



St. David's Square Residents' Association (SDSRA)

**All residents will be affected by the Freeholder's proposed Fire Safety works.
If you are renting, please pass this letter on to your landlord.**

26th October 2020

Dear Neighbour,

We are writing to update you regarding the situation with the Freeholder's application to the Building Safety Fund to remediate the cladding. Your Residents' Association has been working hard speaking to local politicians, solicitors, the Building Safety Fund, Leasehold Knowledge, the Greater London Authority, the fire brigade, the government's LEASE service, etc., and there are several concerns we are flagging for your attention. We have put below the most recent Residents' Association Cladding Update – this has been emailed to SDSRA members and also posted to the Facebook page. Please take the time to review the potential risks to leaseholders – they are significant. If you haven't already, please also join the Residents' Association – the more members the SDSRA has, the more clout we will have in front of a Tribunal, and when dealing with the Freeholder (FM PLC) and FirstPort.

You can apply for membership at: <https://membermojo.co.uk/sdsra>

The cladding Facebook page is: "SDS Cladding Action Group"
(<https://www.facebook.com/groups/578137949798573>)

Current Situation

The buildings on St. David's Square currently have EWS1 Certificates. This certificate is needed in order for any lending against the properties. FirstPort has instructed an engineer to look at whether the external walls and the cladding meet the Building Regulations.

The fire engineer has examined the external wall and has issued the EWS1 with safety classified overall as B1, "Where combustible materials are present in external walls I confirm that... B1 - I have concluded that in my view the fire risk is sufficiently low that no remedial works are required."

To avoid unnecessary worry – we are not aware of any potential downgrade to this report, as has been rumoured.

As noted in the report and as agreed by FirstPort, the cladding material on our buildings is combustible. It is High Pressure Laminate ("HPL") Trespa Meteon Standard 8mm, which has a Euroclass D,s2-d0 rating. This is not the same cladding used on Grenfell Tower. It has been decided by the government that this HPL cladding may be a fire risk.

However, the insulation behind the cladding is Mineral Wool Euroclass A1 and it is applied directly to a brick wall. The insulation and installation type are sufficient to significantly mitigate any fire risk. However, the Freeholder is able to apply to the Building Safety Fund to cover cladding remediation costs because it meets the government's criteria that the cladding itself is combustible and (so the Freeholder says) that our lease dictates that the costs for repairs are to be borne by the leaseholders.

St. David's Square Residents' Association (SDSRA)
Lockes Wharf, St. David's Square,
London, E14 3WA

Email: stdavidssquare@gmail.com

Website: <http://sdsrae14.com>

Facebook: [St Davids Square Residents' Association E14](#) & [SDS Cladding Action Group](#)

The Building Safety Fund has £1 billion available for what is estimated to be a £3 billion liability (estimated by civil servants at the Ministry of Housing, Communities and Local Government). The Building Safety Fund covers the capital costs of cladding remediation. These costs covered include the largest expenses associated with cladding remediation: scaffolding, labour, and replacement materials.

The Freeholder has notified us (via FirstPort) that they are not committing to doing any of the cladding remediation work until they know the outcome of the government's funding decisions. However, the Freeholder has let us know that they intend to use the leaseholders' service charges to cover any costs not covered by the Fund. The costs not covered by the Building Safety Fund are those unrelated to cladding removal. It is not clear from what the Freeholder/FirstPort have said so far whether they have in mind doing any non-cladding related works.

The Freeholder (via FirstPort) has served leaseholders with a Section 20 Notice. This Notice is issued when there will be large works likely to cost more than £250 per flat for which there is no existing contractor in place. The Notice allows a 30-day consultation period. That gives residents the opportunity to object to the Freeholder/FirstPort's proposed works and to nominate contractor(s) to bid on the works to be done. Please note that as part of the Building Safety Fund, the Freeholder is required to have conducted an appropriate tender process and to have solicited quotes from firms not associated with either the Freeholder or FirstPort.

Further, the costings will be checked by the government to ensure that they are in line with other similar projects. There is no guarantee, given that the only information the government will have is other cost submissions from other projects, that we will not be paying over the odds for the work. FirstPort will also collect management fees on the work. If a company in common ownership with either FirstPort or the Freeholder is selected to do the work, then the profits from the work will go to the same owners.

FirstPort has let us know that they are potentially applying to shorten/dispense with the Section 20 consultation process. To do so, they need to apply to the Tribunal and the Tribunal needs to notify all of the leaseholders of this application.

Scenarios

There are three possible outcomes from the application to the Building Safety Fund:

1. The government does not fund the works. We do not know whether the Freeholder would instruct FirstPort to proceed with actioning the remediation works.
2. The government funds part of the cladding remediation. We do not know whether the Freeholder would instruct FirstPort to proceed with actioning the remediation works.
3. The government funds the cladding remediation in full and no other works are identified. It is safe to assume that the Freeholder would want the works actioned because they improve the value of their property portfolio.

We cannot know what the costs to leaseholders will be if these works go ahead. Costs per flat may range from a few hundred pounds to tens of thousands of pounds. All leaseholders will be required to pay, regardless of whether they live on the top floors of the buildings or not.

Eventually the Section 20 process is going to have to be disclosed to potential buyers. Until we know what the works are going to be and what the final costs are going to be, our properties are not going to be easy to sell, if they can be sold at all.

RISKS TO LEASEHOLDERS

The SDSRA has three concerns: (1) Large bills for work that does not need to be done; (2) Dispensation of the Section 20 Notice – potentially expansive works with no ability to challenge their validity; (3) Massive demands on our service charges with difficulty in getting cash refunded (even if the government funds most of the works).

