



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

Case Reference : CAM/42UD/LDC/2018/0015

Property : St Francis Tower, 23 Franciscan Way, Ipswich IP1 1NB

Applicant : RG Securities (No.2) Limited

Representative : Simon Allison (counsel), instructed by David Bland (Pier Legal Services)

Respondent : Leaseholders of St Francis Tower

Type of Application : for dispensation with some or all of the consultation requirements concerning major works
[LTA 1985, s.20ZA]

Tribunal Members : G K Sinclair, G F Smith MRICS FAAV REV & C Gowman BSc MCIEH MCMI

Date and venue of Hearing : Thursday 13th December 2018
at Novotel Ipswich Centre

Date of decision : 20th December 2018

DECISION

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- Background paras 5–11
- The lease paras 12–14
- Consultation requirements & dispensation paras 5–16
- Inspection and hearing paras 17–22
- Discussion and findings paras 23–25

1. In this application the applicant freeholder seeks dispensation from some or all of the statutory consultation provisions required in respect of major works by section 20 of the Landlord and Tenant Act 1985 and regulations thereunder.
2. As was made plain to leaseholders in a letter from Pier Legal Services, on behalf of the applicant, dated 5th December 2018 :
...this application is not seeking any order as to payability or reasonableness of costs. The application is to dispense only with the 3 month consultation period due to the urgent nature of the works.
3. For the reasons which follow the tribunal grants such dispensation without imposing any conditions.
4. For the avoidance of doubt, and as volunteered by the landlord's counsel at the hearing, the tribunal makes an order pursuant to section 20C of the same Act confirming that the landlord's costs of and occasioned by this application shall not be taken into account in the calculation of the service charge payable by leaseholders for this or any future accounting period.

Background

5. Constructed in the 1960s as part of the modernist Greyfriars development, St Francis Tower, originally named Franciscan Tower, is the third tallest building in Ipswich and comprises 116 flats plus some commercial units on the ground floor, standing 17 storeys and 52 metres tall. The block was constructed by way of a concrete frame but was substantially refurbished between 2005 and 2008, when the floors were further subdivided and the number of flats dramatically increased to the current number. The applicant purchased the block from the developer in April 2015.
6. As part of this refurbishment the concrete and glass faces of the block were over-clad with a Trespa Meteon 8mm panel cladding system. This is not ACM (aluminium composite material), as used in Grenfell Tower, and initially the landlord was reassured after Suffolk Fire & Rescue Service confirmed that this was the case after some sample testing.¹ However, a report later obtained by the landlord's managing agents from Facade Remedial and Fire Risk Consultants ("FRFRC") disclosed some rather worrying news at paragraph 11 [page 37] :
On discussions with Building Control, the Building Regulation sign off was sublet to the NHBC. On discussions with the NHBC, the NHBC Guarantee was withdrawn due to reasons they will not disclose. Therefore, on evidence available, it would appear that the building has no Building Regulation sign off. Furthermore, on investigation, the Trespa Meteon used for the majority of the cladding is European Class D as per technical datasheets attached as a separate PDF. This would not meet Building Regulations now, or when it was installed between 2005 and 2007, as it is classed in the UK as a high-risk material. We refer to fires at Lakanhal House (2009) and The Cube, Manchester (2016) as examples of the risks of similar products.

¹ See the managing agents' report to leaseholders dated Friday 13th April 2018, quoting an original letter about cladding dated July 2017 which refers to Suffolk Fire & Rescue Service confirming that the cladding is not ACM [page 129]

7. A Table [page 42] is prefaced with the following observation :
 The highlighted Reynobond is the cladding which is present on Grenfell tower (please note the fire load of 123 MJ/m². The cladding on St Francis Tower is Trespa Std 8mm which you will note has a fire load of 216 MJ/m². (*sic*)
 As explained to the tribunal, this means that – if ignited – the Trespa cladding in use on this block has the ability to produce two-thirds more heat than petrol.
8. The report also noted in the executive summary [pages 32–33] that :
- a. generally the cladding installation was of poor standard
 - b. the fixings used on the facade are a mixture of rivets, wood screws and tec screws
 - c. No drawings were available
 - d. A full panel had fallen from the facade as a result of failed rivets, and a number of further panels had fallen due to poor fitting and workmanship
 - e. No information had been provided about any membranes or vapour control, and none could be found on visual inspection.
9. A Fire Risk Assessment carried out on 2nd July 2018 by Fire X noted a general risk level of “High Intolerable” [page 50], and at section 16 [page 54] the report states, under “Hazards”, that the IFC Fire Strategy report findings are that the risk to life is intolerable. The compartmentation report into the communal areas, including flats, shows serious breaches in compartmentation, and that fire doors are non-compliant. The report identifies serious fire safety concerns that pose a significant fire and life risk.
10. By breaches in compartmentation is meant the failure to seal service penetrations from floor to floor within service risers, and the fact that solid internal fire walls forming the boundaries between flats and between flats and corridors/escape routes only reach the height of the suspended ceilings already in place at the date of refurbishment. In consequence, on each floor an unrestricted gap 300mm deep extends the full width of the block between ceiling level and the concrete floor above.
11. The report also highlighted problems with the fire detection and AOV (automatic opening vent) systems, as a result of which a 24 hour 4-person waking watch has been put in place at a weekly cost of £10 000.

