FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AQ/LDC/2022/0177**
HMCTS code (paper, video, audio)		**V: CVPREMOTE**
Property	:	**Roxborough Heights, Headstone Road, Harrow HA1 1GP**
Applicant	:	**Roxborough Heights Management (RTM) Limited**
Representative	:	**MJG Accountants**
Respondent	:	**All Leaseholders at Roxborough Heights, Headstone Road, Harrow HA1 1GP**
Representative	:	**Not Represented**
Type of application	:	**Application for dispensation from Consultation under Section 20ZA Landlord and Tenant Act 1985**
Tribunal member(s)	:	**Tribunal Judge Roger Cohen** **Tribunal Member Evelyn Flint DMS FRICS IRRV**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**3 February 2023**

DECISION

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1 The Applicant is Roxborough Heights Management (RTM) Limited, a company limited by guarantee. The Applicant is the RTM management

company for the building known as Roxborough Heights, Headstone Road, Harrow.

2 The Respondents are leasehold owners of flats in the building. Some of the leasehold owners occupy their flats and some have let to sub-tenants.

3 The freehold owner of the building is Freehold Managers (Nominees) Limited.

4 The hearing of this application, on 30 January 2023, was conducted on a hybrid basis as follows. The Tribunal sat in a hearing room along with:

a) Faisal Khan - representing the Applicant's managing agents;

b) Shahir Rizvi - a director of the Applicant and the leaseholder of flat 15; and

c) Vikas Garg - the leaseholder of flat 32.

5 The following attended remotely using the CVP video platform:

a) Ramakant Patel - the leaseholder of flat 5;

b) Vijay Viatla - the leaseholder of flat 25;

c) Amit Sahni - the leaseholder of flat 68; and

d) Pierre Virdi - the leaseholder of flat 59 attended by audio telephone call only.

6 The Applicant applied to the Tribunal for a determination that it is reasonable to dispense with service charge consultation in respect of works. The works were the installation of an upgraded fire and heat alarm system which was installed by Sygma Limited in November 2022 at a cost of £73,111.20 including VAT (the Sygma works). An application for such dispensation is provided for by section 20ZA Landlord and Tenant Act 1985 (the Act).

7 The Applicant supplied a 94-page bundle for the hearing. After the hearing and without having sought the consent of the Respondents or the permission of the Tribunal, the Applicant submitted a further bundle of documents. This bundle was not copied to the Respondents. The Tribunal has not considered these late documents in reaching its decision.

8 The building has two blocks and 89 flats in total. There is a ground floor commercial unit. Mr Khan told the Tribunal that this unit is let to the firm of accountants in which he practises. Roxborough Heights is a purpose-built block of flats. The building consists of ground and 8 upper floor levels. The height of the building to the uppermost occupied

floor level is approximately 24m. There is a main entrance on the ground floor which gives access to a communal area that provides individual entrances and exits to the flats. The property consists of two blocks, A and B, which are both accessed from the ground floor, but on the upper floors the communal areas are separated.

9 At the time the application was made, the works ,which are qualifying works under section 20 of the Act, had not yet started. The works were required to implement the recommendations of a fire engineer that, having regard to the presence of hazardous insulation material in the cladding of the building, the Applicant needed to upgrade the fire alarm system for the safety of residents. In its application to the Tribunal, the Applicant stated that consultation would delay the process and the Applicant needed to install this system as soon as possible. The Applicant added that it was also required to upgrade the fire alarm system by their insurance company.

10 The Tribunal was told that some owners supported the action taken whilst others were critical and supported the objections The Tribunal did not find that surprising. However, the determination of this matter does not turn on whether the works have the support of a majority of the leasehold owners but whether, on the facts, it is reasonable to make a determination in favour of dispensation.

11 The facts are as follows.

12 In April 2021 the Applicant arranged a survey of the building by a firm of consultants known as HJP. The purpose of the survey was to establish whether a form EWS1 could be issued in relation to the building. A form EWS1 would be appropriate if the building did not present a fire risk which would lead a mortgage lender to refuse to provide mortgage finance to an intending purchaser of a flat in the building. HJP arranged for a fire engineer to inspect the building.

