



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

Case Reference : **CAM/42UD/LDC/2023/0046**

HMCTS Code : **V: CVP REMOTE**

Property : **Focus Apartments, Eastgate House,
45 Carr Street, Ipswich IP4 1HA**

Applicant : **Grey GR Limited Partnership**

Respondents : **The leaseholders**

Type of Application : **For dispensation of the
consultation requirements under
section 20ZA of the Landlord and
Tenant Act 1985**

Tribunal Members : **Judge Wayte
Gerard Smith FRICS**

Date of Decision : **2 April 2024**

DECISION

The Tribunal determines that:

- (1) Under section 20ZA of the Landlord and Tenant Act 1985, all of the consultation requirements are dispensed with in respect of the fire compartmentation works (“the Works”) set out in paragraph 13 of the applicant’s Statement of Case dated 25 August 2023.**

- (2) Dispensation in respect of the Works is subject to the condition that the applicant writes to each leaseholder within 56 days of the date of this decision confirming the final cost of the works and what proposals there are in relation to the recharge of those costs to that leaseholder, bearing in mind the protections set out in the Building Safety Act 2022.**
- (3) The applicant has confirmed that its costs of the application will not be sought from any leaseholder as part of the service charge.**

The application

1. The applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements in respect of the fire compartmentation Works which were carried out to the property in 2023.
2. The respondents are the leaseholders of the 25 apartments within the block who are potentially responsible for the cost of the works under their lease, subject to the protections set out for leaseholders in the Building Safety Act 2022 and any other successful action against third parties such as the developer and its consultants/contractors.
3. The issue in this case is only whether the consultation requirements of section 20 of the 1985 Act and the Service Charges (Consultation etc) (England) Regulations 2003 should be dispensed with. Any issue as to the cost of the works may be the subject of a separate application under section 27A of the Landlord and Tenant Act 1985 to determine the payability of any service charge demanded under the lease, although the tribunal recognises that in reality the main concern of the leaseholders is the extent to which they will be liable for those costs.

The background

4. The property was originally constructed as an office building in or about 1965 but converted into residential use between 2015/16. It is a 5 storey residential tower block with a total of 25 one and two bedroom apartments, located above commercial premises. The top storey measures approximately 22m above ground level.
5. On 14 June 2017 a fire broke out in the 24 storey Grenfell Tower in West London. The fire spread quickly, exacerbated by newly installed and flammable exterior cladding on the building. 72 people died.
6. The landlord in this application became the registered proprietor of the head lease of the property on 10 January 2018. A Fire Risk Assessment

carried out on its behalf on 21 February 2018 confirmed that a “stay put” policy was appropriate, in line with the pre-Grenfell approach for tower blocks, subject to further investigation in several relatively minor areas.

7. However, in the wake of the Grenfell Tragedy, it became clear that there was an urgent need to check the safety of tower blocks more fully, particularly those in excess of 18 metres high. The initial concern was in relation to Aluminium Composite Material (ACM) cladding, of the type used at Grenfell and a Government Building Safety Fund was set up to help pay for necessary works. On 31 July 2020 the Government extended the scheme to include funding for non-ACM remediation costs.
8. On 23 November 2020 Wintech Facades Engineering Consultancy (Wintech) carried out an intrusive survey of the property. Their report dated 18 December 2020 found potentially large amounts of combustible material forming part of the external wall system and a lack of cavity barriers/fire stopping.
9. Following the Wintech report, the Applicant instructed Tenos to undertake a sample intrusive compartmentations survey which identified defects in compartmentation requiring remediation. In particular the works were in relation to fire doors, wall construction, fire stopping and structural fire protection. Their report and technical note were produced in August 2021.
10. The Applicant’s project managers Tuffin Ferraby Taylor LLP (“TFT”) subsequently produced a report on 1 August 2022 including a schedule of the works. They were sent out to tender to over 10 contractors but only one, Saracen Compliance Services Ltd (“the Contractor”) replied.
11. The contract with Saracen was signed on 17 April 2023 and the works were completed by September 2023. Further works to the front doors of the apartments were carried out but are outside the scope of this application. The Applicant has confirmed that there will be no charge in respect of the replacement of those front doors, which it recognises were the leaseholders’ responsibility in any event under the terms of their leases.
12. The tribunal has previously granted dispensation of the consultation requirements (subject to conditions) in relation to interim works to install a common fire alarm and the major works to remove and replace external wall systems, combustible cladding/insulation and any other works deemed necessary to ensure the safety of the building (Case Reference: CAM/42UD/LDC/2021/0054). Those major works have not yet commenced and are the subject of a separate application for a Remediation Order by the Secretary of State for Levelling Up, Housing

and Communities (Case Reference: CAM/26UH/HYI/2022/0004), which is yet to be determined.

