



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

**Case Reference** : **LON/00BG/LDC/2020/0245  
V :CVPREMOTE**

**Property** : **52-58 Commercial Road London E1 1LP**

**Applicant** : **Roquefort Properties Ltd**

**Representative** : **Mr T Polli QC**

**Respondents** : **The leaseholders as named on the  
application**

**Representative** : **Mr D Matthias QC**

**Type of  
Application** : **S20ZA Landlord and Tenant Act 1985**

**Tribunal Members** : **Judge F J Silverman MA LLM  
Mr C Gowman MCIEH**

**Date of video  
hearing** : **30 April 2021  
Remote video hearing**

**Date of Decision** : **10 May 2021**

**This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which the Tribunal was referred are contained in an electronic bundle comprising approximately 748 pages the contents of which are referred to below. The orders made in these proceedings are described below.**

---

## **DECISION**

---

The Tribunal determines that it will exercise its discretion to dispense with the consultation requirements imposed by s.20 of the Landlord and Tenant Act 1985 on the grounds that the Respondents were notified of the application under s20ZA and the proposed works are required as a matter of urgency to ensure the safety of the building for its residents and visitors.

## **REASONS**

1. By an application made to the Tribunal dated 04 December 2020 the Applicant seeks a determination of its application for dispensation from the consultation requirements imposed by s. 20 of the Landlord and Tenant Act 1985.
2. Directions were issued by the Tribunal on 17 December 2020 and 04 March 2021, together with a postponement Decision.
3. This matter was determined by a remote video consideration V:CVPREMOTE on 30 April 2021 at which the Tribunal considered the Applicant's application and accompanying documents including an electronic hearing bundle extending to 748 pages. The Tribunal heard evidence from Mr Daver, Mr Dove and Ms Mann for the Applicants and from Mr Corless and Mr Hallahan for the Opposing Respondents.

4. The Directions issued by the Tribunal had been sent by the Applicant to all the Respondents asking them to respond and to indicate whether or not they opposed the application. The only objection, has been from Aldgate Property Limited and London Lettings and Management Limited, companies owned by Mr Corless (the Opposing Respondents), who are the long leaseholders of 96 of the 125 flats contained in this modern mixed use building which comprises two tower blocks 18 stories high. None of the other leaseholders has objected to the application.
5. It is common ground that the building, constructed in about 2008, has combustible ACM cladding on the external façade of the top three storeys of both towers and in various other areas of the exterior of the building. This cladding needs to be replaced with a suitable alternative as soon as possible. Full government funding for the works has been negotiated and will, subject to certain conditions, be available for private leaseholders but not to corporate lessees. Mr Corless's companies are therefore ineligible for full financial assistance and will need to meet the substantial shortfall from their own resources.
6. The building also has some non-ACM combustible cladding in other areas which it is recognised will also need to be replaced but this application concerns only the areas to which the ACM type applies. As a temporary fire prevention measure, the building currently has a waking watch which is costing approximately £10,000 per week.
7. The Applicant applies for dispensation from the statutory consultation requirements in carrying out the works necessary to replace the ACM cladding on the building in order to comply with current requirements implemented in the light of the Grenfell disaster.
8. While recognising that the potential cost of the project would inevitably exceed s20 limits, a decision was made by the Applicant not to undertake a formal s20 consultation based on the urgency of the situation and the understanding that the tenants' contributions would be fully indemnified by government funding, meaning that they would not be prejudiced by the lack of consultation. It only became apparent at a later stage of the funding negotiations that full funding was not available to the Opposing Respondents and at that point a decision was taken to make an application for dispensation rather than delay the project further. Further delay would not only extend the period of risk for those living in the building but might also put at risk the agreed funding which was subject to conditions and time limits.
9. The initial steps in this project were taken by Mr Dove, a chartered surveyor employed by the Applicant's former managing agents and continued by the Applicant's current managing agents.
10. Mr Dove's approach was to research a suitable alternative product and to ask contractors to tender for the work based on a specification drawn up by him. He sought a safe replacement product similar in appearance to the coloured ACM cladding presently on the building which would withstand the high wind-loading prevailing at the upper levels of the building, would not need a new planning consent, would

preferably attach to the exterior using the present sub-frame system and which had a reliable supply chain (page 686). He considered but dismissed a solid aluminium alternative because it did not meet some of these criteria and finally decided to specify a product called 'Rockpanel'. He based his specification on a named product to enable like for like comparisons to be made between the tenders received. Similarly, he restricted the tender specification to replacement of the ACM cladding because financial assistance for the non-ACM cladding was subject to a different set of conditions and time limits and to include the latter could cause delay to the entire project. Apart from the obvious need for urgency in order to diminish the fire risk and associated dangers for the residents, the MHCLG were pushing for the works to commence as soon as possible (441-454) with a risk that the agreed funding could be adversely affected if there was delay. There would in any event be a lead in time of several months between the signature of a contract and the start of the actual works which would themselves take several months.