1. Large Bills for Unnecessary Works

The primary concern is that if there is no or insufficient funding from the Building Safety Fund we could then be left with large bills for work that, the need for which has not been justified to us. All that we have been given so far is vague information about “government standards”. We were told by FirstPort in May 2020 and September 2020 that works would be required to get an EWS1. Now, having got an EWS1, we are told works are still required.

We believe there is a material risk of large bills for leaseholders. On 25th September, the government published statistics about registration for the Building Safety Fund which stated that there were 2,711 applications being considered. If all 2,711 applications made to the fund are eventually successful, then the average grant per building will be around £370,000. That sounds like a lot but scaffolding alone can cost thousands of pounds per week and per building. However, at this point, we do not know how many applications will ultimately be approved. We do, however, know that further applications are yet to be made by local councils and housing associations. That round of applications closes in December. The same £1 billion in the Building Safety Fund is going to be used to cover those applications, if they meet the government’s criteria.

The minister in charge of building safety, Lord Greenhalgh, said on 22 September that the entire cost of cladding remediation was not going to be paid by the taxpayer and contributions from leaseholders were expected. Lord Greenhalgh said on 19 October that the government is only going to try to make cladding works bills “affordable” for leaseholders, not pay them in full.

2. Dispensation of Section 20 Process: Inability to Challenge any Further Works Begun During the Cladding Remediation Process

A further risk is that the Freeholder, if it makes an application to dispense with consultation (which it has notified us that it may do), is effectively asking for a blank cheque from the leaseholders. The Freeholder has told us that if it seeks dispensation, it will ask for dispensation from the need to consult on not only cladding works but in addition anything else that may arise. If an order is awarded on that basis and the cladding removal reveals e.g. structural problems, or the Freeholder decides it would be a good time to do other work, we will not be able to challenge them starting yet more work at our expense.

The risk in relation to that is real. Taking apart an existing building is like pulling on a loose thread. We do not know what will be found once the cladding comes off. We are being asked to put blind trust in FirstPort and the Freeholder.

FirstPort and the Freeholder have a poor track record in this area. FirstPort manages the Citiscape development in Croydon. Our Freeholder also owns the freehold of Citiscape. In 2018, Leaseholders there were asked to pay around £3 million to cover waking fire watches and the removal of ACM cladding (the same as used on Grenfell Tower). When the cladding was removed the buildings were found to be structurally defective. The residents had to move out. Thankfully, Barratt Homes (the developer of Citiscape) did the right thing and paid for the costs of the cladding and the structural works. According to Barratt’s accounts, the works at Citiscape and on some other buildings it developed have cost around £27 million to June 2020 and may cost around £48 million more to complete.

3. Immediate Substantial Call for Funds Through Service Charges and Difficulty with Reimbursement in Cases of Overpayment

The timing of our service charges is an issue. Service charge demands for the first payment on account for 2021 are due at the start of December. They may include an estimated cost of the works. That would mean that we start paying up front so the money is available for works to start in March 2021. Even if the government later provides funding, this is money we won’t see again for a long time, if ever. The lease appears to allow FirstPort to retain credit balances until June 2022, at the earliest and perhaps longer.

The Freeholder/FirstPort has not said if there will be any help to spread the costs of a large bill. The default position, if we end up with, say, an estimated bill of £10,000 per flat is that we are going to have to pay the usual service charge amount plus £5,000 in December. The same again in June 2021.

Even if the government funding comes through, the lease appears to say that any money that does come back to leaseholders will only come back as a credit against future service charge demands. If people have to borrow money to pay the extra demands, then this may cause people a real problem.

Having large credit balances is also going to run the risk of the money burning a hole in FirstPort's pocket. There is a trust fund for the service charge money, so it is separate from FirstPort's own money. But there is nothing stopping the Freeholder/FirstPort launching further major works consultations once the money is paid over.

If service charge demands including the estimated costs of the work are made in December, then the Freeholder can (and most probably will) apply to the Tribunal for an order that the charges are reasonably incurred under section 27A. Alternatively, the Freeholder may not include the costs of the works in the 2021 service charge budget but later make a section 27A application. If any order were made, we would lose the right to challenge the necessity and scope of the works. All we will be able to do is to challenge the amount of costs paid, not the issue of whether they should ever have been paid. We would, however, have the right to challenge a section 27A application. We would most likely need an expert witness to argue about the necessity of the works and the costs proposed.

How you can help

1. Join the SDSRA: <https://membermojo.co.uk/sdsra>
2. [Download an objection letter](#) which can be sent (along with any other objections you may have) to:
 - statementofcompliance@firstport.co.uk
 - ewsobservations@firstport.co.uk
 - propman@fmplc.co.uk
3. Email us at stdavidssquare@gmail.com to express your interest in opposing any application the Freeholder may make to dispense with the Section 20 consultation. The more people we have lined up against it, the harder it will be for dispensation to be granted.

The SDSRA is working on preparing our case against the Section 20 dispensation. In addition, the SDSRA has also requested details of the scope of works from FirstPort in order to nominate a contractor to participate in the tender, in the event that the former is unsuccessful. This will enable us to have a view on costing and to get advice on what works are necessary.

Sincerely,

The SDSRA Committee

Brittis Wilks - Lucy Brown - Charles Osborne - Jonathan Cassar - Simon Whittaker -
Sally Fletcher - Grace Cartier - Anupam Sharma - Mark Smith - David Titterington