FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/LDC/2020/0127**
HMCTS Code	**:**	**P: Paper remote**
Property	**:**	**11 Steedman Street, Elephant & Castle, London, SE17 3AF**
Applicant	**:**	**Optivo**
Representative	**:**	**Optivo Legal Services Team (Litigation)**
Respondents	**:**	**(1) The Shared Ownership Leasehold Owners of 12 Flats at 11 Steedman Street, Elephant & Castle, London, SE17 3AF** **(2) Lambeth and Southwark Housing Association (the Leaseholders of 13 Flats)**
Representative	**:**	**In person**
Type of application	**:**	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal members	**:**	**Tribunal Judge I Mohabir** **Miss M Krisko FRICS**
Date of determination	**:**	**27 October 2020**
Date of decision	**:**	**27 October 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has been consented to by the Applicant and not objected to by the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and no one requested the same.

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") for dispensation from the consultation requirements imposed by section 20 of the Act.

2. 11 Steedman Street, Elephant & Castle, London, SE17 3AF ("the property") is described as a purpose built block of flats with 25 residential flats. 12 of the flats are held by leaseholders under shared ownership leases and the remaining 13 flats are leased to Lambeth and Southwark Housing Association. It is common ground that under the leases, the lessees are required to pay a service charge contribution, which includes the cost incurred or to be incurred by the Applicant in repairing and maintaining the exterior of the building.

3. On 20 March 2020, the Applicant received a report from Facade Remedial Consultants ("FRC"), which concluded that fire safety at the property was inadequate and that interim measures were required. These were that a waking watch should immediately be implemented until such time as a common alarm was installed. A waking watch has been in place at the property since 27 July 2020, involving people on site for 24 hours a day, at a cost of £48,360 per month. The costs of the waking watch are fixed for three months, during which time the Applicant is seeking alternative service providers (if necessary) to ensure value for money.

4. Further intrusive sampling to the construction was carried by FRC and it was found that the construction included significant quantities of combustible insulation materials in rainscreen cladding and balconies. They also found that the construction would not have been considered adequate under the advisory provisions of Part B of the Building Regulations in force at the time of the construction of the building. Therefore, the materials were now considered unsuitable and in need of replacement.

5. It was considered necessary to remove and replace the rain screen cladding system, which currently presents an undue fire risk. It was also recommended that the waking watch system be replaced with a temporary alarm because it is an automatic mechanical system that does not have to rely on a person and that it can reduce the need for high numbers of waking watch officers. This is an interim measure until such time as the Applicant until such time as the Applicant can

carry out re-cladding works. These are the qualifying works in respect of which dispensation is sought in this application. The one off cost of installing the system is £34,950 as opposed to the waking watch costs of £48,360 per month.

6. On 8 July 2020 the Applicant wrote to Lambeth and Southwark Housing Association informing them of the planned work to the buildings, including the installation of a temporary common alarm system. On 20 July 2020 the Applicant wrote to all the Respondents who are shared leaseholders informing them of the planned work to the buildings, including the installation of a temporary common alarm system. On 7 August 2020 the Applicant sent letters to all the Respondents who are shared leaseholders, notifying them of the works and anticipated costs. On 7 August 2020 the Applicant sent a letter to Lambeth and Southwark Housing Association notifying them of the works and anticipated costs.

7. Subsequently, the Applicant made this application seeking dispensation from the requirement to carry statutory consultation regarding the temporary alarm system. On 3 September 2020, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.

8. It seems that none of the Respondents have objected to the application.

Relevant Law

9. This is set out in the Appendix annexed hereto.

Decision

10. The determination of the application took place on 27 October 2020 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant.

11. The relevant test to the applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no financial prejudice in this way.

12. The issue before the Tribunal was whether dispensation should be granted in relation to requirement to carry out statutory consultation with the leaseholders regarding the temporary alarm system. It should be noted that the Tribunal is not concerned about the cost that has or will be incurred, as that is not within the scope of this application.

13. The Tribunal granted the application the following reasons:

(a) each of the leaseholders has been kept informed of the potential health and safety risk posed by the cladding on the building.

(b) each of the leaseholders had been served with a copy of the application and documents in support.

(c) no leaseholder has objected to the application.

(d) the Tribunal was satisfied that the potential health and safety risk(s) posed by the cladding since the Grenfell incident oblige landlords to take immediate fire prevention steps that are necessary where significant risks are identified, as in the present case.

(e) although, strictly speaking, the cost of the proposed works are not a relevant consideration the cost of maintaining the waking watch system instead of installing the temporary alarm system would financially prejudice the leaseholders materially.

(f) importantly, the real prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual or estimated costs by making a separate application under section 27A of the Act.

14. The Tribunal, therefore, concluded that the Respondents would not be financially prejudiced by the Applicant's failure to consult and the application was granted as sought.

15. It should be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable.

Name: Tribunal Judge I Mohabir **Date:** 27 October 2020

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

(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.

Section 20ZA

(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.