11. Mr Dove's approach was adopted by the Applicant's current managing agents when they assumed responsibility for the building.
12. The present state of the project is that following a tender process a letter of intent has been issued to a chosen contractor (but no contract signed), a draft funding agreement has been agreed but not yet signed, no works have commenced on site, no costs have been incurred and no tenant has been asked to make any payment.
13. The Opposing Respondents do not dispute the need for the work to be done nor that the works are urgent. Their objections are based on the prejudice which they say will be caused to them if dispensation is granted.
14. In respect of prejudice the Opposing Respondents say that they were not properly consulted about the proposed works. This is a circuitous argument because the whole point of s20ZA is that consultation requirements are dispensed with. Further, it does not appear to be a valid argument because the documentation before the Tribunal demonstrates that the Opposing Respondents were fully engaged in discussions with the Applicant's managing agent about the project and had sufficient information about it to be able to obtain alternative estimates for the works (see pages 589,590,597,598,621, 683,686).
15. The main thrust of the Opposing Respondents' objection appears to be that they feel that the Applicants have chosen to proceed with a more expensive replacement product and contractor than they feel appropriate, the excess cost of which will be borne by them because they are ineligible for full government funding. The Tribunal notes that the Opposing Respondents have not suggested either that the product selected by the Applicants is not fit for purpose or that the chosen contractor is not competent. Their objection and alleged potential prejudice is based purely and simply on financial grounds.
16. It was accepted by the Opposing Respondents that arguments relating to reasonableness were not relevant to the issue under discussion but it was submitted on their behalf that the wording of the legislation envisaged that the cost of the proposed works could be

a matter for consideration under s20ZA. This submission was not supported by any decided case specifically to this effect.

17. The Tribunal does not accept this submission. If the Opposing Respondents suffer financially as a result of these works proceeding under a dispensation, they have a potential remedy under s27A of the Act arguing that the costs are not reasonable.
18. Further, although the Opposing Respondents produced (ultimately, and it seems reluctantly, see pages 670-683) copies of their own tenders, Mr Hallahan agreed in cross examination they were not comparable to those obtained by the Applicant. When seeking tenders Mr Hallahan had not specified a named product and a number of usual or essential items, such as scaffolding and materials storage, were excluded from the tenders. These were later adjusted by Mr Hallahan in an attempt to equate them with the Applicant's chosen tender. Further, none of Mr Hallahan's tenders were prepared on the basis that the tenderer would be a main contractor. Mr Dove undertook an analysis of the various tenders and concluded (page 739-743) firstly that the Opposing Respondents' tenders were not comparable with that prepared by the Applicant's chosen contractor (eg they proposed to use different products) and secondly, that if the Opposing Respondents' contractors had been required to quote on identical terms to those used by the Applicant's contractors the costings were likely to be similar to those submitted by the Applicant's chosen contractor.
19. It is clear from the evidence of Mr Hallahan and Mr Dove that the various tenders obtained by the parties cannot be regarded as comparable. For that reason the Tribunal is not satisfied that the Opposing Respondents have established sufficient evidence to convince the Tribunal that they would suffer prejudice by way of financial loss if dispensation were to be granted. That being so, it is not necessary for the Tribunal to consider whether financial loss alone is a permissible ground for pleading prejudice under the provisions of s20ZA.
20. Similarly, since the Opposing Respondents have pleaded no other ground of objection it appears that their application cannot succeed.
21. In these circumstances it would not be proper to consider either a conditional dispensation order nor a costs order against the Applicant as requested by the Opposing Respondents.
22. In considering this matter the Tribunal also took into account the 3.5 year time elapsed since Grenfell, the ongoing risk and anxiety suffered by those tenants who are living in the building, the fact that further delay in commencing the works, whether to allow the Opposing Respondents to obtain further estimates, to order full consultation or to join the non-ACM cladding replacement to the existing proposals would all have a prejudicial effect on the tenants living in the building and could put at risk the funding arrangements which have already been agreed for the owner-occupier tenants. Those risks are unconscionable and outweigh any potential financial detriment suffered by the Opposing Respondents.

23. The Applicant therefore requests the Tribunal to grant a dispensation from compliance with the requirements of the section in order to allow the cost of the works to be recovered as service charges.
24. The Tribunal was not asked to inspect the property and in the context of the issues before it did not consider that an inspection of the property was either necessary or proportionate.
25. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) 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*” (emphasis added)

26. The Tribunal understands that the purposes of the consultation requirements is to ensure that leaseholders are given the fullest possible opportunity to make observations about expenditure of money for which they will in part be liable
27. The safety of a building for both occupiers and visitors is of paramount importance. Having considered the submissions made by the Applicant, the Tribunal is satisfied that the work to be carried out is necessary and that no undue prejudice has or will be caused to or suffered by any of the Respondents by the grant of dispensation under s20ZA in this case.
28. This determination does not affect the leaseholders’ rights to apply to the Tribunal challenging the payability or reasonableness of the service charges.

Judge F J Silverman as Chairman  
**Date 10 May 2021**

Note:  
Appeals

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rplondon@justice.gov.uk](mailto:rplondon@justice.gov.uk).
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to

appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.