



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

Case Reference: LON/00AY/LDC/2020/0178

HMCTS code: P: PAPERREMOTE

Property: Listello Building, Greenaway
Apartments, 37 Bedford Road, London
SW4 7EF

Applicant: Listello Buildings Management
Company Limited

Representative : DJC Property Management Limited

Respondents: The various leaseholders named in the
application

Representative: None advised

**Type of
Application:** To dispense with the statutory
consultation requirements under
section 20ZA Landlord and Tenant Act
1985

Tribunal: Judge Pittaway

Date of decision: 1 December 2020

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 any respondent. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper. The documents to which the tribunal was referred are in an electronic bundles of 132 pages, the contents of which the tribunal has noted. The decision made is set out below.

DECISION

The Tribunal grants the application for retrospective dispensation from statutory consultation in respect of the subject works, namely the intrusive survey to identify combustible elements within the construction of the building.

The applicant should display copies of this decision in a prominent position in the common parts of the Property. It should also place a copy of this decision together with an explanation of the leaseholders' appeal rights on its website (if any) within seven days of receipt and maintain it there for at least three months, with a sufficiently prominent link to both on its home page.

This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and/or the cost of the work.

The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the **Act**") for dispensation from consultation in respect of an intrusive survey to identify combustible elements within the construction of the building. At the date of the application the applicant referred to the possibility of instructing the survey to be carried out at the end of October 2020. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if the landlord plans to carry out qualifying works which would result in the contribution of any tenant being more than £250. The cost of the works the subject of the application exceed this threshold. No consultation had been undertaken and the applicant seeks dispensation from all the statutory consultation requirements.

2. By directions dated 20 October 2020 (the “**directions**”) the tribunal directed that the applicant send each of the leaseholders the application, the tribunal’s directions and display the same in the common parts of the Property, confirming to the tribunal that it had done so. The applicant confirmed to the tribunal on 2 November that it had complied with this direction by 29 October 2020.
3. The directions required any leaseholder who opposed the application should tell the tribunal. If they opposed the application they should send the applicant a statement responding to the application together with any documents they wished to rely on.
4. On 13 November 2020 Ms Napper advised the tribunal that not all the leaseholders appeared to have received the posted copy of the application and directions. The tribunal therefore directed in a letter dated 16 November 2020 that its letter of that date be sent to all the leaseholders. In it the tribunal directed that any leaseholder who considered that they had not had enough time to respond to the application could apply to the tribunal to vary the timetable in the directions. No such application was received by the tribunal.
5. The directions directed that the applicant prepare a bundle of relevant documents for use in determining the application.
6. The directions provided that the tribunal would decide the matter on the basis of written submissions unless any party requested a hearing. No such request has been made.

The applicant’s case

7. The applicant is the management company of the Property (the ‘**manager**’), named in the specimen lease of Plot 55 included in the applicant’s bundle, acting by its agent DJC Property Management Limited. The application names Adriatic Land 6 (GR1) Limited as the landlord. In the Seventh Schedule (Part 1, paragraph 2) the lessee covenants to pay the a proportion of the Maintenance Expenses incurred by the landlord or the Manager in carrying out the services specified in the Fifth Schedule. Paragraph 2 of Part B of the Fifth Schedule of the ‘Block Cost’ includes, ‘Inspecting maintaining rebuilding repairing cleaning renewing redecorating or otherwise treating as necessary and keeping the structure and the external common parts of the Block comprised in the Maintained Property and every part thereof in good and substantial repair order and condition.’
8. In its application the applicant stated that it was seeking dispensation from consultation to enable it to carry out a full intrusive survey of the development to assess the materials used in construction and confirm their combustibility. This

was to assist the applicant should it need to remove cladding or insulation materials on the building should they be deemed not to be safe. The application stated that the applicant was looking to instruct the surveyor to carry out the survey as soon as possible, and that it was looking to have the survey done at the end of October.

9. The applicant did not include a statement of case in the bundle of documents that it provided to the tribunal. The tribunal have therefore relied on the application, the email from the applicant of 20 November 2020 and the documents in the bundle in reaching this decision.
10. The bundle included an undated quotation for the works from FRC Façade Remedial Consultants, of £19,995 ex VAT for the survey and report, which quotation also set out the cost of various additional supplemental services that it could offer in addition. The bundle also included a Fee Proposal from IFC Group, International Fire Consultants dated 31 July 2020 in the sum of £16,300 and from Silver Grey, chartered surveyors, dated 24 March 2020 in the sum of £6,995 + VAT.
11. The only objection in the bundle was from Ms Naclerio, who objected to the application because a survey had been carried out in 2017 and no explanation had been provided as to the need for a second survey, no details of the cost of the survey had been provided, no assurance of the fair apportionment of the cost had been provided and no details of the tendering process, its transparency and value for money had been provided.
12. By e mail to the tribunal dated 20 November 2020 Ms Katie Napper of the applicant's representative advised the tribunal that the directors of the applicant had decided to proceed with the quote obtained from FRC as it proposed the most thorough survey and would provide an EWS1 form should the materials prove safe.

Determination and Reasons

13. Section 20ZA(1) of the Act provides:
“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.”

14. The whole purpose of section 20ZA is to permit a landlord to dispense with the consultation requirements of section 20 of the Act if the tribunal is satisfied that it is reasonable for them to be dispensed with. Such an application may be made retrospectively. The application in this case was not retrospective but it is possible that the survey has now been carried out.
15. The Tribunal has taken account the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 in reaching its decision.
16. There is no evidence before the tribunal that the respondents were prejudiced by the failure of the applicant to comply with the consultation requirements. The tribunal is therefore satisfied that it is reasonable to dispense with all or any of the consultation requirements in relation to the intrusive survey.
17. Whether the survey has been/is carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the tribunal in relation to this present application. This is particularly relevant to Ms Naclerio's objection.

This decision does not affect the tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of the reasonableness and /or cost of the works.

Name: Judge Pittaway Date: 1 December 2020

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.

4. 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.