



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

Case reference : **LON/00AH/LDC/2019/0192**

Property : **Radnor House, 1272 London Road,
London SW16 4EA**

Applicant : **Radnor Residential Management
Limited**

Respondents : **The leaseholders of the Property as
per the application**

Type of application : **To dispense with the requirement
to consult leaseholders about
major works**

Tribunal members : **Judge P Korn
Mr T Sennett MA FCIEH**

Date of decision : **9th December 2019**

DECISION

Decision of the tribunal

- (1) The tribunal dispenses with the consultation requirements in respect of the qualifying works which are the subject of this application to the extent that they have not already been complied with.
- (2) No cost applications have been made.

The application

1. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) from the consultation requirements imposed on the landlord by section 20 of the 1985 Act in relation to certain qualifying works, to the extent that those requirements have not already been complied with.
2. The Property is a six/seven storey building which was originally an office block and was then converted to flats in around 2005. It comprises 113 residential flats of which 40 are demised to Places for People Homes who in turn have sublet them on shared ownership leases.
3. The application concerns qualifying works to remove larch timber cladding from the building and to replace it with a non-combustible alternative which is compliant with modern safety standards.
4. The Applicant is the management company under the long leases of the individual flats within the Property.

Paper determination

5. In its application the Applicant stated that it would be content with a paper determination if the tribunal considered it appropriate. In its directions the tribunal allocated the case to the paper track (i.e. without an oral hearing) but noted that any party had the right to request an oral hearing. No party has requested an oral hearing and therefore this matter is being dealt with on the papers alone.

Applicant’s case

6. The Applicant states that in the conversion of the building in 2005 larch timber cladding was used extensively on the façade. In the summer of 2019, in the light of enquiries arising during the assignment of one of the leasehold flats, Westcolt Surveyors commissioned a review of the cladding. The report was written by Bernadette Baker, a registered fire risk assessor and architect, and it concluded that the timber cladding was combustible and did not meet the standards set

out in the Government's published guidance relating to fire spread in non-aluminium cladding systems on buildings above 18 metres in height. It also highlighted concerns as to the risk of fire spread from balcony to balcony and generally.

7. On 16th August 2019 the building was inspected by the London Fire Brigade, resulting in a temporary evacuation policy being put in place together with a 'waking watch' system to ensure residents' safety. The waking watch is costing about £20,000 per month pending the replacement of the existing larch timber cladding with a non-combustible alternative, this being the recommended long term solution.
8. Westcolt have put together a specification dealing with the works required to replace the existing larch timber cladding. The work is considered urgent (a) because of the fire risks associated with the larch timber cladding and (b) due to the significant expense of keeping the building safe pending the carrying out of those works. They have invited tenders from ten contractors, four of whom responded with prices; three of these were for the specified works. Those three have been assessed and compared in a tender report and Westcolt intend to enter into a contract with Acumen who provided the lowest quote. Westcolt served initial consultation notices on leaseholders and tenants, and a number of responses were received. The Applicant considered and collated these responses. Six contractors were suggested by leaseholders and they were all invited to quote.
9. The Applicant seeks dispensation from the requirement to allow a further 30 day consultation period on the estimates obtained before entering into the contract. In addition, in case it has made a technical error by not originally serving an initial notice on Places for People Homes in addition to its subtenants it asks for dispensation with this element of the consultation process. It also requests dispensation from compliance with paragraph 13 of Schedule 4 to the Service Charges (Consultation etc) (England) Regulations 2003 in case it decides not to enter into the contract on the basis of the lowest estimate. Finally it requests dispensation from compliance with any other consultation requirements if it transpires that it has failed to comply with any such other requirements.
10. The Applicant considers it unlikely that the Respondents will be prejudiced by the dispensation sought and considers it important to avoid any further delay.
11. The Applicant has confirmed that it has provided a copy of its application and of the tribunal's directions to all of the Respondents.

Responses from the Respondents

12. None of the Respondents has opposed the application or made any other representations.

The relevant legal provisions

13. Under Section 20(1) of the 1985 Act, in relation to any qualifying works *“the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with ... or (b) dispensed with ... by ... the appropriate tribunal”*.
14. Under Section 20ZA(1) of the 1985 Act *“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..., the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements”*.

Tribunal’s decision

15. The tribunal notes the Applicant’s stated rationale for applying for dispensation. Having considered the Applicant’s written submissions, we accept that there is a fire safety issue and that it is prudent to minimise the amount of delay in order to minimise that danger and also because of the large expense associated with the temporary ‘waking watch’ solution.
16. As regards the steps taken by the Applicant to comply with the consultation requirements to the extent reasonably possible, we are satisfied that the Applicant has consulted as much as reasonably possible in the circumstances. It has been through an initial consultation, it has acted on some observations received from leaseholders and has chosen the lowest tender.
17. The Applicant has also complied with the tribunal’s directions, and – importantly – none of the Respondents has opposed the application.
18. There might be questions as to whether the Applicant could or should have identified the need for these works at an earlier stage, but we do not have sufficient information to make a determination on this point and in any event this would not necessarily be relevant to the issue of dispensation. We also have a slight concern about the request for dispensation in circumstances where the Applicant does not go with the lowest quote, but we assume that this point has been added just in case it turns out that there is a good reason why the chosen contractor is unable to do the work.

19. To summarise, we are satisfied that the works are urgent, that there are good reasons not to require the Applicant to carry out the remainder of the consultation process, and that the Applicant has carried out such consultation as was reasonably possible in the circumstances. In addition, and importantly, none of the Respondents has opposed the application or made any other representations. There is also no evidence before us that any of the Respondents has been prejudiced by the failure to consult fully.
20. Therefore, we are satisfied that it is reasonable to dispense with the formal consultation requirements in respect of the qualifying works which are the subject of this application to the extent that those requirements have not already been complied with.
21. **For the avoidance of doubt, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness of the cost of the works.**

Name: Judge P Korn

Date: 9th December 2019

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.