13 The result of this survey was a finding that due to the presence of combustible material on the façade, a form EWS1 could not be issued. According to Mr. Khan, the fire engineer did not recommend any risk mitigation measures such as a 24/7 waking watch or upgrading the fire alarm.

14 The Tribunal asked Mr. Khan whether HJP were instructed to recommend such measures. Mr. Khan said that they were. It is unfortunate that the April 2021 letter from HJP was not produced by the Applicant in its bundle of documents for the hearing. Contrary to Mr Khan's explanation, this document would have been relevant to the Tribunal’s understanding of the background.

15 After the HJP report, the Applicant took no further action until after new legislation came into force in January 2022. Once that legislation came into force the leasehold owners or some of them pressed the Applicant to seek further advice. Accordingly, the Applicant retained TRI Fire to inspect the building and to make recommendations.

16 The Tribunal was surprised by Mr Khan's muted reaction to the HJP report. Although the report did not call for action, in the aftermath of the Grenfell tragedy, a finding that an EWS1 could not be issued should have been a sufficient trigger for remedial works to be progressed without delay.

17 On 4 May 2022 TRI Fire delivered to the Applicant a Fire Risk Appraisal of External Wall construction (FRAEW)] in respect of the building. They reported as follows.

"Tri Fire Ltd was commissioned by Roxborough Heights Management RTM to visit Roxborough Heights to undertake a Fire Risk Appraisal of the External Wall (FRAEW) construction in accordance with PAS 9980:2022. We have also been asked to produce a related EWS1 form. We visited the premises on 14th April 2022.

Our overall view is that the collective effect of the fire safety measures on the site considered holistically, as opposed to each measure in isolation, is that the external wall systems that are present do have a detrimental impact on the overall fire safety of the building. The risk rating in line with PAS 9980 is high.

The outcome of our review is that remedial works are required.

Our current RICS EWS1 form rating is B2, meaning:

B2 - I have concluded that an adequate standard of safety is not achieved, and I have identified to the client organisation the remedial and interim measures required

Option B is for buildings where combustible materials are present in the external wall

We believe that the risk is such that a waking watch should be introduced at Roxborough Heights. Considering the extent of the EPS render system and spandrel panels, the height of the building, and the other fire safety measures, we believe there is an unacceptable risk. The risk presented by the external façade is sufficient to require this, as a fire breaking out of a flat and involving the façade material has the potential to spread rapidly across all floor levels, as well as the means of escape, thus rendering the 'stay put' evacuation policy unsuitable.

The waking watch is to be provided immediately and should be in place on site 24 hours a day seven days a week. We strongly recommend that action is taken to install a temporary fire detection and alarm system to the building in accordance with the NFCC guidance Guidance to support a temporary change to a simultaneous evacuation strategy in purpose-built block of flats. This is to limit the expense of the waking watch."

18 Mr Khan described the outcome of the TRI Fire report as shocking. In due course he made enquiries about sourcing a 24/7 waking watch

team and the procurement of a suitable fire and heat safety system. The results were as follows.

19 On 20 July 2022, Mr Khan obtained waking watch proposals at annual cost of about £224,256 per annum being a cost of £15,000 to £18,000 per month.

20 Between 27 July 2022 and 17 August 2022 Mr Khan obtained fire alarm quotes from three contractors in the sums of £71,430 plus VAT, £90,000 plus VAT and from Sygma, £61,486 plus VAT.

21 On 28 July 2022 the Building Safety Fund opened for new applications.

22 On 24 August 2022 Centor Insurance and Risk Management wrote to Mr Khan as to insurance renewal with Aviva with effect from 1 September 2022. The premium quoted was £23,014. Centor said that

"The premium change from last year is the result of the increased buildings declared value, and due to Aviva re-rating the risk following advices that the property has a highly combustible Expanded Polystyrene render system and cladding containing PIR insulation.

Specific Policy Subjectivities/Exclusions/Conditions/Clauses

Alarms are upgraded to fully automated, remoted monitored within 6-8 weeks of renewal. Failure to comply may result in cover being revoked or additional terms applied.

