



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

<b>Case Reference</b>	:	LON/00BG/LDC/2019/0159
<b>Property</b>	:	London City Island
<b>Applicant</b>	:	1. Clearstorm Ltd 2. Eco World-Ballymore London City Island Company Ltd
<b>Representative</b>	:	Mark Loveday (Counsel)
<b>Respondent</b>	:	The Leaseholders of Phases I and II London City Island whose names are annexed to the application form
<b>Representative</b>	:	No appearance
<b>Type of Application</b>	:	Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985.
<b>Tribunal Members</b>	:	Judge Robert Latham Marina Krisco FRICS
<b>Date and venue of Hearing</b>	:	30 October 2019 at 10 Alfred Place, London WC1E 7LR
<b>Date of Decision</b>	:	3 December 2019

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**DECISION**

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(i) The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act

1985, in respect of a proposed Qualifying Long-Term Agreement, namely the draft Estate Deed annexed as an Appendix to this decision. The relevant consultation requirements are those imposed by Schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003

(ii) The Tribunal grants this dispensation without prejudice to the Applicants' contention that this may not be a Qualifying Long-Term Agreement.

(iii) The terms of the proposed Estate Deed have not been finalised. In so far as there are any significant amendments to the draft Deed, the Applicants shall send a copy of the final draft to the tribunal, marked "for the attention of Judge Latham". The Applicants shall identify the significant changes and explain the reasons for the amendments.

### **The Application**

1. On 9 September 2019, the Applicants issued this application seeking dispensation under Section 20ZA of the Landlord and Tenant Act 1985 ("the Act") from the consultation requirements imposed by Schedule 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations"). The Applicants state that they are planning to enter into a proposed Estate Deed which is potentially a Qualifying Long Term Agreement (QLTA). A copy of this Estate Deed is annexed to this decision. There are some 1,250 respondents to this application whose names are annexed to the application form.
2. The Applicants reserve the right to contend in any future proceedings that the Estate Deed is not a QLTA and that the statutory consultation duties are not engaged. The Estate Deed is an indefinite arrangement between the owners of adjacent development sites regulating their mutual rights and obligations. The lessees are not parties to the Agreement. It is questionable whether such an agreement is a QLTA. However, in *Paddington Basin Developments Ltd v West End Quay Estate Management Ltd* [2010] EWHC 833 (Ch); [2010] 1 W.L.R. 2735, Lewison J held that an Estate Management Deed was capable of being a QLTA. Although the Deed in that case was very different from the current Estate Deed, landlords are now sensitive to the risk of possible challenges under the Act. Protective applications of this kind are now being made. It is not necessary, or appropriate, for this Tribunal to revisit the decision *Paddington Basin Developments Ltd* and determine whether the Estate Deed is a QLTA. We proceed on the basis that it is.
3. On 11 September 2019, the Tribunal issued Directions. The Tribunal was minded to deal with the application on the papers unless any party requested an oral hearing. The Applicants were directed to send the Respondents a copy of the application form together with the Directions. Any leaseholder who opposed the application was directed to complete an attached reply form and return it to the Tribunal. They were asked to

specify whether they had sent a statement to the landlord and whether they wished to attend an oral hearing. They were directed to send to the landlord a copy of this reply form to the landlord together with a statement in response.

4. The following leaseholders have completed the reply form opposing the application:

(i) Ekaterina Marshall, 410 Astell House. She stated that she intended to send a statement to the landlord (at p.279), but did not wish to attend an oral hearing.

(ii) Emily Homer Osmond, 603 Kent Building. She stated that she did not intend to send a statement to the landlord, and did not wish to attend an oral hearing.

(iii) Nino Butkhuzi, 1108 Modena House. He stated that he intended to send a statement to the landlord, but did not wish to attend an oral hearing.

(iv) Houman Kharasani, 203 Globe House. He stated that he intended to send a statement to the landlord (at p.274) and wished to attend an oral hearing.

(v) Aswin Rianganand, 804 Kent Building. He stated that he intended to send a statement to the landlord (at p.272) and wished to attend an oral hearing.

(vi) Hannah Tay, 905 Echo House. She stated that she intended to send a statement to the landlord (at p.277) and wished to attend an oral hearing.

(vii) Nikhil Swami, 1202 Amelia House. He stated that he intended to send a statement to the landlord (at p.275), but did not wish to attend an oral hearing.

(viii) Ran Ju, 1107 Carson House. He stated that he intended to send a statement to the landlord (at p.274), but did not wish to attend an oral hearing.

