



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

**Case Reference** : **BIR/00FN/LDC/2021/0008**

**Property** : **Flats 1 – 112  
Thames Tower  
2 Navigation Street  
Leicester  
LE2 3UJ**

**Applicant** : **Thames Tower Management Company Ltd**

**Applicant's  
Representative** : **Pinnacle Property Management Ltd**

**Respondent 1** : **The Leaseholders  
Flats 1 - 112  
2 Navigation Street  
Leicester  
LE2 3UJ**

**Respondent 2** : **Premier Ground Rents No 5 Limited**

**Type of Application** : **Application for the dispensation of all  
or any of the consultation  
requirements provided for by Section  
20ZA of the Landlord & Tenant Act  
1985**

**Tribunal Members** : **Mr G S Freckelton FRICS (Chairman)  
Judge P Ellis**

**Date of Inspection** : **20<sup>th</sup> July 2021**

**Date of Hearing** : **22<sup>nd</sup> July 2021**

**Date of Decision** : **28<sup>th</sup> July 2021**

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**DECISION**

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## **Background**

1. By Application dated 17<sup>th</sup> May 2021, the Applicant, through its Managing Agents, Pinnacle Property Management Limited, applied to the Tribunal for Dispensation from the Consultation Requirements imposed by Section 20 of the Landlord & Tenant Act 1985 ('the Act') and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the property known as Thames Tower, 2 Navigation Street, Leicester, LE2 3UJ (the Property).
2. The Application requested that the matter be dealt with on the Fast Track as urgent repairs were required to remediate spalling concrete substructure and replacement of all combustible balcony construction materials at the property prior to recladding.
3. The Tribunal issued Directions on 2<sup>nd</sup> June 2021.

## **The Facts**

4. The property known as Thames Tower, 2 Navigation Street, Leicester, LE2 3UJ comprises of 112 self-contained flats. The property was originally built as an office building. Based on the date of the Lease in respect of Flat 12, the Tribunal assumes that the conversion was completed some 11 years ago.
5. The Applicant in this case is the Management Company and the Respondents are the various long leaseholders of the flats whose details (provided by the Applicant) are given in the Schedule attached to this decision.
6. Part V of The Schedule attached to the lease provides for the Management Company to be responsible for the repairs which are required under this Application and for which the Respondents pay a maintenance charge.
7. The Tribunal carried out an inspection on 20<sup>th</sup> July 2021 in the presence of Ms Caroline Davis of Pinnacle Property Management Ltd (the Applicant's Representative and Managing Agent).
8. The property comprises 112 flats over seventeen storeys. The property is clad externally and it is those cladding panels that are the subject to a wider scheme of works of which this Application is the first part.
9. According to the Application, work is required to remediate spalling concrete substructure and replacement of all combustible balcony construction materials at the property.
10. These works will form part of a contract of works for remediating the unsafe cladding on the Property. The remediation of the cladding is eligible for Government Building Safety Fund ('BSF') assistance. At the present time the Applicant is waiting for a determination on the full works and costs submitted.
11. The Tribunal understands from the Application that the remediation of the cladding cannot commence until the concrete repairs to the substructure have been undertaken. In order to meet their funding requirements, the Applicant must adhere to the BSF deadlines otherwise the funding in respect of the cladding (anticipated to be in excess of £6,000,000.00) could be lost.

12. The Applicant therefore submits in its Application, that the concrete works are time critical and could affect the BSF cladding funding if not expedited.

### **INSPECTION**

13. The Tribunal understands from the Application and noted at its inspection that although the property is effectively one building it is owned by two separate Freeholders and split into two parts. The part to which this Application refers is known as 'The Horizon'. The other part is known as 'The Equinox' and comprises three lower floors over a larger footprint.
14. The Tribunal was informed during the inspection that pedestrian access to 'The Horizon' was made through 'The Equinox' where there was a Concierge, post boxes and lifts leading to 'The Horizon'.

