FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/LDC/2020/0136**
Property	**:**	**Munkenbeck & Marshall Buildings, Montgomery House and Montgomery Court, Paddington Walk, 2 - 4 Hermitage Street, London, W2 1PW**
Applicant	**:**	**Paddington Walk Management Ltd.**
Respondent	**:**	**Leaseholders of Munkenbeck & Marshall Buildings, Montgomery House and Montgomery Court, Paddington Walk, 2 - 4 Hermitage Street, London W2 1PW**
Type of Application	**:**	**For the determination of an application for dispensation from the statutory consultation requirements**
Tribunal Members	**:**	**Tribunal Judge Stuart Walker**
Date and venue of Hearing	**:**	**Decided on the Papers**
Date of Decision	**:**	**8 October 2020**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the statutory consultation requirements shall be dispensed with in respect of urgent remediation works at the property consisting of the removal of a combustible timber cladding system forming part of the external wall system, Sto render replacement, replacement of the timber decking on the balconies and associated works which are compendiously described as the "Non-ACM works" .

Reasons

The application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") dispensing with the statutory consultation requirements which apply by virtue of section 20 of the 1985 Act in respect of urgent remediation works at the property consisting of the removal of a combustible timber cladding system, Sto render replacement, replacement of the timber decking on the balconies and associated works. These are described as the "Non-ACM works".

2. The Applicant has already had correspondence with the Respondents about the major works to the building including the replacement of Aluminium Composite Material "ACM" cladding. This correspondence is detailed in the application form. The Applicant's objective is to ensure that the Non-ACM works are included in the forthcoming major remediation works relating to the ACM cladding that are due to start in October 2020.

3. The application was made on 26 August 2020. It sets out many reasons why it is urgent to combine the works with the ACM remediation. These include the fact that the inclusion of the Non-ACM works with the ACM remediation will give a more timely solution and thereby reduce the risks to occupiers and minimise disruption. Other reasons are that there is the possibility of securing a successful application from the government's Building Safety Fund but this requires the project to commence prior to March 2021, that there should be cost savings if the projects are combined, and, that the contractors can optimise the works programme if the works are combined.

4. Directions were issued on 7 September 2020. They provided that the Tribunal would determine the application on the papers in the week commencing 5 October 2020 unless either party made a request for an oral hearing. No such request has been received by the Tribunal and so this determination is made on the papers which have been provided by the parties.

5. The directions required the Applicant to send to each of the leaseholders a copy of the application together with a copy of the directions by 14 September 2020. They were also to display a copy of both in a prominent place in the common parts of the property.

6. The Applicant was also required to confirm to the Tribunal by 16 September 2020 that this had been done.

7. The Applicant confirmed to the Tribunal on 15 September 2020 that it had complied with the directions relating to the provision of notice to the leaseholders.

8. Under the terms of the directions any leaseholders who opposed the application were to complete a reply form and send it to the Tribunal by 25 September 2020.

9. No reply forms have been received by the Tribunal.

10. The relevant legal provisions are set out in the Appendix to this decision.

The background

11. The property is a residential development, which comprises 153 private residential flats and 79 affordable housing flats at 2-4 Hermitage Street, Paddington. The building consists of 5 towers with a varying number of storeys from 9-14 and link blocks of 7 storeys linking the towers.

12. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The Leases

13. There are two sets of leases in respect of the property. One is described as a residential lease and the other a housing association lease. In the case of the former, by clause 5 and Part 2 of Schedule 9 of the lease, the landlord's manager covenants, among other things, to maintain, repair, preserve, renew, replace or rebuild the building including all the structural parts (paragraph 1.1). Similar provision is made in the housing association leases. In both cases the clauses are broad enough to cover the works the subject of this application.

14. By clause 4 and paragraph 5 of Schedule 9 of the residential leases the leaseholder is required to pay a service charge. This is to be calculated by the manager and includes contributions in respect of the building services set out above. Again, similar provisions are made in the housing association leases. In any event, the issue for this Tribunal is not one of whether service charges are recoverable or not. If the lease does not allow for the costs of the proposed works to be charged to the tenants this is something which the tenants can raise when they receive a service charge demand.

The Issues

15. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. The Tribunal is not concerned with the issue of whether any service charge costs will be reasonable or payable.

The Applicant's Case

16. The Applicant's case is that the works which are the subject of this application are required because, following the release of a series of updated regulatory requirements since June 2017, the existing external wall system does not meet the current government guidance. The cladding system needs to be replaced using materials of limited combustibility in order to comply with government guidance.

17. The Applicant argues that the works are urgent for a number of reasons. One is that much of the building is clad in ACM cladding and this is subject to replacement through funding from the Government's Private Sector ACM Cladding Remediation Fund. The funded ACM remediation works are due to commence in October 2020. An application is being progressed for the Building Safety Fund in order to secure grant funding for the Non-ACM works. The Applicant seeks dispensation because in the event that Government funding is not granted, then the Non-ACM works can be undertaken under the same contract as the ACM works. This will deliver significant cost savings for leaseholders by avoiding duplication of costs by having to remediate under separate building contracts, in addition, it will significantly reduce the time that leaseholders are living in an unsafe building, resulting in less inconvenience and disruption.

18. In addition, they argue that in the event that dispensation is not granted, the contractor undertaking the ACM remediation will be unable to procure the materials for the Non-ACM works in time to remediate in sequence with the main contract works. This would lead to potentially increased material costs, a delay in the commencement of the remediation works, and an extended works programme. The latest date to instruct the contractor to include the Non-ACM works is 6th November 2020.

The Respondent's Case

19. As previously explained, no objections have been received from any leaseholders.

The Tribunal's Decision

20. The Tribunal is satisfied that the consultation requirements should be dispensed with. It is satisfied that the works are urgent and should, if possible, be done at the same time as the ACM works. It accepts that carrying out a section 20 consultation would extend the time during which leaseholders will be living in an unsafe building and may well also lead to an increase in the costs of the works which need to be done.

21. The Tribunal is satisfied that the leaseholders have been notified of the application and bears in mind that there has been no objection from any of them to it. It also bears in mind the limited scope of the issue before it.

22. In all the circumstances the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements.

Name: Tribunal Judge S.J. Walker **Date:** 8 October 2020

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

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 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) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
(a) if it is an agreement of a description prescribed by the regulations, or
(b) 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) Regulations under section 20 or this section
(a) may make provision generally or only in relation to specific cases, and
(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.