



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

<b>Case Reference</b>	:	<b>CAM/22UD/LDC/2021/0007</b>
<b>HMCTS code (paper, video, audio)</b>	:	<b>P:PAPERREMOTE</b>
<b>Property</b>	:	<b>1-18 Old Market Terrace, Hart Street, Brentwood, CM14 4AD</b>
<b>Applicant</b>	:	<b>Freehold Managers Limited</b>
<b>Respondents</b>	:	<b>Various leaseholders named in the application</b>
<b>Type of application</b>	:	<b>For dispensation from consultation requirements - Section 20ZA of the Landlord and Tenant Act 1985</b>
<b>Tribunal members</b>	:	<b>Mary Hardman FRICS IRRV(Hons)</b>
<b>Date of decision</b>	:	<b>21 April 2021</b>

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was P:PAPERREMOTE. A hearing was not held because it was not necessary, and all issues could be determined on paper. The documents that I was referred to are in a 58-page bundle from the Applicant. I have noted the contents and my decision is below.

**The tribunal's decision**

The tribunal determines under section 20ZA of the Landlord and Tenant Act 1985 to dispense with all the consultation requirements in respect of the EWS 1 survey.

## **Reasons for the tribunal's decision**

### **The application**

1. This is a retrospective application to dispense with the statutory consultation requirements in respect of the carrying out of an EWS 1 survey in February 2021.
2. The works were carried out without full consultation as the managing agents state that residents were concerned about the safety of the cladding on the block and 3 apartment sales were being held up due to lenders requiring an EWS 1 certificate.
3. The relevant contributions of leaseholders through the service charge towards the costs of these works would be limited to a fixed sum unless the statutory consultation requirements, prescribed by section 20 of the Landlord and Tenant Act 1985 (the “**1985 Act**”) and the Service Charges (Consultation etc) (England) Regulations 2003:
  - (i) were complied with; or
  - (ii) are dispensed with by the tribunal.
4. In this application, the Applicant seeks a determination from the tribunal, under section 20ZA of the 1985 Act, to dispense with the consultation requirements. The tribunal has jurisdiction to grant such dispensation if satisfied that it is reasonable to do so.
5. **In this application, the only issue for the tribunal is whether it is satisfied that it is reasonable to dispense with the consultation requirements.**
6. **This application does not concern the issue of whether any service charge costs of the relevant works will be reasonable or payable or by whom they are payable.**

### **The Property and parties**

7. The Property is a two/three storey purpose-built block of 17 apartments close to the centre of Brentwood. Some of the facing to the apartments is timber clad.
8. The application is made on behalf of the landlord under the leases by Broadlands Estate Management. The application was made against the leaseholders of the flats (the “**Respondents**”)

### **Procedural history**

9. The Applicant said that the works had been urgent, as explained below.
10. Case management directions were given on 15 March 2021, requiring the Applicant by 24 March 2021 to serve on the Respondents copies of the application form and these directions and to display a copy in a prominent position in the common parts of the Property; and by 26 March 2021 to file with the tribunal a certificate to confirm that this has been done and stating the date(s) on which this was done.
11. On 24 March 2021 the Applicant emailed the tribunal to confirm that this had been done.
12. The directions included a reply form for any leaseholder who objected to the application to return to the tribunal and the Applicant, also indicating whether they wished to have an oral hearing. Any such objecting leaseholder was required to respond by 9 April 2021.
13. The directions further provided that this matter would be determined on or after 19 April 2021 based on the documents, without a hearing, unless any party requested an oral hearing.
14. No leaseholder has responded, and no party has requested an oral hearing.
15. On reviewing these documents, the tribunal considered that an inspection of the Property was neither necessary nor proportionate to the issues to be determined and that a hearing was not necessary

### **The Applicant's case**

16. The Applicant states that they were contacted by residents concerned about the safety of the cladding on the block. 3 apartment sales were being held up due to lenders requiring an EWS 1 certificate. A survey needed to be carried out to produce the EWS 1 certificate for the property.
17. The survey was booked in December 2020 and completed on 22 February 2021.
18. No details of costs were supplied but the cost exceeded £250 per apartment due to access requirements.
19. A Stage 1 notice outlining the proposed survey was sent to all leaseholders on 28 January 2021.

### **The Respondents' position**

20. As mentioned above, the directions provided for any Respondent who wished to oppose the application for dispensation to complete the reply form attached to the directions and send it to the tribunal and the Applicant.
21. The tribunal has not received any response or statement of case opposing the application, or comments on the Applicant's statements in the application form. In the circumstances, the tribunal concluded that the application was unopposed.

### **The tribunal's decision**

22. Following the Supreme Court decision of *Daejan Investments Ltd. v Benson* [2013] UKSC 14, the only issue for the Tribunal is whether the Respondents have suffered prejudice in dispensing with the requirements.
23. This application for retrospective dispensation from the consultation requirements was not opposed by the Respondents, who have not challenged the information provided by the Applicant in the application form, identified any prejudice which they might suffer because of the non-compliance with the consultation requirements, nor asked to be provided with any other information.
24. Accordingly, in the circumstances set out in this decision, the tribunal is satisfied that it is reasonable to dispense with the consultation requirements in relation to the works.
25. For the purposes of this application, the tribunal determines under section 20ZA of the 1985 Act to dispense with all the consultation requirements in relation to carrying out the EWS 1 external wall survey.
26. **This is not an application for the tribunal to approve the reasonableness of the works or the reasonableness, apportionment or payability of the service charge demand. I make no finding in that regard and the leaseholders will continue to enjoy the protection of section 27A of the Act.**
27. There was no application to the tribunal for an order under section 20C of the 1985 Act.
28. The Applicant's management company shall be responsible for serving a copy of this decision on all leaseholders.

### **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).