### **THE APPLICATION**

15. The Application confirms that the Applicant seeks dispensation from all of the consultation requirements as it considers the work to be urgent. The Applicant also confirms that it has carried out some consultation with the leaseholders. No evidence of support (or otherwise) from the leaseholders in respect of the works was given to the Tribunal with the exception of the emails from Shailesh Chandarana and Raksha Chandarana who own flats 25 and 104 and is referred to in paragraph 31.
16. Briefly the timeline is that the Applicant had arranged for a survey of the concrete beams at the property which was completed by Martech Technical Services Ltd, 21 Church Street, Huntingdon, Cambridgeshire, PE28 5SZ ('Martech'). In the Executive Summary Martech state:

*"The concrete ring beams have suffered from ongoing carbonation and low cover induced reinforcement corrosion problems, most probably exacerbated by the overclad environment, which can provide conditions for accelerated decay. It is critical in over cladding to properly address concrete corrosion issues and put in place mitigation and protective measures. We have always assumed that the concrete would be immediately repaired before a future re-cladding, as the evidence on site clearly suggests that ongoing corrosion will continue to increasingly affect the structural concrete edge beams.*

*The ring beams are suffering from widespread low cover to the reinforcing steel to such an extent that the carbonation to date has widely reached the reinforcing steel. The average carbonation depth in the survey to date exceeds the average cover, essentially meaning very widespread loss of passivation and hence extensive active corrosion conditions. This means extensive latent or hidden damage areas in which corrosion is active even in the absence of visible cracking or spalling. All this corrosion needs to be addressed in order to achieve a durable concrete repair.*

*The concrete patch repair requirements vary around the ring beams somewhat as construction quality will obviously vary across a block. Given*

*the significant latent or hidden damage potential within the concrete, drilled in corrosion inhibitors are to be added to the concrete repair process as a blanket treatment, in addition to the elastomeric decorative protective anti-carbonation coatings required.*

*In summary it is in our opinion that these essential concrete repair works should be completed without delay in this overclad environment, the window of opportunity being the cladding replacement contract when the concrete becomes exposed (understood to be later in 2021). The reason for this is that there is, from the testing carried out to date, widespread active reinforcement corrosion plus already extensive concrete damage, both of which will significantly get worse with time. This process would ultimately compromise the structural integrity of the floor slab edges if left unchecked”.*

17. In the Application, the Applicant submits that the qualifying works will form part of a contract of works for remediating the unsafe cladding on the Horizon building. The remediation of the cladding is understood to be eligible for BSF assistance and the Applicant is awaiting a determination on the full works and costs submitted.
18. Based on the Application, the Tribunal understand that the remediation of the cladding cannot commence until the concrete repairs to the substructure have been undertaken and the Applicant must adhere to the BSF deadlines in order to meet their funding requirements. The Application form further states that the cost of the qualifying works is significant and a levy to leaseholders for the full value of the works will be required as the Applicant must be in receipt of funds before entering into a contract of works. If the Applicant fails to meet the BSF deadline of 30<sup>th</sup> September 2021 to commence cladding remediation works on site they could, as previously noted lose their cladding funding which was anticipated to be in excess of £6,000,000.00. The Tribunal understands that the Applicant is currently awaiting approval of funding for the cladding replacement works from the BSF and have their preferred contractor, Alumet Systems (UK) Ltd ('Alumet'), ready to be appointed following a competitive tendering process.
19. The Tribunal understands, based on the Application and the Applicant's submission that the Application for Dispensation is sought:
  - a) Because the work to the concrete structure requires completion before the cladding can be replaced.
  - b) If the work is not underway prior to 30<sup>th</sup> September 2020 the application to the BSF Fund is in jeopardy.
  - c) That while the scaffolding is in place it is cost efficient to replace the timber balconies with fireproof structures. This is considered preferable to avoid the additional cost of re-erecting the scaffolding in the near future.
20. The Tribunal infers from the submissions that if the full consultation process was to be undertaken, the delay could result the application to the BSF Fund not proceeding with a subsequent loss in funding of some £6,000,000.00. This cost would then need to be borne by the Respondents.

