



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

Case Reference: LON/00AH/LDC/2021/0292 P

HMCTS code: P: PAPERREMOTE

Property: Canius House, 1 Scarbrook Road,
Croydon CR0 1SQ

Applicant: Adriatic Land 5 Limited

Representative : J B Leitch Limited

Respondents: The leaseholders of Canius House

**Type of
Application:** To dispense with the statutory
consultation requirements under
section 20ZA Landlord and Tenant Act
1985

Tribunal: Judge Pittaway

Date of decision: 15 February 2022

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 any Respondent. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested a hearing and all issues could be determined on paper.

The documents to which the tribunal was referred in a bundle of 242 pages which included the application dated 4 November 2021, the Directions dated 30 November 2021 and the Applicant's statement of case dated 5 November 2021.

The tribunal's decision is set out below.

DECISION

The Tribunal grants the application for retrospective dispensation, from statutory consultation in respect of the subject works, namely the removal and replacement of combustible materials in the external wall system (the 'External Works') and internal fire safety works (the 'Internal Works') (collectively called the 'Works') more particularly described in documents before the bundle the Tribunal.

This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of liability to pay, for a reason other than non-consultation in respect of the Works, and the reasonableness and/or the cost of the Works.

The Application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (the '**Act**') for dispensation from consultation in respect of works to the Property. The works are described in the application as the removal and replacement of combustible materials from the external wall system, internal fire safety works and decanting residents in line with Government Guidance.
2. The application describes the Works as urgent as there is a risk of fire spread.
3. The application states that the Applicant's agent issued stage 1 and stage 2 notices to the Respondents in respect of the External Works. The Applicant's agent issued stage 1 notices to the Respondents in respect of the internal compartmentation works. The application states that, 'Due to the nature of the works and the Design & Build method due to be adopted, the Applicant is unable to complete the consultation process.'

4. The Service Charges (Consultation Requirements) Regulations 2003 provide that consultation requirements are triggered if it is planned to carry out qualifying works which would result in the contribution of any tenant being more than £250. The statement of case submitted with the application includes four tenders for the External Works, all of which are for more than one million pounds.
5. By directions dated 30 November 2021 (the '**directions**') the tribunal directed that the Applicant, by 6 December 2021, send each leaseholder and any residential sublessees the application and the directions and confirm to the Tribunal that this had been done by 9 December 2021. The Applicant confirmed on 7 December 2021 that this had been done on 3 December 2021 and that it had advised each leaseholder that the annexes to the Applicant's statement of case could be made available in hard copy on request or alternatively through an online portal whose details were given to each leaseholder. The Applicant also confirmed on 7 December 2021 that its managing agent had confirmed to it on 6 December 2021 that the documents were displayed in a prominent place in the common parts.
6. The directions provided that if any leaseholder/sublessee objected to the application he/she should do so, to the Applicant and the Tribunal, by 14 January 2022. The tribunal received no objections, and the Applicant confirmed to the Tribunal on 20 January 2022 and again on 28 January 2022 that it had received none.
7. The directions provided that the Tribunal would decide the matter on the basis of written representations unless any party requested a hearing. No such request has been made.

The Applicant's case

8. The Applicant is the freeholder of the Property. The property is described in the Applicant's statement of case as a 6-storey residential building with internal car parking on the ground floor and 39 residential apartments on the remaining levels. The height of the building is estimated to be approximately 24.70m, with a habitable top storey level calculated to be approximately 21.60m to the slab level of the uppermost floor. The apartments located within the Property are subject to long residential leases.
9. The Applicant's formerly appointed agent, Warwick Estates, instructed Façade Remedial Consultants Limited ("**FRC**") to undertake an intrusive inspection of the external wall system and fixtures including all associated components on the Property to comment on the existing building materials with reference to the provisions set out in the Approved Documents applicable at the time of construction and make recommendations to remediate items of risk resulting from the guidance of the

Ministry of Housing, Communities and Local Government ('**MHCLG**') (now the Department for Levelling Up, Housing and Communities) (the External Works). FRC made recommendations in respect of the long-term remedial proposals within the report on the external wall assessment dated 4 August 2020 ("the **FRC Report**"), a copy of which report is in the bundle. Harris Associates produced a scope of works which is also copied in the bundle.

