



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

Case reference : LON/00BE/LDC/2021/0017

Applicant : Tavern Quay RTM Company Ltd

Respondents : Various lessees

Property : Tavern Quay, Rope Street, London,
SE16 7EX

Tribunal : Judge M Mullin

Date of Decision : 16th March 2021

**DECISION ON AN APPLICATION UNDER SECTION 20ZA OF THE
LANDLORD AND TENANT ACT 1985**

IMPORTANT – COVID 19 ARRANGEMENTS

- Due to the Covid-19 pandemic, the London Regional office at 10 Alfred Place is currently operating with a skeleton staff. Most judges and staff are working remotely. Where possible and appropriate, determinations are being made based on documents provided by parties in digital bundles. If a hearing is required, the tribunal will seek to accommodate this through the use of audio or video conferencing technology. While face-to-face hearings may be arranged in exceptional circumstances, these will be subject to necessary precautions to prevent the spread of infection.
- Unless directed otherwise, all communications to the tribunal, including the filing of documents and bundles, should be by **email ONLY**, attaching a letter in Word format. Emails must be sent to London.RAP@justice.gov.uk. The attachment size limit is 36MB. If your attachments are larger than 36MB they must be split over several emails.
- **If a party does not have access to the Internet and/or cannot prepare digital documents, they should contact the case officer about alternative arrangements.**
- Parties are notified that, due to the pandemic, it is likely to take longer than usual for the tribunal to respond to correspondence. Please do not chase for a response unless truly urgent.

Background to the application

- (1) The landlord/applicant has applied for dispensation from the statutory consultation requirements in respect of part of its plan to facilitate the removal and replacing of the cladding at Tavern Quay, a modern clad block consisting of four separate buildings.
- (2) The application is said to be urgent because the landlord/applicant is under some pressure from various government agencies to remove and replace the cladding. Although it has funded the project it seeks dispensation as there may be costs and elements of the pre-tender work which may ultimately not be recoverable from the government and may fall to leaseholders to pay if other routes to recovery are not successful.
- (3) The Applicant has put in place interim safety measures to ensure that the building is safe but is under some pressure from various government agencies to remove and replace the cladding. It has funding for the project from MHCLG, however, seeks dispensation as there may be costs and elements of the pre-tender work which may ultimately not be permitted to be recovered from the government grant funding provision and may fall to leaseholders to pay if it should transpire that other routes to recovery (Premier insurance and Defective Premises claims) may not be successful.
- (4) 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.**
- (5) The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 give guidance on how the application will be dealt with.

Decision

1. This matter was determined remotely following written representations. A face-to-face hearing was not held because all the issues could be determined on the papers. The documents referred to in this decision are in two bundles submitted by the Applicant, the first consisting of 89 pages the second consisting of 125 pages.
2. There has been no response or representations from any of the relevant leaseholders (Flats 1 -75 Ensign House and flats 1 -41 Locke House).
3. The Applicant seeks dispensation from the consultation requirements in relation to Pre-tender costs for the specification and tendering of the contract for removal and replacement of the cladding at Lock House and Ensign House by its chosen consultant Tower 8. The contract is to be entered into immediately.

4. The Tribunal accepts that it is not possible or practical to obtain further quotations for the 'pre-tender' work as it has taken over 12 months to reach the stage where a quote has been able to be obtained from Tower 8 and to repeat that process for another quote to be obtained, whilst it might be faster a second time, would not meet with timelines for the replacement of cladding laid down by MHCLG and so funding options may become closed if that option were explored.
5. The Tribunal also agrees that any cost savings that might be achieved by tendering the 'pre-tender' work would likely be outweighed many times over by the cost of providing all the required information to the companies being asked to tender and by the process of tendering that work.
6. It is right that there does not yet appear to be a fee schedule or a quantified figure accompanying the application for the relevant pre-tender work, but the Tribunal considers that the leaseholders are adequately protected in this regard by their ability to challenge the reasonableness of any service charges they do end up incurring and notes the urgency of the situation.
7. Accordingly, the Tribunal grants dispensation for the stage 1 pre-tender costs as set out in the Application and the Applicant's statement of case.
8. At the end of its statement of case the Applicant also seeks dispensation: *"such that in the event that, for whatever reason, upon the final reconciliation of the submissions made to MHCLG/GLA, that its project is not accepted for funding and it is called upon to repay the fund and where it may lack the ability to do so, except by calling upon leaseholders to make such contributions as may be required."*
9. It is not immediately obvious if this is tended to seek dispensation beyond the stage 1 pre-tender costs granted above. If it is, the application is refused. It is not set out in any detail what other matters will at this stage will require dispensation (beyond the stage 1 pre-tender costs) or what the reasons for dispensation being granted in relation to them are. The Application is rightly focussed on the stage 1 costs.
10. ***This decision does not affect the right of the Respondents to challenge the costs or the standard of work should they so wish. In accordance with paragraph 9 of the Directions, it is the Applicant's responsibility to serve a copy of the Tribunal's Decision on all respondent leaseholders.***

Appendix of relevant legislation
Section 20 of the Act

(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) a leasehold valuation 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.

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).