(ix) Yua Haw Yoe, 1408 Bridgewater. He stated that he did not intend to send a statement to the landlord, but he wished to attend an oral hearing.

(x) Michael Bates, 1106 Kent Building. He stated that he intended to send a statement to the landlord (at p.279).

(xi) W Hu. The form sent to the Tribunal was not legible. Despite a request, a legible version was not provided.

5. In the light of these responses, the Tribunal set the matter down for an oral hearing. The Applicants have provided a Bundle of Documents for the hearing.

## The Hearing

6. Mr Mark Loveday (Counsel) appeared on behalf of the Applicants instructed by Ballymore Asset Management Ltd. He was accompanied by Mr Jerome Bond (Legal Assistant), Lauryn Amara (Senior Facilities Manager (Projects), Ballymore Asset Management Limited) and Mr Mark Thompson (Development Manager, Ballymore Group). They have all provided witness statements and attended to answer any questions about the consultation that has been conducted. Mr Thompson was available to answer any queries about the strategic reasons for the Estate Deed. Mr Loveday provided a Skeleton Argument.
7. None of the Respondents appeared.

## The Law

8. The only issue which this Tribunal is required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements, and if so, whether to impose any conditions. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.** However, the statutory consultation procedures are part of the statutory armoury to protect leaseholders from paying excessive service charges.
9. Section 20 of the Act provides (emphasis added):

“(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement. (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement:

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.”

10. The appropriate amount set by Regulation in relation to “qualifying works” is an amount which results in the “relevant contribution” of any tenant being more than £100 in relation to a QLTA.

11. Section 20ZA provides:

“(1) 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section:

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.”

12. The consultation requirements for “Qualifying Long Term Agreements other than those for which Public Notice is Required” are contained in Schedule 1 of the Service Charge (Consultation Requirements) (England) Regulations 2003. The first stage of the statutory consultation is the service of a Notice of Intention to enter into the QLTA. This Notice must be given to each tenant and any tenants’ association, describing the nature of the agreement, or saying where and when a describing may be inspected, stating the reasons for the agreement, and specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The Applicants contend that it is not practical for the leaseholders to nominate a contractor, given the nature of the QLTA that they intend to enter.

13. The leading authority on the granting of dispensation is the Supreme Court decision in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854. The issue for the Tribunal is any prejudice which will be caused to the leaseholders by their landlord’s failure to follow the statutory procedures.

### **The Background**

14. London City Island and Goodluck Hope are large mixed-use developments at the mouth of the River Lea. The Leamouth development includes three phases built out by various development partners:

(i) London City Island Phase I: This has been completed as a mixed-use scheme of apartments in 5 blocks (namely Globe House, Grantham House, Harmony House, Hercules House, Java House and Kent Building) together with employment uses, communal facilities, common parts and grounds.

(ii) London City Island Phase II: This is nearing completion, and will comprise a mixed-use scheme of apartments in 5 blocks (namely Amelia House, Astell House, Bridgewater House, Corson House, Echo House, Meade House and Modena House) also with employment uses, communal facilities, common parts and grounds.

(iii) Goodluck Hope: This is in the course of construction.

London City Island Phases I and II include some 1,587 private residential units, 104 social rented and 15 shared ownership. Goodluck Hope will comprise 691 private units, 106 social rented and 52 shared ownership.

15. The interests in London City Island Phase I are as follows:

(i) The freehold is registered at HM Land Registry under title No. EGL442847. The Second Applicant is the registered proprietor.

(ii) It is subject to a head lease granted on 15 May 2015 for a term of 1,000 years from 1 April 2014, registered at HM Land Registry under title No. AGL344583. The First Applicant is the registered proprietor.

(iii) By various leases, The First Applicant and/or its predecessors in title demised long residential leases to occupational lessees for terms of 999 years from 1 April 2014. The Tribunal has been provided with a sample lease (at p.40). The apartments are almost all occupied.

16. The freehold interest in London City Island Phase II is held by the Second Applicant. Some residential leases have been completed and the remainder have been pre-sold under 'off-plan' contracts of sale. The leases which have completed are in similar form to the Lease and it is intended that the rest will be in similar form.

17. The registered freehold proprietors for Goodluck Hope are (1) Leamouth Nominee Ltd and (2) Leamouth Nominee 2 Ltd. Some 'off-plan' sales of flats have taken place at Goodluck Hope, but no leases have completed. It is intended that these leases will be in similar form to the Lease.