Subject to maintaining 24-hour concierge with regular/hourly patrols of building/site.

All action points within the Fire & H&S reports supplied, must be fully completed or progressed to conclusion within 4 months of renewal.

6 Months regular updates required on the funding and planning of cladding removal and progression of securing funds from the Government Building Safety Fund

Full Building Revaluation to be completed within 6 months of renewal"

23 Centor could not obtain premium quotes from any other insurers. Aviva made its proposal because it was the incumbent underwriter.

24 The Tribunal finds that once it became clear that Aviva was the only insurer and that Aviva required as a condition of maintaining cover that either a 24/7 waking watch was provided or the fire alarms were upgraded, the Applicant had no choice but to comply and provide one or other mitigation measure within the narrow timescales required by Aviva.

25 The Applicant decided to proceed with a fire alarm upgrade being the cheaper solution than a waking watch. It also decided to proceed with

Sygma, their quote being the lowest quote of the three quotes the Applicant obtained.

26 Mr Khan was concerned about the consequences of delay given that he had only 6 to 8 weeks from insurance renewal on 1 September 2022 to begin the waking watch or upgrade the alarms.

27 Sygma performed the upgrade work in November 2022 at a cost of £73,111.20 including VAT; this was about £2,000 more than their quote.

28 It is against this background that the Applicant chose not to engage in statutory consultation under section 20 of the Act and proceeded with the Sygma work.

29 On 15 September 2022 the Applicant made its application to the Tribunal for dispensation.

30 In response to directions issued by the Tribunal on 20 September 202 the Respondents obtained a quotation for the supply and installation of a wireless automatic fire alarm system in accordance with BS5839 part 1 standards. On 5 December 2022, CBM quoted a price of £47,671 plus VAT being about £57,205.

31 The Tribunal notes that the British standard BS5839 for fire detection and fire alarms for buildings is the code of practice for the design installation commissioning and maintenance of systems in non-domestic premises. As noted, the building is residential apart from the commercial unit on the ground floor.

32 Further this quote was obtained after the Sygma Works had been performed. The quote does not suggest that the building had been visited by CBM when quoting. Indeed the Tribunal infers that CBM would not have quoted had they known that the work had already been performed.

33 Mr Khan stated that, on receipt of the CBM quote, he called CBM and they confirmed that they do not install fire heat detectors; they only install fire smoke detectors. They confirmed that they are specialised electricians and there is only one person who deals with fire alarm systems. Mr Khan said the Applicant was advised to install heat detectors in each flat, not smoke detectors.

34 Mr Khan said that he called again on numerous occasions regarding this quote but he did not receive a satisfactory response to his questions as to lead time, number of detectors, BAFE certification, past experience and cost per unit.

35 Mr Khan told the Tribunal that he was particularly concerned by the absence of any information from CBM as to how long it would take them to complete the work. If the time allowed by Aviva for the alarms to be upgraded expired without the upgrades having taken place, the

Applicant would have to arrange a waking watch. As Mr Khan put it, one month's delay would cost £18,000 for a waking watch which was broadly equivalent to any saving that might have been achieved by engaging CBM rather than Sygma.

The law

36 The relevant statutory material is annexed to this decision.

37 The Tribunal adopt this summary from Tanfield on Service Charges and Management, paragraph 11.53.

"The leading authority on applications for dispensation is the Supreme Court's decision in Daejan Investments Ltd v Benson. In that case the Supreme Court held that the main, indeed normally, the sole question for the Appropriate Tribunal when considering how to exercise its jurisdiction in accordance with s.20ZA(1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements. The financial consequences for the landlord of not granting a dispensation is not a relevant factor. The Appropriate Tribunal may grant dispensation on such conditions as it thinks fit: provided that any such conditions are appropriate in their nature and their effect.

Given that the purpose of the consultation requirements is to ensure that the tenants are protected from (1) paying for inappropriate works or (2) paying more than would be appropriate, the issue on which the Appropriate Tribunal should focus when entertaining an application under Landlord and Tenant Act 1985 s.20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the consultation requirements. Thus, the main, indeed normally, the sole question for the Appropriate Tribunal when considering how to exercise its jurisdiction under Landlord and Tenant Act 1985 s.20ZA(1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements."

