FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AZ/LDC/2020/0120**
HMCTS Code	:	**P: Paper remote**
Property	:	**Arden House, 52 – 54 Thurston Road, London SE13 7GT**
Applicant	:	**The Peabody Trust**
Representative	:	**In house**
Respondents	:	**The leaseholders of flats 1-12**
Representative	:	**In person**
Type of application	:	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal members	:	**Tribunal Judge I Mohabir** **Miss M Krisko FRICS**
Date of determination	:	**28 October 2020**
Date of decision	:	**28 October 2020**

DECISION

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 the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and no one requested the same.

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") for dispensation from the consultation requirements imposed by section 20 of the Act.

2. Arden House, 52 – 54 Thurston Road, London SE13 7GT ("the property") is described as a purpose built block of flats with 62 residential flats of which 12 are held on long leasehold. It is common ground that under the leases, the lessees are required to pay a service charge contribution, which includes the cost incurred or to be incurred by the Applicant in repairing and maintaining the exterior of the building.

3. It seems that the Applicant has identified that the cladding to the building presents an immediate fire hazard to the occupiers. It has implemented temporary simultaneous evacuation strategy to replace the walking watch system in the event of a fire event.

4. The Applicant proposes to install a fire alarm and detection system in the communal areas and in the individual flats as a more cost effective to achieve early detection. Because of the urgent nature of these works, the Applicant states that it cannot wait to carry out statutory consultation with the leaseholders. Nevertheless, on 27 July 2020, it served a Notice of Intention on the leaseholders in relation to the proposed works.

5. Subsequently, the Applicant made this application seeking dispensation from the requirement to carry statutory consultation regarding the fire alarm and detection system. On 20 August 2020, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.

6. It seems that only one leaseholder, Mr Farrar of flat 10, has objected to the application.

Relevant Law

7. This is set out in the Appendix annexed hereto.

Decision

8. The determination of the application took place on 28 October 2020 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant and Mr Farrar.

9. The objections raised by Mr Farrar are:

- the Applicant has had sufficient time before making this application in July 2020 to identify interim remedial solutions and to consult with the leaseholders because the problem with the cladding was known since March of this year. The Applicant's case is that the application is limited to the installation of the fire alarm system only (and not the cladding) and that it took steps to implement a simultaneous evacuation strategy to replace the walking watch system.

- the Building already has a fully functioning alarm system. The Applicant states that the present system only applies to the communal areas whereas the proposed works will extend to the individual flats.

- the Applicant has yet to commence statutory consultation. However, as stated earlier, the Tribunal was satisfied that it served a Notice of Intention dated 27 July 2020.

- the Applicant has failed to identify exactly what fire hazard is posed by the cladding and the timescales for carrying out the remedial work.

- Various issues regarding the cost of the remedial work and whether this is being sought against the original building contractor, the leaseholders or is the subject matter of an insurance claim. However, these are issues relating to cost and the Tribunal was satisfied that they do not fall within the jurisdiction of this application, as was made clear in the Tribunal's Directions.

10. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no financial prejudice in this way.

11. The issue before the Tribunal was whether dispensation should be granted in relation to requirement to carry out statutory consultation with the leaseholders regarding the fire alarm and detection system. As stated earlier, the Tribunal is not concerned about the actual cost that

has or will be incurred. Those issues can properly be the subject matter of a separate application made by either party under section 27A of the Act.

12. The Tribunal granted the application for the following reasons:

(a) each of the leaseholders has been kept informed of the potential health and safety risk posed by the cladding on the building.

(b) each of the leaseholders had been served with a copy of the application and documents in support.

(c) no leaseholder has objected to the application save for Mr Farrar. The Tribunal found that delay, if any, on the part of the Applicant did not result in any real prejudice to Mr Farrar within the test laid down in the ***Daejan Investments*** case.

(d) the Tribunal was satisfied that the potential health and safety risk(s) posed by the cladding since the Grenfell incident oblige landlords to take immediate investigation and fire prevention steps that are necessary where significant risks are identified, as in the present case. Mr Farrar stated, with some force, that the Applicant had not identified what particular fire risk is posed by the cladding. It would have been helpful to the Tribunal and Mr Farrar if the Applicant had provided, as part of its evidence, a copy of any report that had been obtained identifying the risk(s) in relation to the cladding. However, for the purpose of this application the Tribunal was prepared to accept the Applicant's assertion that the cladding did pose an immediate fire risk to the occupiers. That inference can be drawn from the immediate steps by the Applicant to address the risk.

(e) the Tribunal accepted the Applicant's evidence that the present fire alarm system only covered the communal areas and the proposed system would provide enhanced protection by extending it to individual flats.

(f) importantly, the real financial prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual or estimated costs incurred by making an application under section 27A of the Act.

13. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the Applicant's failure to consult and the application was granted as sought.

14. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

Name:	Tribunal Judge I Mohabir	**Date:**	28 October 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 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 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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises.