



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

Case Reference : **BIR/00CN/LDC/2020/0003**

**HMCTS
(paper, video, audio)** : **CVPREMOTE**

Property : **Brindley House, Newhall Street, Birmingham,
West Midlands B3 1LL**

**Applicant
Managing Agent
Representative** : **Brindley House RTM Company Limited
: Centrick
: J B Leitch Solicitors**

Respondents (1) : **The Long Leaseholders listed in the
Application (Underlessees)**

Respondent (2) : **Wallace Estates Limited (Head Lessee &
Intermediate Lessor)**

Date of Application : **23rd June 2020**

Type of Application : **To dispense with the consultation
requirements referred to in Section 20 of the
Landlord and Tenant Act 1985 pursuant to
Section 20ZA**

Tribunal : **Judge JR Morris
Mr V Ward BSc Hons FRICS – Regional
Surveyor**

Date of Directions : **31st July 2020**

Date of Decision : **8th September 2020**

DECISION

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Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing on the papers which has been consented to by the parties. The form of remote hearing was Video (V: SKYPEREMOTE). A face-to-face hearing was not held because it was not practicable, no-one requested the same, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. The Tribunal determines that it is reasonable to dispense with the Consultation Procedure in all respects except that a combined Notice of Intention to Carry Out Works and Notice of the Landlord's Proposals pursuant to the section 20 Consultation Procedure should be served on each Leaseholder 7 days before the commencement of the Proposed Works. No period for observations or opportunity for alternative contractors to provide estimates need be given. The Combined Notice should inform the Leaseholders in a single document of the Proposed Works as approved by the Fire Risk Assessor, as clearly and concisely as possible, including the following information:
 - Brief statement that the Proposed Works are needed on the advice of the Fire Risk Assessor and the National Fire Chiefs Council Guidance to enhance fire safety following the Trident Report's finding that the cladding and insulation are a significant fire risk to the property and it will take some time to replace these materials.
 - The quotation selected and reasons for doing so, if it is not the cheaper of the two, and the estimated overall cost and service charge contribution of each Leaseholder in respect of the works.
 - The operation of the system should be outlined so that Leaseholders know that it will be a combined alarm and Waking Watch (the cost of the latter being reduced by the presence of the alarm, if this is correct, and that a fully automated system would be substantially more, if this is correct). The alarm will require annual maintenance.

Reasons

The Application

2. An Application for dispensation from all or some of the section 20 consultation requirements in respect of qualifying works to install a fire alarm system at the Property referred to hereafter as “the Proposed Works”.
3. The justification for the application is that the Applicant aims to carry out works to install a fire alarm system which will reduce the extent of the waking watch currently in place at the Property. The works are said to be urgent for safety reasons and also to reduce the financial burden to Leaseholders by the operation of the waking watch. The cheapest quote currently obtained for the works is £46,044 including VAT.
4. Directions were issued on 25th June 2020 which stated that the Application would be determined based on written representations and without an inspection, unless either party made a request for an oral hearing. An oral hearing was requested, it was asked by the Applicant that this should be held as soon as possible. Additional Directions were made informing the parties that the hearing would take place on 25th August 2020 by video conferencing due to the guidance given in respect of the Covid-19 Public Health Emergency.
5. The Directions required the Applicant to send to the Tribunal and the Respondents by 3rd July 2020 the following documents and confirming compliance:
 - a) A copy of the Application Form and accompanying documents (except the Lease)
 - b) A copy of the Directions;
 - c) A statement explaining the purpose of the Application and the reason why dispensation is sought. This should include reference to the Lease provisions that allow the cost of the Proposed Works to be charged back to the Leaseholders as service charges.
 - d) Copies of any specialist reports (i.e. the Fire Risk assessment) obtained in respect of the Proposed Works together with any quotes received and any other appropriate material.
6. The Applicant provided a bundle to the Tribunal. which contained a statement of case in which it was said that the Applicant is a Right to Manage Company of the Property. The Freehold Title to the Property is held by Canal & River Trust under HM Registry Title Number WM852530 which has granted a Head Lease to Wallace Estates Limited under HM Registry Title Number WM856520 (copies of the Register Entries were provided). The Managing Agent appointed for the Property by the Applicant is Centrick Limited.
7. The Bundle included the following documents:
 - 1) A Statement of Case by the Applicant.

- 2) Copies of HM Land Registry Entries Numbers WM852530 and WM856520 (Annex 1 to Applicant's Statement).
- 3) A copy of one of the Leases for an Apartment for a term of 150 years less three days commencing 31st March 2005, confirming the Leaseholders hold long leases. The Leases also contain variable Service Charge provisions (Annex 2 to Applicant's Statement). The Leases are said to be in common format.
- 4) A Report by Trident Building Consultancy Limited ("the Trident Report") and Sandberg Consulting Engineers ("the Sandberg Report") which is a Review of the Cladding Materials of the Property submitted as a Fire Risk Assessment (Annex 3 to Applicant's Statement).
- 5) Email correspondence from West Midlands Fire Service commenting on the report which includes guidance from the National Fire Chiefs Council in support of the Fire Risk Assessment (Annex 4, 5 and 6 to Applicant's Statement).
- 6) Two quotations received from Bristol Fire and Fire Compliance Services Ltd (Annex 7 to Applicant's Statement).

Application for Variation BIR/00CN/LVT/2020/0004

8. The Applicant is of the opinion that the terms of the Leases do not permit the raising of a supplemental demand in respect of further Interim Expenditure at any time within the Financial Year. The works for which this Application for dispensation has been made have drawn attention to the need for such provision. Firstly, funds are needed to carry out the Proposed Works. Secondly, the problems that have been found with the construction of the building have resulted in an additional insurance premium being demanded. The Applicant is a Right to Manage Company and therefore has no funds of its own in reserve to meet such payments when they are required to be made between the previous annual advance service charge payment and the next. Therefore, it has applied for a variation of the Lease to enable a supplemental demand to be made.
9. The application for variation (BIR/00CN/LVT/2020/0004) is to be heard at the same time as this Application for dispensation because the Applicant considers that, whether the Application for dispensation is granted or not, an interim service charge may need to be levied to meet the additional insurance premium and the Proposed Works if they are to be carried out within the current service charge year.

Description of the Property

10. The Property comprises two residential apartment blocks of seventeen storeys (ground and sixteen floors) residential apartment blocks with one commercial unit located at ground floor level. The lower fifteen storeys were probably built in the 1970s and the sixteenth and seventeenth storeys being added in the early 2000s. The Property is understood to be constructed of reinforced steel frame with concrete infill panels interspaced with a linear horizontal curtain wall system.

The floors are concrete and there are three staircases. The sixteenth and seventeenth storeys have cladding which is referred to later in these Reasons. All 182 apartments, including 2 penthouses, are subject to long leases which are underleases, there being a head lease. These underleases are referred to here as “the Leases”. It was said that the Leases are in similar terms.

The Law

11. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
12. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations are summarised in Annex 2 of this Decision and Reasons.
13. Section 20ZA allows a Landlord to seek dispensation from these requirements, as set out in Annex 2 of this Decision and Reasons and this is an Application for such dispensation.
14. In determining whether or not dispensation should be given and the extent of such dispensation the Tribunal took into account the decision in *Daejan Investments v Benson* [2013] UKSC 14. Lord Justice Gross said that “*significant prejudice to the tenants is a consideration of the first importance in exercising the dispensatory discretion under s.20ZA(1)*”.
15. In addition, Lord Neuberger said that the main issue and often the only issue is whether the tenants have been prejudiced by the failure to comply:
Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 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 requirements. [44]

Attendance at the Hearing

16. Person attending the hearing on 25th August 2020 by video conferencing were:
For the Applicant:
Mr Cameron Stocks of Counsel,
Ms Katherine Edwards of JB Leitch LLP,
Mr Chris Blackburn and Mr Sam Diffley of Centrik,

For the Respondents:

Mr Iqbal Mohammed;

Ms Aman Kaur and Ms Samantha Evans of Citizen Housing Association

Preliminary Issue 1

17. The Representatives for Citizen Housing Association raised as a preliminary issue their concerns about who the parties to the Lease are and whether the right persons were parties to the Application. They said that they had an Underlease which is between three persons:
MCD (Brindley House) Limited (the Landlord)
Brindley House Management Company Limited (the Management Company)
Citizen Housing Association (“the Tenant”)
18. They said that on looking at the Land Registry Entry for Title Number WM856520 Wallace Estates is the Registered Proprietor as at 17th July 2014 and the Brindley House RTM Company Limited is stated as having acquired the right to manage as at 16th November 2015. On further investigation at Companies’ House, the Representatives for Citizen Housing Association said that they had found that the MCD (Brindley House) Limited and Brindley House Management Company Limited, the Landlord and Management Company respectively, named on their Underlease had both gone into liquidation. In addition, Wallace Estates Limited, named as the current Landlord had gone into liquidation. Citizen Housing Association asked who now was the Landlord and Management Company.
19. Also, as Citizen Housing Association held underleases to 31 Apartments to which it had in turn granted shared ownership sub-underleases there was concern who now was the Landlord and Management Company. The Association was aware of its responsibilities to its shared Sub-underleases and asked whether a new Underlease and new Sub-underleases should be granted naming the new Landlord and Management Company.
20. Counsel for the Applicant set out the position with which the Tribunal concurs and is as follows:
21. The Freehold Title of the Property was originally held by British Waterways Board which subsequently became the Canal & River Trust and are now the Registered Proprietors whose title was registered on 10th September 2012 as per HM Land Registry Entry WM852530.
22. The original Freeholder, British Waterways Board, now the Canal & River Trust, granted a Lease (the Head Lease) to MCD (Brindley House) Limited on 31st March 2005 for 150 years from 31st March 2005. The Leasehold Title was registered on 13th May 2005 as noted on the Property Register for WM856520.

23. MCD (Brindley House) Limited set up Brindley House Management Company Limited to manage the Property and granted leases (Underleases) to each of the Apartments for 150 years less three days from 31st March 2005 with MCD (Brindley House) Limited as the Landlord and Brindley House Management Company Limited as the Management Company.
24. On 17th July 2014 MCD (Brindley House) Limited as the Lessee (Tenant) of the Head Lease assigned its interests in the Property to Wallace Estates Limited as noted on the Proprietorship Register for WM856520. This included its rights and obligations as a Lessee (Tenant) under the Head Lease and its rights and obligations as a Lessor (Landlord) under the Underleases. Brindley House Management Company Limited continued to manage the Property until 16th November 2015 when the Applicant as a Right to Manage Company, took over the Lessor's/Landlord's and Management Company's role of management of the Property under the Commonhold and Leasehold Reform Act 2002.
25. If Wallace Estates Limited and Brindley House Management Company Limited are in liquidation this does not affect the position of the Underlessees or Sub-underlessees. The liquidator is in the role of Landlord and the Applicant is managing the Property.

Decision on Preliminary Issue 1

26. The Tribunal found the parties to the Application to be correct.

Preliminary Issue 2

27. A Respondent Leaseholder, Mr Iqbal Mohammed, objected submitting as one of the grounds for his objection that the Lease did not permit improvements to be charged to the service charge and that the Proposed Works were an improvement.
28. The Tribunal considered this point as a Preliminary Issue and asked the Applicant to identify the provisions in the Lease which allow the Proposed Works together with the Waking Watch. The Tribunal was referred to the following:
29. Paragraph 1 of the Sixth Schedule:
Inspection repairing re-building (substantially in accordance with the principles of the Development) maintaining renewing (by way of repair only) cleaning re-pointing improving or otherwise treating as necessary and maintaining the Maintained Property and every part of the same in good and substantial repair order and condition and renewing and replacing all worn or damaged parts
30. Paragraph 10 of the Sixth Schedule:
Providing operating repairing maintaining insuring and (if necessary solely due to the item being beyond economic repair) renewing and adding to any

security gates associated security apparatus security cameras, security lights, firefighting appliances communal television aerials and satellite dishes, lighting apparatus, water pump, fire alarm system, heating and lighting system, any fixtures, fittings and furnishings of the maintained Property and such other equipment or Service installations as the Management Company from time to time may reasonably think fit

31. Counsel for the Applicant said that the above specifically authorised the installation of a fire alarm. In addition, the provision below required the Applicant to comply with any statutory requirements and that the local authority could impose a prohibition order if it considered the Property unsafe. In the light of the advice and guidance the Applicant had received from its Fire Risk Assessor the local authority would be likely to consider the Property unsafe unless the fire alarm were installed.
32. Paragraph 19 of the Sixth Schedule:
Complying with the requirements and direction of any competent authority and with the provisions of all statutes regulations orders planning permission and byelaws relating to the Maintained Property except in so far as such compliance is the responsibility of the owner of any individual dwelling on the Development
33. The Tribunal considered the provision below permitted the Waking Watch Paragraph 8 of the Tenth Schedule stated:
The Management Company may introduce new services for the benefit of the Maintained Property at any time and it shall be entitled to recover the cost of such new services pursuant to the provision of the Sixth Schedule Provided that the Management Company shall act in the interests of good estate management in the exercise of its rights under this paragraph
34. Mr Mohammed replied that he considered the whole emphasis of the quoted paragraphs of the Sixth Schedule related to repair not installing an entirely new system and that Paragraph 8 of the Tenth Schedule related to a service whereas the installation was not.

Decision on Preliminary Issue 2

35. The Tribunal examined the Lease and noted in particular the words of Paragraph 10 of the Sixth Schedule: *Providing operating ... and adding to any security, firefighting appliances ... fire alarm system*
36. The Tribunal found that this provision enabled the Applicant to carry out the Proposed Works of installing a fire alarm.

Evidence re Dispensation

Applicant's Case

37. The Applicant provided a statement of case explaining the background to the application as follows.
38. High-rise residential properties with cladding have been under scrutiny in recent years due to certain cladding being found not to be fire resistant. The Applicant was aware that the external cladding to the facade of the Property (“the Cladding”) required testing in this regard and instructed Trident Building Consultancy Limited to produce a report in respect of it. The investigation found that the Cladding of the upper two storeys consists of Trespa non-FR Grade TYP Standard Panels. These panels are referred to as High Pressure Laminate Panels.
39. The Trident Report confirmed that the High-Pressure Laminate Panels enclosing the roof top apartments is “...not fire resistant, has a Class D Fire Rating and is a significant fire risk to the property.” In addition, the insulation behind the High-Pressure Laminate Panels has been identified as a Polyisocyanurate product (confirmed in the Sandberg Report). The Trident Report states that this is insulation “is combustible and has a s2 smoke release rating (emits lots of smoke) and is a significant fire risk to the property.” At the Hearing the Applicant’s representatives said that the insulation affected the whole of the Property and not just the two top floors. Finally, the Trident Report states that core tests to the insulation, behind the rendered surfaces is made up of polystyrene boards in varying depths, with some areas having no evidence of vapour barrier. The Trident Report states that “the materials used are a significant fire risk to the property.”
40. The Applicant has since the Trident Report been advised that the Property is no longer suitable for a “stay put” strategy in the event of fire and a “simultaneous evacuation” strategy should be adopted.
41. The West Midlands Fire Service were provided with a copy of the Trident Report and confirmed their advice to “incorporate a simultaneous evacuation system to any block that has a form of flammable cladding.” It also provided the Applicant with a copy of the National Fire Chiefs Council guidance. This confirms that the early detection of a fire may comprise of:
 - a. A common fire alarm system throughout the building with detectors and sounders where necessary
 - b. A waking watch using trained staff to assist with detecting a fire and raising the alarm
 - c. A combination of both a. and b. above
42. A Waking Watch has been put in place at the property in accordance with the advice of the Fire Risk Assessor, Mr Chris Easton FRICS C Build E, (“the Fire Risk Assessor”) of Easton Bevins Ltd, Chartered Building Surveyors, West

Midlands Fire Service and the National Fire Chiefs Council guidance. However, paragraph 4.14 of the National Fire Chiefs Council (NFCC) Guidance states:

43. *“NFCC strongly recommends that where a change in a simultaneous evacuation is deemed appropriate and will be required for medium to long periods of time, that a temporary common fire alarm system is installed. This is because a temporary alarm when designed, installed and maintained appropriately is a more reliable and cost-effective way to maintain a sufficient level of early detection. An appropriate communal fire alarm and detection system will provide more certainty that a fire will be detected and warned at the earliest opportunity rather than rely on using trained staff.”*
44. To reduce the need for the Waking Watch, the Applicant wishes to install an alarm system within the common areas. 4 klaxons per floor are required to ensure that there is an adequate decibel rating within each of the flats along the corridors with 2 klaxons for each of the penthouse floors. In the event that one of the fire alarms/smoke vents (that are already in place) are activated, a repeater or scope unit within the Property will send a signal to the one remaining member of the waking watch to manually activate the klaxons.
45. The West Midlands Fire Service said that it was for the Fire Risk Assessor to determine whether the manually operated klaxon system is suitable and sufficient during the interim period prior to removal of the cladding.
46. In order that the installation can be carried out as soon as possible this Application is made for dispensation.
47. In obtaining the estimates the e mail from the Fire Risk Assessor to the West Midlands Fire Service dated 8th June 2020 (Annex 6 of the Applicant's Statement) was used. This explained how the new alarm system operated by reference to a similar system installed at Islington Gates which is adjacent the Property. It asked for permission to instigate the same system at the Property. At Islington Gates, the standard operating procedure is that there is a 24/7 Waking Watch with one security guard in the office and one patrolling. Referred to here as security guards who act as the waking watch wardens and fire marshals. The repeater was amended to identify the block and the floor where a detector was activated. In the event of a detector in the common areas being activated, the security guard will then step outside, verify that the repeater has confirmed the right floor and the right block by seeing the open Automatic Opening Vent (AOV - designed to vent smoke). The security guard will then run to that block and by a manual activation of a key that only the security guards hold, will sound the klaxon for evacuation of that building. The fire service will then be summoned and it is understood that they are in a 7-minute zone. For reasons of maintenance all 6 klaxons at Islington Gate are tested every Tuesday at 9.30, about which the residents are aware.

48. The Residents and Leaseholders have been notified of the procedure and that as soon as they hear the klaxon they should vacate. There are notices all over the building and the lifts informing of the procedure and at the time of writing the email had not been defaced or removed after 4 months.
49. It appeared from the email that it was intended to extend the system at Islington Gates which comprises 6 blocks and combine it with the 2 blocks of the Property, Islington Gates and the Property being only 15 paces apart.
50. At the Property there would be two klaxons on each floor, because the corridors are quite long, although the two blocks which comprise the Property will not be linked. There are currently 2 fire doors between each building and the Fire Assessor considered this to be sufficient. The Property has concrete floors and 3 staircases and the fire doors to the flats are now up graded. On activation of the smoke detectors in the communal areas of the Property the AOVs will activate and a repeater will sound in the security office of the Property. This is via a wi fi system known as Scope which will repeat in the security office of Islington Gates, some 20 to 25 metres away. Then the same procedure will be adopted as that operated at Islington Gate.
51. It is anticipated that the patrolling security guard will also patrol all 6 of Islington Gates blocks and the 2 blocks of the Property, 8 blocks in total. It is estimated that this would take approximately an hour followed by a 15-minute break after which the patrol would begin again.
52. It was added that the Regulatory Reform Order Engineer for the Property had approved the scheme. It was anticipated that the costs of the 24/7 Waking Watch would be shared by Islington Gates and the Property.
53. West Midlands Fire Service replied that the Fire Risk Assessor needed to be satisfied that the fire alarm system gave the residents early warning within the individual flats and that there was a robust evacuation system in place, referring to the NFCC Guidance. It was added that the Service was in agreement with the rationale provided of the current fire safety measures and the pre-planned control measures that will be implemented to ensure the continued safety of the residents but that these measures must be maintained.
54. Two quotations have been received as follows:
 - Bristol Fire
 - Early warning fire alarm system - £45,307.25 excluding VAT
 - Connection to fire panel £3,657.85 excluding VAT
 - Fire Compliance Services Ltd
 - Klaxon alarms - £35,880.00 excluding VAT
 - Scope units - £2,490.00 excluding VAT

55. The quotations are to be provided to the Fire Risk Assessor for feedback prior to installation to confirm that they meet the requirements set out in the NFCC Guidance. Until that feedback is obtained the Applicant is not able to say which quotation will be selected.
56. The Waking Watch is required due to the issues with the cladding and the insulation in accordance with Fire Risk Assessor's advice and the West Midland Fire Service and the NFCC Guidance. The Watch is currently provided by SJ Security Solutions at a cost of £10.45 plus VAT an hour with bank holidays attracting a double rate. To date it has cost £56,5612.92 averaging £15,000.00 per month for two fire marshals. The Proposed Works should enable this to be reduced to one fire marshal at a saving £7,500 per month.
57. Overall, the Applicant wants to be able to start the Proposed Works as soon as the Fire Risk Assessor's decision is received and that the Leaseholders are not prejudiced because the installation is urgent.

Respondent's Case

58. There was only one Respondent Leaseholder who objected to the Application.
59. Mr Iqbal Mohammed, Leaseholder of Apartment 296, Brindley House opposed the Applicant's Application for dispensation of the consultation requirements. He provided a Statement of Case which is paraphrased and précised below. He objected to the application for the following reasons:
 - a. There is no urgency or proper basis to dispense with the consultation;
 - b. The applicant has sought to avoid Leaseholder scrutiny by the application;
 - c. Failure to inform Leaseholders of the intention to apply for dispensation;
 - d. Manner of conducting proceedings

Absence of proper basis

60. Mr Mohammed said that the Proposed Works had been known about for well over 2 years and there is no reason now to deprive the Leaseholders of the statutory right to consultation. The Applicant has not provided any explanation as to why the consultation has not taken place sooner. If it had taken place in a timely manner the whole matter would have been completed well within the statutory time frame.
61. The Trident Report was commissioned in December 2019, following the Grenfell fire, and concluded that the cladding to the two top floors, which although suitable when built, is now considered a fire risk and no longer appropriate. The Report does not suggest that the Proposed Works to reduce the risks caused by a fire are so urgent that consultation should be dispensed with. The cladding has been in place for several years and the need for the Proposed Works is as a result of a change in attitude by the Fire Service and the Fire Risk Assessor.

Avoiding scrutiny

62. Mr Mohammed said that that he considered the Applicant was seeking to avoid scrutiny of the Proposed Works by this Application because the efficacy and necessity of them would be questioned. Three fire reports were commissioned in 2018 dated 20th July, 23rd August and 9th September of that year in which the Fire Service required every void in the building being filled with expanding foam and every gap in every door being filled. This was done at a cost in excess of £71,000. However, the reports and the work did not deal with the removal of the cladding. Lenders and surveyors are not prepared to grant a statement of conformity enabling mortgages and sales until this is dealt with. The Applicant's application is because it is reluctant to ask for further contributions from the Leaseholders after the previous works when the work of removing the cladding is still outstanding.

Misrepresentation and failure to inform Leaseholders in notice

63. Mr Mohammed was of the opinion that the Applicant had not been open about its intention to apply for dispensation and that this suggested that it sought to avoid publicity and accountability. In the Update to the Leaseholders on the fire safety issue dated 11th March 2020, following the December 2019 Trident Report, it was stated that: "*Over the coming weeks, you can expect to receive up dated communications from Centrik...These will include things such as...Consultation on the new fire alarm to be installed (known as a Section 20 Notice)*". In the Update dated 24th March 2020 it was stated that "*You will have received a Section 20 notice of intention*" about the upgrades to the fire alarm system and fire evacuation strategy which is a requirement in order to reduce or completely remove the need for the waking watch.
64. Mr Mohammed said that he did not receive any such notice and was not clear whether it was in fact sent. He added that the application for dispensation was made on 24th June 2020 but none of the updates in May which referred to the fire safety work made any mention of the intention to apply for dispensation of the consultation requirements.
65. In support of his statement that he had not received the Notices of Intention, the representatives from Citizen Housing Association said that they too had not received copies for the Notices. In addition, whereas they supported the Application for Dispensation, they doubted whether they had received all the Updates.

Convenience of proceedings for the Applicant

66. Mr Mohammed said that as the Leaseholders were not informed of the Application, they were not prepared for the bundle of papers sent to them. The Directions which gave an opportunity for Leaseholders to respond were buried

amongst an inch of paper relating to the Application. Mr Mohammed indicated that this was to discourage Leaseholders from participating in the proceedings.

67. Mr Mohammed said that without further explanation and case management Leaseholders would have no appreciation of the purpose and effect of the Application.
68. Mr Mohammed said that the Proposed Works are likely to save £7,750.00 a year. It would take 6 years to repay the spend on the fire alarm system. He submitted that it was unlikely that the Waking Watch would be required for 6 years given:
- The national dialogue over how the remedial works on cladding are to be paid for;
 - The attempts being made to claim under the NHBC guarantee which likely covers the cladding; and
 - A subsequent possible change in regulatory behaviour.
69. He said that the removal of the cladding should be the priority in which case the fire alarm works were not necessary, that it is unlikely there was a legal obligation to carry them out and may be improvements and so not within the terms of the Lease (this last point was dealt with by the Tribunal as a preliminary issue – see above).

Active case management

70. Mr Mohammed submitted that an update should be issued in the same form as ordinary updates which:
- a. Sets out the nature, basis and effect of the Application;
 - b. Refer to the previous misleading information and expressly retracts;
 - c. Sets out the projected cost;
 - d. States why the consultation was not commenced in January to June.

Applicant's Response to Respondent's Case

71. The Applicants prepared a Statement of Case in response to the Respondent's objections set out in his email of 29th July 2020 in accordance with the email directions of 31st July 2020. The points raised by the Respondent and itemised by the Applicant are set out below and followed by the Applicant's response:

- a. The works have been known about for two years

Response - The Applicant was aware of the cladding and insulation issues about 18 months ago in December 2019 and was advised that a 24/7 waking watch was required. To reduce the cost of this and to mitigate the fire and health and safety risks the Applicant has commissioned a fire alarm system in accordance with advice from West Midlands Fire Service and the NFCC Guidance.

- b. The works required are not statutorily required but are guidance as to “best practice”

Response – The Applicant is of the view that the lack of a fire alarm system in line with the NFCC Guidance may make the Property unsafe whereupon the local authority may serve a prohibition order under the Housing Act 2004 requiring the evacuation of the Property until works are completed.

- c. The Trident Report does not confirm that the works are urgent

Response – The Applicant disagrees, the Trident Report states: *Our strong recommendation is that you commission the wholesale replacement of these identified combustible materials with appropriately specified materials.* The Applicant is of the view that a significant risk of fire requires urgent action. It is currently applying for a government grant for dealing with the cladding and insulation issues and must carry out any works within strict timescales. The grant does not cover the installation of a fire alarm system.

- d. There has been no issue with the cladding pre-Grenfell just a change in attitude of the fire service

Response – Following Grenfell fire safety measures with regard to both construction and procedures in the event of fire have changed. The Trident Report states: the two phases of construction were commensurate with the standards and legislation of their eras but are a significant risk compared with current legislative standards. Therefore, there have been legislative changes which affect the current obligations of the Applicant requiring the Applicant to act with urgency having regard to fire safety measures, regulations and guidance from West Midlands Fire Service, NFCC, local authority and the Fire Risk Assessor.

- e. The lack of consultation is to deprive the Leaseholders of the right to scrutinise the works, the 3 fire surveys of 20 July, 23rd August and 9th September 2018 required works to be carried out regarding compartmentation which were done at a cost of £71,000 but it was not clear what the works were for. The EWS1 Form is required by lenders and surveyors will only approve the safety of the building when the cladding issue is resolved.

Response – The previous compartmentation works are not relevant to the application for dispensation to enable the urgent installation of a fire alarm system. The compartmentation works were done following a consultation process. The Applicant confirms that all the works regarding fire safety are being carried out in order to obtain an EWS1 Form.

- f. The Applicant is trying to get out of consultation and the lessees have received no information about these works

Response – The Applicant referred to correspondence in Annex 1 of its reply to the Respondent’s statement including a Notice of Intention, Updates from the Applicant dated 10th March 2020, April 2020, 25th May 2020, 23rd June 2020

- g. The amount of £7,500.00 saved each year by the alarm will take 6 years for it to pay for itself

Response -

- h. The NHBC guarantee will cover the replacement cladding

Response – The recovery of costs for replacing of the cladding are not relevant to the Application. In any event the Applicant is considering all options with regard to recovery of costs associated with the interim safety measures but this does not alter the Applicant’s ability to place costs through the Service Charge.

- i. The works are an improvement and are not covered by the Lease

Response – The costs are allowable under Paragraphs 1, 10 and 19 of the Sixth Schedule of the Lease (this point was dealt with by the Tribunal as a preliminary issue – see above).

- j. The Applicant had been secretive about its Application for dispensation

Response – The Applicant denies it has been secretive and referred the Tribunal to copies of the Updates and refer to meetings being held with Leaseholders in Annex 1 which were issued with a view to being as informative and transparent as possible.

- k. There needs to be an update to all Leaseholders by the usual email communication explaining the misleading information regarding the section 20 procedure, the projected cost for Leaseholders and why consultation did not commence between January and June 2020.

Response - The Applicant has kept Leaseholders informed by:

- Monthly Updates (as per examples in Annex 1)
- Notice of Intention (as in Annex 1)
- Two Leaseholders meetings via zoom

The fire alarm system was not agreed with the West Midlands Fire Service and the Fire Risk Assessor until June 2020. The Applicant had considered a Category L5 fire alarm system which would provide automatic detection.

However, the estimates for the initial cost for such a system for a building of the size of the Property, was said by Mr Diffley at the Hearing to be over £200,000. Its installation would involve the installation of heat detectors inside each apartment which would require at least three visits per apartment and any delay in obtaining access would increase the cost. The system may also be temporary, in that the removal and replacement of the cladding and insulation may result in a “stay put” fire policy returning. Therefore, the Proposed works appeared the most cost effective and appropriate for ensuring a quick notification of fire to all residents in order to initiate the evacuation process.

72. In response to the Tribunal’s questions about the Notice of Intention the Applicant confirmed that the letter sent to the Leaseholders and the information at Centrik’s office at that time did not include any estimates as these were not obtained until May 2020 and the Fire Risk Assessor’s email as to how the new system would work was not sent until June 2020.
73. The Applicants confirmed that the Leaseholders had received a copy of the Application Form and the Applicant’s Statement of Case for these proceedings.

Discussion

74. The Tribunal considered all the evidence and submissions.
75. The Tribunal was aware that the construction of high-rise residential buildings was under scrutiny following the fire at Grenfell Towers, and considered that the Applicant was justified in making investigations in respect of the construction of the Property. The Tribunal found that the Trident Report identified the cladding of the two upper floors and the insulation throughout the building as being satisfactory at the time of construction but now is no longer appropriate and requiring replacing due to the materials used as being a significant fire risk to the property, therefore compromising the safety of residents. It appeared to the Tribunal from the Updates that the Applicant was taking action to replace the cladding and insulation with a safer alternative and looking at ways in which the cost of remediation might be met.
76. The Tribunal found that the recognition of the high risk of fire due to the construction had led the Fire Service and the Fire Risk Assessor to revise previous safety advice in respect of the Property which had been to advise residents to ‘stay put’ in the event of a fire. Instead a simultaneous evacuation system has been adopted.
77. From the Tribunal’s knowledge and experience key elements in simultaneous evacuation may be identified as:
Detection of the fire by smoke and heat detectors;
Notification of the fire to those at risk by alarms operated automatically or manually by waking watch and to the fire firefighters;

Evacuation from the fire of those at risk assisted by fire doors, sprinkler systems etc, fire exits and escapes and marshalling.

78. It appears that the Property has detection equipment in the form of the Automatic Opening Vents. However, it does not have a fire alarm installed and therefore 24 hour 7 days a week (24/7) Waking Watch was employed. This has been found to be expensive. To improve fire safety and reduce the cost of the Waking Watch the Applicant intends to carry out the Proposed Works of installing a fire alarm.
79. The Tribunal found that the Applicant had considered the option of a fully automated system but was of the opinion that this was too expensive at over £200,000. On the advice of its Fire Risk Assessor following the NFCC Guidance the Applicant has chosen a fire alarm that is activated by the Waking Watch at a cost of some £40,000 to £50,000. The Waking Watch can be reduced from 2 persons, which cost about £15,000 per month, to one person at a cost of £7,500 mitigating the cost of the installation and maintenance costs of the fire alarm.
80. On activation of the fire alarm the Property will be evacuated.
81. At the present time the system of detection, triggering an alarm followed by evacuation is seen as temporary until the cladding and insulation is remediated. However, taking into account changes in fire safety procedures in recent years it is not certain whether the Property will be advised to have a “stay put” or “evacuation” fire safety procedure. Therefore, the Tribunal considers the Proposed Works and related cost should only be presented to the Leaseholders as enhancing the safety of residents in the light of the current risks posed.
82. The Applicant has submitted that the Application for dispensation is necessary to expedite the works as they are urgent. The Tribunal is of the opinion that, notwithstanding the points made by Mr Mohammed, there is always a degree of urgency for works related to safety and in respect of fire safety works in particular. In the present circumstances, although there is a Waking Watch, for such a large building as the Property, an alarm system is likely to significantly improve the warning given to residents of a fire after detection and give more time for a safe evacuation. The Tribunal therefore finds the installation urgent.
83. Mr Mohammed said that works have already been carried out to improve fire safety by compartmentalisation but no evidence has been adduced to show that those works have made the installation of a fire alarm unnecessary.
84. Mr Mohammed said that the Applicant failed to inform the Leaseholders of their intention to apply for dispensation. There is no obligation upon an Applicant to give advance warning that it intends to apply to the Tribunal for dispensation. The Leaseholders have been informed of these proceedings and, like Mr Mohammed, can make representations.