21. The Tribunal notes that the Leaseholders have all been informed and had an opportunity to comment on the proposed works and estimated costs but only one observation has been received as detailed in paragraph 31 below.
22. The Tribunal enquired at the inspection, from the Applicant's Representative, if any further representations or comments had been received from the Respondents and it was confirmed by Ms Davis that no further representations from any of the other Respondents had been received.
23. It was further submitted that a Notice of Intention was issued for the concrete works on 2<sup>nd</sup> December 2020 and for the balcony works on 20<sup>th</sup> March 2021. Following the issue of the Notice for the concrete works the building underwent an extensive intrusive survey carried out by Alumet, across all elevations to determine the extent of remediation required. The Boroscope survey yielded a detailed log of remedial works which enabled Alumet to go out to tender for the works.
24. The Applicant submitted that it intended that the balcony works would be undertaken across the course of the cladding remediation project and that neither the concrete repairs nor the balcony material replacement are considered eligible for funding under the BSF. It was therefore necessary for the concrete works to be undertaken before any cladding could be replaced.
25. Based on the application before the Tribunal is understood that Alumet's scope of works under the BSF includes for a full scaffold to the façades, which the Applicant proposes to utilise to facilitate the concrete and balcony remediation works. The logistics of the operation, the Tribunal understands, will require the combustible balcony decking be removed and the new decking installed as the new scaffold is struck down. In light of this, and the forthcoming legal status of Alumet as principal contractor, the qualifying works will need to be carried out within the Alumet contract.
26. The Applicant submitted that Alumet have provided two alternative quotations for both sets of works and that the cost of scaffolding would be significant. In the opinion of the Applicant, the existing cladding and balcony construction represents a significant risk to the spread of fire across all elevations and must be remediated as soon as possible. A report was prepared by Tri Fire Ltd, 7 Bell Yard, London, WC2A 2JR and a copy of the Fire Engineers conclusion following his survey was provided to the Tribunal. The Tribunal understands that based on the MHCLG Safety Advice for Building Owners (20/01/2020) the Fire Engineer recommended that the balcony decking should be replaced with a non-combustible alternative. The Fire Engineer advised that:

*“The decking material to the balconies is timber, which is a combustible material. There is no soffit provided to the balconies, and they are vertically aligned; as such they represent a potential route or external fire spread which is unacceptable. The timber decking should be replaced with materials achieving Euroclass A2 or better”.*
27. The Applicant submitted that the lower of the two costs obtained for the concrete substructure repairs equated to just over £340,000.00 inclusive of VAT and professional fees and for the balcony remediation works to just under £270,000.00 inclusive of VAT and professional fees.

28. The Applicant further informed the Tribunal that it was currently awaiting approval of funding for the cladding replacement works from BSF and, following a competitive tendering process, have a preferred contractor Alumet ready to be appointed. Alumet's scope of works under the BSF includes for a full scaffold to the façades which the Applicant proposes to utilise to facilitate concrete and balcony remediation works. The Applicant submits that considering the forthcoming legal status of Alumet as principal contractor the concrete and balcony works will need to be carried out within the Alumet contract and as such the Applicant will not be able to provide two discrete competitive quotes. This is the reason that the Applicant seeks dispensation from the Section 20 consultation process to expedite these works.

### **The Hearing**

29. A Remote Video Hearing was held which has not been objected to by the parties. The form of the hearing was SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal refer to are within the Application, the Applicants statement of case and bundle filed by the parties, the contents of which have been fully considered by the Tribunal.

30. At the hearing the Applicant confirmed the submissions made in the Application and submitted that it was hoped works would commence on site in mid-September, in advance of the BSF deadline of September 30<sup>th</sup>.

31. Based on the bundle provided to the Tribunal the only submissions from any of the Respondents appears to be from Shailesh Chandarana and Raksha Chandarana who own flats 25 and 104. These submissions were:

- 1) That Thames Tower is one whole building so for the purposes of the cladding it is not clear why only mention of flats 1 – 112 would be funded by the BSF as surely any works would affect the whole building and there was no breakdown of the cladding details expected to cost in the region of £6,000,000.00.
- 2) There was no simple explanation regarding the additional remedial works that they could understand as they were just being given a levy figure per flat without the calculation explanations.
- 3) That the extra balcony decor works was given as an estimate but no real indication of costs.
- 4) The timescale mentioned was 12 – 18 months but there was no mention of the buildings insurance premium changes as they had increased by some £239,000.00 in the year April 2021 – April 2022. Again, the Respondents submitted that surely the whole building was insured as one so did not understand why the Applicant had not given the total insurance costs and how the breakdown was arrived at.
- 5) That the car park belongs to The Equinox (apart from six spaces) but that once you have entered the car park it was possible to gain entrance to flats 1 – 112 which, in the opinion of the Respondents was a safety and security issue. At the same time the owners of flats 1 – 112 were denied a fob to enter the car park for moving heavy items into their flats although they have been charged a proportion of the maintenance cost of the car park for many years.