The lease

12. The sample lease provided is for flat 1206, is dated 11th October 2011, and grants a term of 125 years starting on 1st June 2007. The parties are Central House Investments Ltd as landlord and Michael Figgins as tenant. By clause 3.3 the tenant covenants to pay the service charge calculated in accordance with the Third Schedule on the dates therein stated, i.e. half-yearly in advance on account on the same days, 25th March and 29th September, on which rent is payable.
13. The amount recoverable on each occasion is half of the amount the landlord reasonably and properly anticipates spending in the following financial year on the services detailed in the Fifth Schedule. These include, inter alia, repairing and maintaining the main structure and all parts of the building not demised or intended to be demised to third parties.

14. The Third Schedule defines “service costs” as being the amount spent by the landlord in carrying out all obligations imposed on it by clauses 4.2 (insurance) and 4.4 (provision of services listed in the Fifth Schedule) of the lease and which are not reimbursed in any other way.²

Consultation requirements & dispensation

15. The statutory consultation process for major works, the cost of which will exceed the sum of £250 for any leaseholder, is prescribed by section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003. The process is lengthy and, unless abridged, can take at least three months.
16. If the consultation process is not followed then the consequence for the landlord is that the cost recoverable from any leaseholder by way of service charge is capped at £250. There is a saving provision, namely section 20ZA, which enables a tribunal upon application to dispense with all or any of the consultation requirements, and on such conditions as the tribunal thinks fit.

Inspection and hearing

17. The tribunal inspected the exterior of the building from ground level and from windows in the corridors and stairwell. Access was also provided to the riser cupboard and, from the top of the stairwell, the tribunal was able to take a fairly close look at the new AOV hatch which had been cut in the concrete roof.
18. Externally, most of the cladding had been removed on most sides of the block except below windows, where removal had only exposed to the elements the rear of plasterboard panels with recessed electric sockets and associated wiring. Some thought was being given to a solution that would preserve the weather-tightness of the flats, but until that was found removal of the cladding would be incomplete.
19. Accompanying the tribunal on the inspection were counsel and representatives of the landlord’s managing agents plus some leaseholders. At the hearing which followed rather more leaseholders turned up, but as none had accepted the offer in the tribunal’s directions to make their own written representations this meant that the hearing was entirely one-sided.
20. On behalf of the applicant landlord Mr Allison explained how its managing agents had invested considerable time and effort (so far at its own cost) to investigating the problems gradually revealed after initial post-Grenfell concerns about the nature of the cladding. Reports obtained in the early part of this year, and since, had only revealed greater causes for concern about the poor quality of the refurbishment works, the action taken in that regard (or not) by the NHBC, and the non-compliance with Building Regulations. This resulted in a finding that the building was a serious risk to life and the Fire & Rescue Service imposing conditions such as the 24 hour waking watch system, and its desire for various remedial measures to be undertaken (with the implicit threat of action being taken by it to serve a prohibition notice under the Fire Safety Act.



² For example, there is a possibility in this case of obtaining partial recovery through an insurance claim against the Building Warranty provider, Allianz – although this is currently contested

21. He then drew the tribunal's attention to the five tasks in respect of which relief was sought. Set out in the "grounds for seeking dispensation" section of the application form [page 23], they were :
- a. Compartmentation
 - b. Removal of external cladding
 - c. Installation of a fire alarm
 - d. Suppression systems
 - e. Automatic Opening Vents
- In addition, the tribunal reminded him also of the weatherproofing of the voids under the flat windows.

22. All of this work had to be undertaken by the landlord urgently. It had obtained reports and acted upon them, but in so doing had ensured – where possible – that competitive estimates were obtained. This allowed no time, however, for formal consultation over a period of three months as required by section 20 and the Regulations. Despite this the landlord had engaged with leaseholders, both in writing and at meetings that included lengthy question and answer sessions. Transcripts were in the bundle. Dispensation was therefore sought, with issues of cost and quality of the work to be dealt with later. Invoices had, however, been issued recently for around £19 000 per flat. While some allowance had to be given for unexpected findings it was not anticipated that any further top-up demand to cover actual costs would be of more than a few thousand pounds. It would not be as high again.

Discussion

23. Having :
a. studied the submissions, reports, correspondence with leaseholders, transcripts of meetings and the estimates included in the bundle
b. inspected the block, and
c. listened to and questioned the applicant's representatives (including a manager and engineer),
the tribunal has no hesitation in granting the landlord dispensation from the section 20 consultation process in respect of the matters listed in paragraph 21 above.
24. This is not simply a case where a high-rise residential block has been encased in extremely hazardous cladding material that should never lawfully have been installed. The refurbishment process seems, from the reports obtained so far, to have involved a questionable inspection regime from which the NHBC withdrew and extremely poor quality construction practices, both as to internal fire walls that left a hidden 300mm gap at the top and inadequate fixings securing the panels to the walls. If the required works are not undertaken quickly then there are potential risks of the Fire & Rescue Service serving a prohibition notice requiring the entire building to be vacate by residents, and/or insurers declining to provide cover – thus invalidating mortgages.
25. Leaseholders are understandably concerned that they are the ones now being asked to pay for staggering failures by those supposed to have the knowledge and/or the formal responsibility for ensuring that the flats were built and the building refurbished so that it was safe, and to a high standard. If there is some crumb of comfort here it is that there may be a warranty backed by an insurer

worth pursuing, if a suitable case can be made out.

Dated 20th December 2018

Graham Sinclair

Graham Sinclair
First-tier Tribunal Judge