10. The Applicant received an Improvement Notice from Croydon Council on 9 July 2021 (copied in the bundle) that the local authority is considering taking enforcement action, detailing Fire Safety issues and deficiencies found at the Property, relating to both external issues (identified in the FRC Report) and internal issues that also require remediation (the Internal Works). At the date of the Applicant's statement the specification of works in respect of the Internal Works had not yet been produced.
11. The Applicant intends to proceed with the Works via a Design & Build procurement route, and appointed Harris Associates to act as lead consultant pursuant to the Design & Build contract for the External Works. The Applicant intends to also appoint Harris Associates to project manage the Internal Works.
12. Harris Associates were instructed to obtain tenders in respect of the External Works, and the following quotes were received:
 - a. A S Ramsay: £1,104,035.35 (excluding VAT and professional fees)
 - b. Princebuild: £1,122,704.08 (excluding VAT and professional fees)
 - c. Millane: Estimated £1.34m (excluding VAT and professional fees); and
 - d. Green Facades: £2,082,022.97 (excluding VAT and professional fees)
13. Harris Associates recommended the instruction of A S Ramsay on the basis that they had submitted the lowest price tender, which recommendation the Applicant accepted.
14. As no formal Specification of Works for the Internal Works has yet been produced, the estimated costs of the Internal Works have not been calculated.
15. The Applicant intends to follow a Design & Build procurement route owing to the nature of the Works and the safety of the residents and the Property. The Applicant states it is of the view that the Design & Build process will allow the appointed lead consultant to facilitate the Works in a way that minimises risk in relation to design, delivery and cost. The Applicant submits that Design & Build procurement is not compatible with the section 20 requirements to their full extent.
16. The Applicant states that it is unknown when it will be decided whether the Applicant is eligible for full or partial funding under the Government Building Safety Fund, and

the contractor will need to be in place to commence Works at short notice with the cost of the Works agreed

17. The Applicant issued a Stage 1 Notice of Intention in respect of the External Works (29 September 2020) to which it received no observations from the leaseholders, a Stage 2 Statement of Estimates in respect of the External Works (11 June 2021) and a Stage 1 Notice of Intention in respect of the Internal Works (1 October 2021), copies of which are in the bundle. The Applicant, through its agents has kept the leaseholders informed as to the progress of the Works and copies of relevant correspondence are included in the bundle.
18. The Applicant submits that the issues highlighted in the FCR Report pose a significant health and safety risk to residents at the Property and the Works should therefore not be delayed, and the timing of the MHCLG funding requirements effectively prevents the Applicant from fully consulting. Further a Design and Build contract does not permit the leaseholders to be fully consulted, as contemplated by section 20. The Applicant does not consider that the leaseholders will suffer any financial penalty due to it not being possible to consult to the full extent contemplated by statute.

Responses from the Respondents

19. The tribunal received no objections or representations from any Respondent, and the Applicant stated that it that it had received none.

Determination and Reasons

20. Section 20ZA(1) of the Act 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.”

21. The purpose of section 20ZA is to permit dispensation with the consultation requirements of section 20 of the Act if the Tribunal is satisfied that it is reasonable for them to be dispensed with.
22. The Tribunal determines that the Respondents are not prejudiced by the Works and it is reasonable to dispense with the consultation requirements. It notes that no leaseholder has objected to the application.

23. In reaching its decision the Tribunal has considered the decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14, and has had regard to the application and the documents provided, in particular

- the evidence of the consultation which the Applicant has undertaken with the Respondents,
- that no objection has been received from any Respondent,
- the stated need for the Works, and
- the timetable which needs to be complied with for the Applicant is to be eligible for MHCLG funding.

24. Whether or not the Respondents are liable for the cost of the works by reason of the terms of their leases or any statutory provision other than section 20ZA, and whether the Works are carried out to a reasonable standard and at a reasonable cost are not matters which fall within the jurisdiction of the Tribunal in relation to this present application. This decision does not affect the Tribunal's jurisdiction upon any future application to make a determination under section 27A of the Act in respect of liability to pay and the reasonableness and /or cost of the Works.

25. The Applicant is reminded that, as stated in the Directions, it is the responsibility of the Applicant to serve a copy of this decision on all Respondents.

Name: Judge Pittaway Date: 15 February 2022

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.

4. 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.