



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

Case reference : **LON/00AC/LDC/2023/0252**

HMCTS code : **P:PAPERREMOTE**

Property : **Hitcham Court, 1 Station Approach,
London N12 7EG**

Applicant : **H W Residents' Management Company
Limited**

Representative : **ABC Estates Limited (ref Declan
Mullarkey)**

Respondents : **The Various Leaseholders of the
Property as Identified in the Schedule to
the Application**

Representative :

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

Tribunal members : **JUDGE SHAW**

Venue : **PAPER DETERMINATION**

Date of decision : **13th June 2023**

DECISION

Description of hearing

This has been a remote determination on the papers which has not been objected to by the parties. 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 application

1. The Applicant seeks a determination pursuant to s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”).

The hearing

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

2. The background

A The Applicant made a joint application covering two separate blocks of flats each with its own lease structure, Hitcham Court (the property in this case) and Woodchester Court, and adjacent building and part of the same development). By Directions in relation to Hitcham Court dated 3 February 2023 the Tribunal directed that it was not appropriate for a conjoined application to be made covering multiple blocks each with its own lease structure. The then-existing application was treated as limited to Hitcham Court and the applicant was invited to make a separate application in respect of Woodchester Court, which it has done (and in respect of which the tribunal has issued a separate decision).

B The Applicant is asking the tribunal to make an order to dispense with the requirements to consult with leaseholders regarding cladding works in relation to the property, that is Hitcham Court.

C The Applicant has removed the cladding said to be flammable, and now seeks retrospective dispensation from the consultation requirements.

D The Applicant states that the property is a purpose built block of flats. The building has been measured professionally, and is below 11m tall and therefore no public funds are available to contribute to the costs of the works.

E The Applicant says that the building insurers Aviva required the cladding to be removed by 10 September 2021 failing which cover would be withdrawn. This prevented the Applicant from complying with the statutory consultation procedures that are required by section 20 of the 1985 Act and the Service Charges (Consultation Requirements) (England) Regulations 2003.

3. Analysis of the Tribunal

- A. By Interim Decision dated 9th May 2023, this tribunal sought further clarification in respect of this application relating to this property, Hitcham Court, and in respect of the separate application relating to Woodchester Court. This clarification has now been supplied by the Applicant. As understood by the tribunal, the freeholder of both buildings is a company called SCWH Limited, the original freehold company having been dissolved. It is this company, SCWH Limited which is properly designated the Landlord of the property, in that it is this entity which is entitled to the reversion upon expiry of the long leases.
- B. The leases are “tripartite” agreements, in that the named applicant (HM Residents’ Management Company Limited) is a party to the lease, and is the entity responsible for the repair and maintenance of the property, and further is the entity to which all leaseholders pay their service charges. It seems to the tribunal therefore that this entity is correctly joined as the Applicant.
- C. HM Residents’ Company has appointed ABC Block Management Limited as its agent, for the purpose of arranging for the above services and collecting in the service charges. Mr Mullarkey at ABC Block Management, has had conduct of matters in respect of the two separate buildings, and in respect of these related applications.
- D. Mr Mularkey has confirmed that all leaseholders are “members” of the applicant company, from which the tribunal deduces that they are the shareholders and, collectively, the owners of the applicant. Accordingly, these applications are in a sense made , and responded to by, the same people, albeit that the applicant is the corporate formulation of the respondent leaseholders. Unsurprisingly, the respondents, who have been kept informed of the position throughout, have not objected to the request for dispensation of the formal consultation requirements, as confirmed Mr Mullarkey in his e-mail to the tribunal dated 2nd May 2023.
- E. Mr Mullarkey has also provided correspondence from the insurers, Aviva, which states in terms that cover will not be extended unless the cladding on both buildings is removed, given that it does not comply with the current regulations. It was for this reason, so the tribunal is informed, that there was little option other than to remove this cladding before formal consultation could be completed. The removal took place in December 2021. As understood by the tribunal, the buildings have been temporarily protected from the elements in the meantime, whilst the very substantial sums necessary to fund the re-cladding, have been collected. It is hoped that sufficient funds will have been collected by later this year.

4. Decision of the Tribunal

The tribunal is satisfied on the above analysis that it is reasonable in all the circumstances of this case to dispense with the formal requirements of consultation under section 20 of the 1985 Act. On the information provided, the removal of the cladding was required to take place urgently in order to maintain

insurance cover. The respondents were, albeit informally, kept informed throughout, and there have been no objections to this application for dispensation. As noted above, the applicant company is in fact the corporate alter ego of the respondents and is owned by them.

5. The Order of the Tribunal

Pursuant to section 20ZA, the consultation requirements of section 20 of the 1985 Act are dispensed with, in respect of the cladding removal works referred to in this application. It should be noted that the tribunal makes no findings as to the reasonableness of these works or the payability of the associated costs, all of which remain challengeable by the respondents under section 27A of the Act, should they desire to do so at some later stage.

Name: JUDGE SHAW

Date: 13 June 2023

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.