- 6) That, in the opinion of the Respondents there was no clarity about the operation of the Management Company and no information in detail regarding the payment options.
  - 7) Finally, the Respondents submitted that to state that if BSF deadlines were not met funding might be lost was only included to scare the Respondents into paying up.
32. The Applicant had previously answered in detail all the queries raised some of which (the building insurance premium, operation of the Management Company and car park) are not relevant to this Application.
33. None of the Respondents attended the hearing and the Tribunal can therefore only conclude that none of the other Respondents (if not actively in favour of the Application) are not opposed to it.

### **The Law**

34. Where a landlord proposes to carry out qualifying works, which will result in a charge being levied upon a leaseholder of more than £250.00, the landlord is required to comply with the provisions of Section 20 of the Landlord & Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
35. Failure to comply with the Regulations will result in the landlord being restricted to recovery of £250.00 from each of the leaseholders unless he obtains a dispensation from a Leasehold Valuation Tribunal under Section 20ZA of the Act, (now the (First-tier Tribunal) (Property Chamber)).
36. In deciding whether or not to grant dispensation, the Tribunal is entitled to take into account all the circumstances in deciding whether or not it would be reasonable to grant dispensation. An application to grant dispensation may be made before or after the commencement of the works.

### **The Tribunal's Decision**

37. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA the Act. The Tribunal is not making a determination on whether the costs of those works are reasonable or payable. If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Act would have to be made.
38. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a wide discretion on whether to grant or refuse dispensation. The discretion however, must be exercised in the context of the legal safeguards given under sections 19 and 20 of the Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd-v-Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.
39. At paragraph 44 in *Daejan* Lord Neuberger said:

*“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”.*

40. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.
41. The Tribunal now turns to the facts. It is evident to the Tribunal that the work is urgent, and that if the work is delayed the application for funding to the BSF could be at risk. If this situation was allowed to occur it would place the burden of costly repairs on the shoulders of the Respondent leaseholders.
42. It is also evident to the Tribunal that if the remedial works to the concrete substructure and balconies is not carried out this could affect the safety of the building. This would present a real potential danger to both the building and persons using the building whether they are residents or visitors.
43. If the repairs to the cladding are not ultimately completed this is likely to result in the building being declared unfit for habitation and possibly subject to a Prohibition Order from the Local Authority.
44. At the same time, it is evident to the Tribunal that it is eminently sensible to replace the timber decking to the balconies while the scaffolding is in place as the scaffolding is provided as part of the claim to the BSF. If this work was to be carried out as a separate contract at a later date the additional costs to the leaseholders (in respect of scaffolding) would be considerable.
45. The Tribunal is satisfied on the information provided that it is reasonable to dispense with the consultation requirements in this case. The Tribunal is satisfied that leaseholders will not suffer (or have not suffered) any prejudice by the failure to consult. Indeed, they would, in the Tribunal’s view, be significantly prejudiced if the work is delayed.
46. The Tribunal is satisfied that the works appear comprehensive and that if properly completed should enable the repair works to the cladding to proceed and for the combustible balcony decking to be replaced.
47. The Tribunal is also influenced by the fact that only two of the Respondents have made any submission to the Applicant or, more importantly to the Tribunal either opposing or commenting on the Application.



48. Accordingly, the Tribunal grants the dispensation requested under Section 20ZA and determines accordingly.

49. This Determination does not give or imply any judgement about the reasonableness of the works to be undertaken or the cost of such works.

### **APPEAL**

50. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

G S Freckelton FRICS.

Chairman.

First-tier Tribunal Property Chamber (Residential Property)