



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

Case reference : **LON/00BG/LDC/2020/0151
PAPER REMOTE**

Property : **Block A, 417 Wick Lane, London E3 2JG**

Applicant : **417 Wick Lane RTM Company Limited**

Representative : **Coleman Coyle Solicitors**

Respondent : **All (90) long leases of 417 Wick Lane,
London E3 2JG**

Representative : **N/A**

Type of application : **Section 20ZA Landlord and Tenant Act
1985 - dispensation**

Tribunal member : **Judge Tagliavini
Mr K Ridgeway MRICS**

Venue : **10 Alfred Place, London WC1E 7LR
PAPER REMOTE**

Date of hearing : **2 December 2020**

Date of Decision : **4 December 2020**

DECISION

Covid-19 pandemic

This has been a remote determination 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. The documents that the tribunal was referred to are in a bundle of 227 pages, the contents of which the tribunal has noted. The order made is described at the end of these reasons.

The tribunal's summary decision

- (1) The tribunal grants dispensation from the requirements of section 20 of the Landlord and Tenant Act 1985 in respect of the Emergency Roof Works and the proposed permanent Roof Works.
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The application

1. This is an application dated 23/09/2020 made under the provisions of section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') seeking dispensation from the consultation requirements of section 20 of the 1985 Act.

The background

2. The application concerns both the Emergency Roof Works as well as the permanent Roof Works that are required to Block A, 417 Wick Lane, London E3 2JG that are required as a result of damage to the roof due in part to storm damage in February 2020. Block A is one of four blocks (B, C and D) making up the Estate comprising 86 residential flats and designated car parking spaces. This storm damage resulted in the integrity of the flat roof of Block A becoming compromised and a number of flats were subjected to severe water ingress as detailed in the report of Albany Chartered Surveyors dated 11 February 2020. Further, wider safety concerns were raised for both the occupiers of the premises and their visitors, which were contributed to by the instability of the roof timbers and falling debris.
3. Emergency works were carried out in February 2020 and completed in March 2020 at a cost of approximately £84,000. Further works as set out in the further report of Albany Chartered Surveyors dated March 2020 are said to be now urgently required in order to maintain the watertightness and satisfactory performance of the roof covering and are estimated to cost in the region of at least £80,000 (plus VAT).

The applicant's case

4. In support of its application the applicant provided the tribunal with a Bundle of Documents for hearing numbered comprising 227 pages which included a copy of a sample lease, the specification of the works required and the tenders received. Further, the bundle included the applicant's Reply to Statements in Opposition that had been notified to the applicant in accordance with the tribunal's Directions dated 14 October 2020.
5. The applicant asserted that as the relevant leases make no provision for the collection of a surplus or reserve fund the cost of the roof works have to be collected through the usual service charge provisions. Currently, the insurance provider has refused the insurance claim concerning the entirety of the roof work as it is alleged that the previous managing agent had failed to comply with a precondition set by the insurer.

The respondents' case

6. In accordance with the tribunal's Directions the applicant confirmed that all lessees had been informed of this application. In response, the applicant (indirectly) received email correspondence from Mr Jason Payne a leaseholder of G.04 at the subject premises and Mr Shafiq Malik a member of Union City Investments who are leaseholders of two flats on the Estate. Both Mr Payne and Mr Shafiq whom objected to the application for dispensation. No other objections to the application were received by the applicant or the tribunal.
7. In his correspondence, Mr Payne indicated that he wished Millane Contract Services ('MCS') to be approached to quote for the roof works as they had previously carried out work on a neighbouring block.
8. Mr Malik in his email correspondence suggested that the Roof Works were not required as works to remove the cladding from the Building and the construction of additional flats (Additional Storeys Works) on the roof rendered these works unnecessary.
9. Telephone calls were received by the applicant's solicitors from Mr Roy Farrugia a leaseholder of three flats on the Estate and Mr Joseph Farrugia who is the leaseholder of Flat G.09. However, neither leaseholder clarified their objections to this application for dispensation of the consultation process in their communications.

The tribunal's decision and reasons

10. The tribunal finds that there has and continues to be an urgency to these works in order to preserve the integrity of the roof and the safety and welfare of the occupiers and their visitors. The tribunal accepts the applicant's chronology of the events. However, the tribunal finds the applicant has left unexplained why it was not possible to serve at least an initial section 20 Notices on the lessees once the Emergency Roof Works were completed and it became apparent a longer term solution would soon be required.

11. The tribunal has had regard to the objections raised by Messrs Farrugia and determines that neither have established any significant prejudice that would be caused were dispensation to be granted. Further, the tribunal finds that the primary concerns relate to the issue of the cost of the works, which may be the subject of a legal challenge in the future. The tribunal finds that the removal of cladding and the building of additional stories is at present uncertain and unlikely to occur in the near future.
12. The tribunal finds that the nature of the roof disrepair required an emergency remedy the efficacy of which is likely to be compromised if delays to a more permanent solution occur through the need to follow the consultation process. Further, the tribunal finds that the respondents have failed to establish that any prejudice will be caused to them by the grant of dispensation in accordance with *Daejan Investments Ltd v Benson* [2013] UKSC recently considered by the Upper Tribunal in *Aster Communities v Chapman* [202] UKUT 177 (LC). The tribunal finds that the objections received relate mainly to the cost of the works due in part to the insurance company refusing to cover the cost of the damage and a failure to contact previous roof contractors who had carried out work on another block. The tribunal finds that the objections received go to the issue of the cost of the works which is able to be disputed at a future date rather than to the prejudice caused by granting dispensation to the applicant.
13. Therefore, the tribunal grants the dispensation sought by the applicant both in respect of the Emergency Roof Works and the Roof Works that form the subject matter of this application.

Name: Judge Tagliavini

Date: 4 December 2020

Rights of appeal from the decision of the tribunal

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).