18. Although Ballymore is a joint venture partner in all three, its partners are not the same. For the foreseeable future, the three phases will remain in separate ownership. Unlike many phased developments where the freehold is held by a single owner, it is therefore necessary for each phase to enjoy easements over the neighbouring phases and to be subject to similar rights in favour of the owners, lessees and other occupiers.

## **The Proposed Agreement**

19. The Lease imposes standard-form obligations on the landlords in Schedule 6. These include obligations in respect of “the Estate”, such as obligations to pay outgoings (Sch.6 Pt.I para 1), to maintain roadways, pipes, wires, drains etc. (Sch.6 Pt.I), to repair and decorate media, fixtures, fittings etc. (Sch.6 Pt.I paras 3(e) and (f)), to maintain facilities (Sch.6 para 5) and so on. There are numerous other references to the “Estate” in the Lease. Sch.4 para 11 and clause 1(a) further require the lessee of the apartment to pay an Estate Service Charge for the costs incurred by the landlord in meeting these obligations.
20. The Applicants have considered, in consultation with the freeholder owners of Goodluck Hope, the most appropriate means of ensuring that all three phases are managed together. The advice received is that the most appropriate method of co-ordinating management between the various freehold owners is to enter into a Mutual Service Charge Deed. The terms of the draft Estate Deed have now been finalised after considering representations from consulting their lessees and following negotiations between the various parties
21. Goodluck Hope is a party to the Agreement, but none of its flats have yet completed. It is not necessary for it to be a party to the application (see *BDW Trading Ltd v South Anglia Housing Ltd* [2013] EWHC 2169 (Ch); [2014] 1 WLR 920).
22. In his witness statement, Mr Bond explains the rationale for the Estate Deed:
  - (i) The leases envisage Estate-wide management.
  - (ii) It is the only way that the landlords and leaseholders can comply with their obligations under the leases in respect of other phases of the Estate.
  - (iii) Occupiers need rights of access to other parts of the Estate.
  - (iv) The Estate Deed will ensure the smooth running of the Estate and (hopefully) achieve cost savings.

## **The Scope of the Consultation**

23. The Applicants have consulted with their leaseholders. Their problem in complying with the strict statutory requirements is that there are only three possible parties to the Agreement, namely the three site owners. The Applicants cannot therefore invite the leaseholders to nominate a contractor from whom an estimate should be sought.
24. The Applicants have sought to follow the spirit of the statutory consultation:

- (i) On 3 August 2018, they gave Notices of Intention to the lessees at London City Island Phase I and II. On 4 December 2018, they re-sent the notice to some 841 lessees at London City Island Phase I and II as it had emerged that there was a typographical error in the e-mail address.
- (ii) On 23 May 2019, they gave Notices of Proposals to the lessees at London City Island Phase I and II. By this stage the number of lessees had increased to 1,085.
25. The Applicants had regard to the observations made in response to these notices. This is described by Mr Bond in his witness statement. Mr Loveday emphasised that this has not been an empty ‘tick box’ exercise. In relation to at least one issue, namely use of the gym, the Applicants have made a financial contribution to ensure that lessees do not have to carry the burden of costs for unfinished units at Goodluck Hope.
26. On 10 July 2019, the Applicants held an open meeting with all residents (including lessees). It followed up the meeting with a note to all leaseholders.
27. The Applicants have conducted further consultations outside the Act in respect of those who are not “tenants” and/or who are not required to be consulted:
- (i) On 5 April 2019, the Applicants’ solicitors contacted the solicitors for the buyers of units in London City Island Phase I who had not completed their leases. They were sent a Note about the Agreement and asked to comment.
- (ii) On 4 June 2019, the solicitors sent the same Note to potential purchasers of flats at Goodluck Hope.
- (iii) On 26 June 2019, the Applicants consulted with Clarion Housing Association, which leases Harmony House, and which houses the 104 social rented flats. There has been no response.
- (iv) The Applicants invited non-lessees invited to an open meeting on 10 July 2019.
- (v) The Applicants state that they have had regard to all the feedback that they have received.

### **Why the full Statutory Consultation is not Possible**

28. The Applicants reserve their position as to whether this is a QLTA on which they are under a statutory duty to consult. If such a duty arises, the Applicants argue that the nature of premises are such that it is not possible to invite nominations of alternative contractors and/or to obtain estimates from nominated persons, and/or to prepare at least two proposals and/or to make estimates and/or otherwise to comply with the requirements of Schedule 1 to the Regulations. The



Agreement can only be made with the owners of the other parts of the Estate.

