, which is a 22-storey tower block comprising 154 residential flats, one commercial unit and a car park. Like many similar, dispensation applications it arises from the tragic fire at Grenfell Tower in 2017 and subsequent guidance issued by the National Fire Chiefs Council ('NFCC').
2. Directions were issued on 10 January 2020. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 04 February 2020.
3. The relevant legal provisions are set out in the appendix to this decision.

The parties

4. The applicant is the freeholder of the Property, which is managed by Ian Gibbs Estate Management Limited ('IGEML'). The respondents are the long leaseholders of the 154 flats.

The grounds of the application

5. The grounds were set out in a helpful statement of case, produced by the applicant's solicitors. Various relevant documents were exhibited to the statement of case, including reports commissioned by IGEML
6. Two reports on the external façade of the Property were produced by Finley Harrison Limited ('FHL'). These were dated 30 January 2019

and 10 January 2020, respectively. The former identified two insulation types, Kingspan K15 Kooltherm phenolic rigid insulation board set behind brick slips and Trespac solid cladding panels with expanded polystyrene ('EPS') insulation behind a Knauf render system. FHL stated that these materials are banned for new constructions of residential blocks over 18m in height.

7. The second report identified an absence of horizontal fire breaks in a sample of window heads and the presence of EPS insulation with no evidence of fire breaks. FHL concluded that the construction of the EPS and Knauf render system did not comply with Knauf standard detailing or BR135 2013 Fire Performance of External Thermal Insulation for Walls of Multi Storey Buildings (3rd edition). Further, it appears that the installation did not comply with Building Regulations at the time of construction (approximately 2007). These fire safety defects will all need to be remedied.
8. IGEML also obtained a report from TAG Fire Safety Limited ('TAG') dated 13 January 2020. This advised that the existing 'stay put' strategy for the Property was no longer suitable and simultaneous evacuation should be adopted, given the defects in the external render system. It also set out interim measures that should be undertaken pending the remedial works, including the installation of an automatic fire detection and alarm system. TAG also recommended the introduction of a waking watch service, pending installation.
9. IGEML has also consulted the London Fire Brigade ('LFB'), who confirmed that simultaneous evacuation is appropriate and advised that fire marshals be present at the Property in accordance with NPCC guidance. LFB and TAG have recommended a total of five marshals who each patrol a designated area.
10. IGEML entered into a contract with the Adsec Group on 10 December 2019 for the provision of five fire marshals at a weekly charge of £10,878. The contract is for a term of three months with one week's notice to terminate or reduce the number of marshals.
11. IGEML has also obtained the following tenders for the fire detection and alarm system:

Seclec Limited	£127,900 plus VAT
Trinity Fire & Security Systems Limited	£167,641 plus VAT

The applicant is seeking advice on the tenders from TAG but is likely to accept the lower one, from Seclec Limited. The installation of the system should remove or reduce the need for fire marshals.

12. The applicant seeks dispensation due to the fire risks arising from the defects in the external façade, the need to safeguard the residents at the Property and the urgent nature of the Works.
13. Paragraph 2 of the tribunal's directions required the respondents to complete and serve response forms, if they wished to oppose the application. None of the respondents has opposed the application, identified any prejudice that might arise from the grant of dispensation or proposed any terms as a condition of granting dispensation.

The tribunal's decision

14. The tribunal grants the application for dispensation for the Works. No terms are imposed on this grant of dispensation.

Reasons for the tribunal's decision

15. Given the contents of the FHL reports, the tribunal accepts there are various defects in the external cladding system at the Property that need to be remedied. This will take time, given the height of the Property and the extensive nature of the remedial works. The Tribunal also accepts the recommendations of TAG and the London Fire Brigade who recommend the installation of a fire detection and alarm system and the use of fire marshals, as interim measures. The safety of the residents is paramount and these recommendations must be followed. The installation of the alarm/detection system is urgent, given the fire risks and the substantial, ongoing cost of the fire marshals.
16. The dispensation application is unopposed. None of the respondents has submitted reply forms, identified any prejudice that might arise from the grant of dispensation or proposed any terms as a condition of granting dispensation.
17. It occurs to the tribunal that the provision of fire marshals may not amount to 'qualifying works', requiring consultation under section 20(1) of the 1985 Act. This is a service and does not appear to be 'works on a building or any premises', as defined at section 20ZA (1). If no consultation is required then dispensation is unnecessary. However, this point was not raised by the respondents. In the absence such a challenge (and legal argument), the tribunal has treated the provision of marshals as qualifying works.
18. Having regard to the particular facts of this case it is reasonable to dispense with the consultation requirements for Works.
19. This decision does not address the cost of the Works or whether the respondents are liable to contribute to the cost, via their service charges. Nothing in this decision prevents the respondents from

seeking a determination of 'payability', pursuant to section 27A of the 1985 Act.

Name: Tribunal Judge Donegan **Date:** 05 February 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 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate 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 the appropriate 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) 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 the appropriate tribunal for a determination to dispense with all of 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.