85. In determining whether or not the Leaseholders are prejudiced by dispensing with some or all the consultation requirements a tribunal needs to consider whether there are matters in respect of which the Leaseholders are likely to make observations which should be addressed by the Applicant and which could affect the appropriateness of the works to be carried out and their cost.
86. The consultation requirements are not just a matter of giving an opportunity to comment but also to provide information. Leaseholders may be prejudiced if they do not know what is to be done and how much it is to cost, even if they do not comment.
87. In making this determination the Tribunal needs to take into account:
Firstly, the position at the time of the hearing:
- What the Proposed Works are; and
 - What information has already been received by the Leaseholders in respect of the Proposed Works and what opportunity they have had to make observations.
- Secondly, at the time of the hearing:
- What further information do the Leaseholders need, if any; and
 - What further opportunity, if any, should they have to make observations taking into account the nature of the Proposed Works and their urgency in that undue delay could be prejudicial to the Leaseholders.
88. In considering what information has been received by the Leaseholders, it was submitted that a Notice of Intention has been served on Leaseholders. The Tribunal found that this Notice was scant in detail. It was served when estimates were not available and before the Fire Risk Assessor had fully considered the matter. Also, from the statements of Mr Mohammed and the Representatives from the Citizen Housing Association there is some doubt as to how many Leaseholders received the Notice.
89. Also, the Tribunal finds that the Applicant has issued regular Updates about the management of the Property. From those provided for March, April, May and June the whole focus of the Update is on fire safety and, what became a related matter, insurance and cashflow. The Tribunal finds that although the Updates give substantial information on what the situation was at the time of their publication, nevertheless, they identify a number of uncertainties which now need to be clarified as the Applicant is on the threshold of instructing contractors.
90. In addition, the Tribunal finds that the Leaseholders have received the documentation relating to these proceedings and have had an opportunity to make observations. However, a summary of the situation following the proceedings is needed.
91. Therefore, notwithstanding the information given to date, to ensure the Leaseholders are not prejudiced, the Tribunal finds that they need to be informed definitively of the following:

- the selection of the contractor on the advice of the Fire Risk Assessor;
- the total cost of the system and its apportionment;
- the continuance of a reduced Waking Watch;
- the need for ongoing maintenance of the fire alarm system.

Decision

92. The Tribunal determines that it is reasonable to dispense with the Consultation Procedure in all respects except that a combined Notice of Intention to Carry Out Works and Notice of the Landlord's Proposals pursuant to the section 20 Consultation Procedure should be served on each Leaseholder 7 days before the commencement of the Proposed Works. No period for observations or opportunity for alternative contractors to provide estimates need be given. The Combined Notice should inform the Leaseholders in a single document of the Proposed Works as approved by the Fires Risk Assessor, as clearly and concisely as possible, including the following information:
- Brief statement that the Proposed Works are needed on the advice of the Fire Risk Assessor and the National Fire Chiefs Council Guidance to enhance fire safety following the Trident Report's finding that the cladding and insulation are a significant fire risk to the property and it will take some time to replace these materials.
 - The quotation selected and reasons for doing so, if it is not the cheaper of the two, and the estimated overall cost and service charge contribution of each Leaseholder in respect of the works.
 - The operation of the system should be outlined so that Leaseholders know that it will be a combined alarm and Waking Watch (the cost of the latter being reduced by the presence of the alarm, if this is correct, and that a fully automated system would be substantially more, if this is correct). The alarm will require annual maintenance.
93. It is certainly not intended that the Notice includes detailed instructions on what a Leaseholder should do in the event of a fire as these will be given once the alarm is installed.
94. Leaseholders should note that this is not an application to determine the reasonableness of the Proposed Works or their cost. If, when the service charge demands in respect of the Proposed Works are sent out, any Leaseholder objects to the cost or the reasonableness of the work or the way it was undertaken, an application can be made to this Tribunal under section 27A of the Act. A landlord can also seek a determination as to the reasonableness of the cost of the work.

Judge JR Morris

ANNEX 1 - 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.

ANNEX 2 - THE LAW

1. Section 20 of the Landlord and Tenant Act 1985 limits the relevant service charge contribution of tenants unless the prescribed consultation requirements have been complied with or dispensed with under section 20ZA. The requirements are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003. Section 20 applies to qualifying works if the relevant costs incurred in carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.
2. The consultation provisions appropriate to the present case are set out in Schedule 4 Part 2 to the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) (the 2003 Regulations). The Procedure of the Regulations and are summarised as being in 4 stages as follows:

A Notice of Intention to carry out qualifying works must be served on all the tenants. The Notice must describe the works and give an opportunity for tenants to view the schedule of works to be carried out and invite observations to be made and the nomination of contractors with a time limit for responding of no less than 30 days. (Referred to in the 2003 Regulations as the “relevant period” and defined in Regulation 2.)

Estimates must be obtained from contractors identified by the landlord (if these have not already been obtained) and any contractors nominated by the Tenants.

A Notice of the Landlord’s Proposals must be served on all tenants to whom an opportunity is given to view the estimates for the works to be carried out. At least two estimates must be set out in the Proposal and an invitation must be made to the tenants to make observations with a time limit of no less than 30 days. (Also referred to as the “relevant period” and defined in Regulation 2.) This is for tenants to check that the works to be carried out are permitted under the Lease, conform to the schedule of works, are appropriately guaranteed, are likely to be best value (not necessarily the cheapest) and so on.

A Notice of Works must be given if the contractor to be employed is not a nominated contractor or is not the lowest estimate submitted. The Landlord must within 21 days of entering into the contract give notice in writing to each tenant giving the reasons for awarding the contract and, where the tenants made observations, to summarise those observations and set out the Landlord’s response to them.

3. Section 20ZA allows a Landlord to seek dispensation from these requirements, as follows –
 - (1) 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.

- (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) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
if it is an agreement of a description prescribed by the regulations, or in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 - b) to obtain estimates for proposed works or agreements,
 - c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) and (7)... not relevant to this application.