29. The Applicants submit that there is no prejudice caused to the lessees by any dispensation. One of the intentions behind the Agreement is that it will lead to cost savings. A pooling of management across a wider estate, will allow the possibility of economies of scale. That is not the only reason why joint management of the Estate would be desirable, but it is an aspiration. In her statement, Ms Amara has sought to estimate some of these potential savings.

### **The Objections which have been raised**

30. Eleven leaseholders have completed the reply form opposing the application. Four stated that they wished to attend a hearing. None of them appeared. The seven Statement of Objections which were provided are included at p.272-280 of the Bundle. A number of the responses used a common template.
31. Leaseholders question whether the proposed Estate Deed will result in savings for the leaseholders. One of the objectives of the Estate Deed is to achieve economies of scale. It is impossible to guarantee that this objective will be met. This application does not concern the issue of whether any service charge costs will be reasonable or payable. If the stated objective is not met, and the Estate Deed results in service charges that are not reasonable, any leaseholder will be able to bring an application to this tribunal. Mr Loveday notes that under their leases, the lessees are currently obliged to pay for services on the other two freehold areas. It is therefore difficult to see why they should be prejudiced by higher service charges.
32. A number of leaseholders suggest that a larger site would adversely affect rights under the Landlord and Tenant Act 1987 (namely the rights of first refusal, appointment of Manager and Acquisition Orders), under the Leaseholder Reform, Housing and Urban Development Act 1993 (collective enfranchisement) and the Commonhold and Leasehold Reform Act 2002 (Right to Manage). Most of these rights appertain to a building and not an estate. It is unlikely these rights would be affected. Mr Loveday refers us to the decision of *Ninety Broomfield Road RTM v Triplerose* [2015] EWCA Civ 282; [2016] 1 W.L.R. 275.
33. A leaseholder (at p.279) suggests that the shared use of certain Phase I and II facilities with Goodluck Hope might lead to overcrowding. The Applicants respond that the Estate Deed will not affect the legal position. The Lease does not grant residents at London City Island the exclusive use of shared facilities such as the gym. Quite the opposite. Clause 8(x) (at p.53) expressly states that the Facilities (including the gym) are for the common use of the Estate (including Goodluck Hope). Indeed, it is not just for the exclusive use of the Estate. The Estate Deed does not affect this.

34. A leaseholder raises the possibility that sharing the burden of costs with Goodluck Hope would leave a shortfall from unsold flats. The Applicants have addressed this and have made a financial contribution to ensure that lessees do not have to carry the burden of costs of unfinished units at Goodluck Hope.
35. A query (at p.280) is raised about a Recognised Tenant's Association. The Applicants respond that there is no Tenant's Association recognised under section 29 of the Act. There is a non-statutory tenant's association at London City Island with which the Applicants As have engaged. The Applicants understand that it is supportive of the Estate Deed, but does not wish to officially endorse any position.
36. Leaseholders ask the Tribunal to make it a condition of granting dispensation that the Applicants pay their legal costs. There is no evidence that they have incurred any legal expenses. The Tribunal are satisfied that they do not require legal advice to make an informed response to this application.

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

37. The Tribunal have considered the objections raised by the leaseholders. The Applicants have responded to these. The only issue which this Tribunal has been required to determine is whether or not it is reasonable to dispense with the statutory consultation requirements. This application does not concern the issue of whether any service charge costs will be reasonable or payable.
38. The Tribunal is satisfied that it is reasonable to grant dispensation. We accept that it is not practical for the Applicants to comply with the full statutory consultation procedures. In particular, leaseholders cannot nominate a contractor in response to the Stage 1 notice.
39. The Tribunal is not satisfied that the leaseholders will suffer any prejudice as a result of the proposed Estate Deed. One objective of the Estate Deed is to secure value for money. This is not merely a question of lower service charges, but also ensuring that the Estate is managed efficiently and effectively. In the circumstances, it is appropriate to grant dispensation without any conditions.

### **Notification of this Decision**

40. The Tribunal directs the Applicants to send a copy of this decision to all leaseholders. In addition, the Tribunal will send a copy of the decision to the eleven leaseholders who have objected to the application. This need not include the Appendix, as the Estate Deed was attached to the application form. The Applicants should also, if possible, place a copy of this decision (including the Appendix) on any website. The Applicants shall notify the tribunal when they have complied with this Direction.

**Judge Robert Latham,  
3 December 2019**

## **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).