38 This Tribunal is the appropriate tribunal.In deciding whether it is reasonable to make a determination in favour of dispensation, the Tribunal has regard to the following:

a) the Tribunal's task is to consider if the tenants have suffered financial prejudice by the failure to consult;

b) the Tribunal has been unable to identify any such prejudice;

c) from the moment that Aviva notified their requirements, the Applicant had no practical choice but to comply within the time limit stipulated by Aviva;

d) the Tribunal accepts that the timetable for compliance with consultation was incompatible with the timetable for the

upgrade of the alarms without having to arrange at least one month's waking watch at a cost of about £18,000;

e) this cost would have exceeded any saving that might have been achieved by engaging CBM rather than Sygma had that been an option for the Applicant.

39 For those reasons, the Tribunal finds that it is reasonable on the facts of this case to determine that the Applicant have dispensation from consultation in relation to the Sygma Works.

40 That is not the end of the matter.

41 A number of criticisms were made in particular by Mr Garg and Mr Patel about the management of the building by the Applicant and its performance as the RTM manager in relation to fire safety issues. These criticisms included the following.

42 First, it was said that the Applicant was slow to react to what was happening in relation to fire safety in buildings and changes in legislation. The Applicant should have applied for a UK government grant to fund a waking watch in January 2022.

43 Secondly, the Applicant had allowed the fire alarm system to become outdated and in need of updating.

44 Thirdly, Mr Garg said that he was not opposing the Sygma Work, but he had informed Mr Khan of the Building Safety Fund but despite that the Applicant took no action. Mr Garg did complain of being forced to pay despite an absence of communication from the Applicant to the leaseholders which would have helped in finding a lower quote without delay. There had been no feedback or communication from Mr Khan after the CBM quote was provided to the Applicant.

45 Fourthly, Mr Viatla said that the leaseholders wanted to be reimbursed with the difference between the amount charged by Sygma and the sum quoted by CBM. Further, Mr Viatla's understanding was that the freeholder should contribute to the building safety works costs and government guidance as to who bears the cost should be followed.

46 Mr Sahni complained of financial irregularities by the Applicant which needed to be examined.

47 Mr Khan stated how he believed he had kept the leaseholders informed including by holding an EGM in August 2022. Further, his understanding was that the Building Safety Fund was not available for internal improvements such as to a fire alarm system but could be applied to works to deal with external matters such as the replacement of insulation made from unsafe materials

48 Clearly, there are some serious divisions of understanding and opinion between the Applicant and some of the leaseholders of flats in the building as to how the fire safety issues have been dealt with.

49 However, it is no part of the Tribunal's role to adjudicate any issue other than whether or not it is reasonable for the Applicant to have dispensation from the consultation requirements concerning the Sygma Works. The Tribunal makes it clear that it has made no findings of fact as to the other complaints above.

50 It will be a matter for any leaseholders who wish to do so to pursue those complaints as they may be advised. However, determining the merits of them is not a matter for this Tribunal.

51 Equally, the Act provides for service charges to be capped at what is reasonable as provided for in the Act. In concluding that it is reasonable that the Applicant should have dispensation from consultation, the Tribunal is not making any finding that the costs incurred are reasonable within the meaning of the Act. It is a matter for the parties whether they wish to pursue that question.

52 The Tribunal is not seeking to encourage further proceedings between the parties. Just as there was an orderly discussion of the issues at the hearing of this application, it is to be hoped that a dialogue can be maintained that will enable the differences of view to be resolved, so far as is possible, by agreement.

Outcome

53 The Tribunal determines that the Applicant shall have dispensation from consultation under section 20 of the Landlord and Tenant Act 1985 in relation to the fire alarm system upgrade works performed to Roxborough Heights in November 2022 at a cost of £73,111.20 including VAT.

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).

Annex

Landlord and Tenant Act 1985

20 Limitation of service charges: consultation requirements

(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.

20ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate 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, and
- "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) ....

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.