



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

Case reference : **LON/00BK/LDC/2020/0244**

HMCTS code : **P:PAPERREMOTE**

Property : **Munkenbeck and Marshall Buildings,
Paddington Walk, 2-4 Hermitage
Street,
London W2 1PW**

Applicant : **Paddington Walk Limited**
SAY Property Consulting LLP

Representative : **(Mr Charles Seiffert MRICS)**

Respondents : **The Leaseholders of the Property, as
identified in the Application**

Representative :

Type of application : **An Application for a Dispensation
Order pursuant to section 20ZA of the
Landlord and Tenant Act 1985**

Tribunal member : **JUDGE SHAW**

Venue : **PAPER DETERMINATION**

Date of decision : **26th January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers which has not been objected to by the parties. The form of remote hearing code and description was: P:PAPERREMOTE. A face-to-face hearing was not held because none of the parties requested such a hearing, and all the issues could be determined in a remote hearing, on paper. The documents submitted to the Tribunal will, as necessary, be referred to below, and all papers submitted have been perused and the contents considered. The order made is described at the end of these reasons.

Decision of the tribunal

The tribunal determines that an order dispensing with the consultation provisions under section 20 of the Landlord and Tenant Act 1985, is appropriate in this case, and makes such order.

The application

1. An Application has been received in which the Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”).
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The hearing

The Applicant sought a Paper Hearing, which was, as stated above, not objected to by any the Respondents.

2. The background

The Property is an existing residential development, which comprises 153 private residential flats and 79 affordable housing flats at 2-4 Hermitage Street, London. The building consists of 5 towers with a varying number of storeys from 9-14 and link blocks of 7 storeys in between linking the towers.

The works for which dispensation is sought are as follows:

- The removal and replacement of combustible insulation behind the terracotta cladding;
- Removal and replacement of CP boards behind the terracotta cladding;
- Replacement and installation of new cavity barriers behind the terracotta cladding;

- Removal and reinstatement of the existing terracotta panels.

These works are collectively referred to in the Application as the ‘Terracotta Works’.

These works are required because, following the release of a series of updated regulatory requirements since June 2017, the existing external wall system does not meet the current government guidance. The cladding system needs to be replaced using materials of limited combustibility in order to comply with government guidance.

Directions were given in this case on **10th December 2020**. The background stated in those Directions is comprehensive, and for ease of reference, is repeated herein:

(1) On 8 October 2020 the Applicant was granted dispensation pursuant to section 20ZA from the consultation requirements in respect of urgent remediation works at the property, namely removal of a combustible timber cladding system forming part of the external wall system, STO render replacement, replacement of the timber decking on the balconies and associated works, together described as the ‘Non-ACM works’.

(2) Since the granting of dispensation, further intrusive tests have been carried out by the Applicant’s contractor, Clear Line Maintenance Limited (‘CLML’) and the following additional necessary works have been identified (collectively, ‘the Terracotta Works’), in respect of which the landlord/applicant has applied for dispensation from the statutory consultation requirements: (i) Removal and replacement of insulation behind the terracotta cladding; (ii) Removal and replacement of CP boards behind the terracotta cladding; (iii) Replacement and installation of new cavity barriers behind the terracotta cladding; (iv) Removal and reinstatement of the existing terracotta panels.

(3) The estimated cost of the works, provided by CLML and reviewed by the Applicant’s Quantity Surveyor, is £3,286,431 plus VAT if no additional funding from the Building Safety Fund is obtained. Submissions for said funding must be received by MHCLG by 31 December 2020. It is said that the estimate is based on having to carry out the Terracotta Works concurrently with the Non-ACM works. Were they to be separately undertaken, an estimated additional £1,100,000 is said to be likely to be incurred. It is not yet known whether these are works that would be considered as qualifying works for the purposes of the Building Safety Fund.

(4) It is said that if the works were to require full consultation, additional sums of £29,000 per week are likely to be incurred, due in large part to the fact that the property is currently subject to scaffolding. Furthermore, the Building Safety Funding is conditional upon works being physically commenced on site before **31 March 2021**, so in order to have any prospect of funds being granted for these works it is said that dispensation is essential. It is further estimated that, were the works to be carried out in isolation from the contract with CLML that has already commenced, 47 additional weeks work would be required.

(5) A Notice of Intention relating to the Non-ACM works the subject of the previous dispensation application was given in **March 2019**. The Terracotta Works have not been the subject of a further Notice of Intention, due to their latency. The application is said to be urgent because the works all relate to the safety of the occupants, and not insignificant costs.

(7) The only issue for the tribunal is whether it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

(8) The leaseholder Respondents were notified by the Tribunal, that the Ministry of Housing, Communities and Local Government has provided guidance for Leaseholders in respect of non-ACM cladding cases in which there has been an application to the government fund for remedial action:

We encourage all leaseholders and leaseholder group representatives to contact their building owners to make sure they are aware of this publication and that they are intending to take forward the actions on identification of buildings within scope and the expression of interest process. Although leaseholders should contact their responsible entity with queries about their specific building, LEASE will act as the point of contact for leaseholders with questions about the fund. If you are a leaseholder with an enquiry, please contact the Leasehold Advisory Service (LEASE) via <https://www.lease-advice.org/>

The Issues

3. The sole issue in this case is whether the tribunal is satisfied that it is reasonable for the tribunal to dispense with the consultation provisions (section 20 of the

Act) which would otherwise have applied to the qualifying works at the Property, as described below.

The tribunal's decision

4. The tribunal determines that it is reasonable to dispense with the consultation provisions of section 20 of the Act, pursuant to section 20ZA thereof, and in relation to the works set out above and identified in the Application. A dispensation order to this effect is therefore made, as set out below.

Reasons for the tribunal's decision

5. Directions in this case were given on **10th December 2020**. In those Directions, the Respondent leaseholders were given the opportunity both to request an oral hearing and to object to the roof works. No such request has been received by the Tribunal, nor has there been any objection from any of the leaseholder Respondents. The application has been supported by a very full and helpful presentation, running to nearly 500 pages, and prepared by the Applicant's agents as noted above. The cost of the works is very substantial, (in excess of £3,000,000 – but much, if not all, of this, it is hoped will be covered by Government funding. In any event, this application relates not to the reasonableness of the cost, but to the question of whether it is reasonable in accordance with the Act, to dispense with the consultation provisions. The Tribunal is in no doubt that it is so reasonable. The possible health and safety risk to occupants, and the escalating nature of the costs, if full consultation were to be pursued, make it reasonable to proceed with the works before the full consultation procedure has been complied with.

6. DECISION

For the reasons set out above, the tribunal determines that it is reasonable to dispense with the consultation provisions of section 20 of the Act, pursuant to section 20ZA thereof, and in relation to the works described as “the Terracotta Works” referred to above.. A dispensation order to this effect is therefore made. It should be understood that nothing in this Decision precludes the entitlement of the Respondents to challenge the cost, quality, reasonableness or payability of service charges for these works, under the provisions of

section 27A of the Act, should they have reason or desire to do so after the works have been completed.

Name: JUDGE SHAW

Date: 26th January 2021

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.