13. The leaseholders were advised about the need for the Works covered by this application by a letter dated 9 May 2023 and the timing of them by subsequent letters dated 8 June, 22 June, 18 July and 8 August 2023. Confirmation that the Works had been completed was given by letter dated 20 September 2023. That letter also confirmed that the Applicant would cover the cost of replacing the apartment doors. None of those letters consulted as such in respect of the Works, although contact details were given for queries or support.
14. This application was dated 25 August 2023 and directions were ordered on 23 November 2023. Those directions required the applicant to write to the respondents informing them of the application and the timetable for any objections.
15. The applicant's bundle contains a copy email dated 4 December 2023 confirming that the application form, statement of case and directions were served on all leaseholders by email on that day. A link was provided to all of the documents and a covering letter with the same information was placed in the common parts as ordered.
16. Statements of objection were received on behalf of 8 leaseholders and a further statement from Chris Battle, who had represented the objecting leaseholders in the previous application for dispensation. A hearing was requested which took place by Cloud Video Platform (CVP) on 5 March 2024. The applicant was represented by counsel Natalie Foster, with Peter Wyld of TFT and Matthew Harris of Principle Estate Management LLP as witnesses. Chris Battle also attended to represent himself and another leaseholder, Mr Harris.
17. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act and the Regulations.

The Applicant's case

18. The grounds of the application in the Statement of Case dated 25 August 2023 included the statement that the Works were required to be carried out as soon as possible and the fact that only one tender was received made it impossible to comply with the statutory requirements, which require at least two.
19. The applicant relied on the Supreme Court decision in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14 in support of its application, which confirmed that the key question for the Tribunal is whether the tenants would be prejudiced by a lack of consultation. They submitted that the leaseholders would not be prejudiced by the grant of

dispensation as the Works were required and necessary to ensure the safety of the residents and their property. Any challenge to the reasonableness of the costs could still be brought if dispensation is granted.

20. The applicant further argued that in the absence of prejudice, dispensation should be unconditional.

The Respondents' position

21. At the hearing, Mr Battle confirmed that he was happy for the works to have gone ahead but there was a need for greater transparency from the landlord going forward as it was not clear what works had actually been carried out to date and their cost to him and other leaseholders. He was not a qualifying tenant under the Building Safety Act 2022, although Mr Harris and others were and therefore had the benefit of the full leaseholder protections under that Act.
22. Mr Harris had provided a written statement which objected to unconditional dispensation as he stated that it had been very difficult to obtain information from the landlord about likely costs without issuing separate service charge proceedings. In particular, the accounts for 2021 onwards were still unsigned and earlier service charge demands had included the cost of unspecified building safety works. He stated that he would withdraw his objection if the applicant agreed to specific and regular updates of all aspects of the work and the recovery of costs from third parties. He also wanted confirmation that the cost of the Works would not be added to his service charge demands.
23. These concerns were replicated in the other written objections.
24. The applicant replied to the written objections in writing on 17 January 2024. That document reiterated the view that no relevant financial prejudice had been demonstrated and therefore the default position should be that unconditional dispensation is granted. In any event, most of the objections referred to all of the works to be carried out to the Property and the conditions attached to the previous grant of dispensation would continue until the works to the external wall systems were completed. That said, the applicant also indicated that it would be willing to provide an update to the leaseholders in relation to the Works and progress in relation to any third party proceedings to recover remediation costs.

The Tribunal's decision

25. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*". The objections by the leaseholders to this application were to unconditional dispensation, as they felt that

communication with the leaseholders continues to be unclear, particularly in respect of the costs they are likely to bear.

30. The applicant had agreed to provide information about third party recovery but the tribunal considers that it is appropriate to order more specific information about the cost of these Works as a condition of dispensation. The wording of the condition was discussed in the hearing and the timing agreed with Mr Harris.
31. On that basis, the Tribunal considers it is reasonable to grant dispensation in respect of the statutory consultation requirements for the Works.

Application under s.20C Landlord and Tenant Act 1985

31. There was no application for any order under section 20C (limiting the ability of the landlord to seek their costs of the dispensation application as part of the service charge) before the tribunal. That said, the applicant confirmed that they would not seek the recovery of the costs of this application as part of the service charge in any event.

Name: Judge Wayte

Date: 2 April 2024

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)