



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

Case Reference : **MAN/00BN/LDC/2019/0042**

Property : **Vie Building
Water Street
Manchester
M3 4JU**

Applicant : **Vie (Manchester) Management
Company Limited**

Representative : **JB Leitch, Solicitors**

Respondents : **The residential leaseholders of the
Property (see Annex)**

Representative : **N/A**

Type of Application : **Landlord and Tenant Act 1985
- section 20ZA**

Tribunal Members : **Judge J Holbrook
Deputy Regional Valuer N Walsh**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **6 February 2020**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising the installation of a fire detection system at the Property; appropriate rewiring of the smoke vents; and compartmentation works in respect of fire breaks. A more detailed description of these works is given in paragraph 4 below.

REASONS

Background

1. On 20 November 2019, an application was made to the First-tier Tribunal (Property Chamber) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application was made by Vie (Manchester) Management Company Limited and relates to premises known as Vie Building, Water Street, Manchester M3 4JU (“the Property”). The Applicant is the management company under the long leases of the 207 residential apartments within the Property. The Respondents to the application are the long leaseholders of those apartments. A list of the Respondents is set out in the Annex hereto.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern fire protection measures which the Applicant says are urgently required to safeguard the occupiers of the Property. In particular, the proposed works comprise the installation of a fire detection system within the individual apartments and linked with the common parts; rewiring of smoke vents to ensure that they are working correctly and for their intended purpose in directing smoke out of the Property (as opposed to potentially spreading smoke to other floors); and compartmentation works to the internal parts of the Property consisting of works to the firefighting shaft, dry riser inlets and the bin store to ensure the compartmentation to reduce the spread of fire is satisfactory.

5. On 3 December 2019, the Tribunal issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received and the Tribunal therefore convened on the date of this decision to consider the application in the absence of the parties. Copies of the application (with supporting documentation) had been provided to each Respondent and three of them submitted written representations in response. The Applicant then provided a reply to those representations. We considered all of this material when determining the application.
6. The Tribunal did not inspect the Property but we understand it to comprise a major purpose-built development of two apartment blocks known as The Medlock Building and The Irwell Building which together contain 207 residential apartments. The Medlock Building also contains a ground floor commercial unit and an underground ventilated car park. In addition, there is an external open-air car park.

Grounds for the application

7. The Applicant's case is that, following testing of the external cladding system, deficiencies in the Property's fire safety measures have been identified. Although the external cladding does not consist of Aluminium Composite Material, it has defects in respect of its fire stopping qualities and risk of extensive fire spread. In addition, the buildings' compartmentation and smoke vents have been found to be insufficient and thus to pose a further health and safety risk to residents.
8. Following discussions with Greater Manchester Fire and Rescue Service, the Applicant has arranged for fire marshals to patrol the Property on a 24/7 basis pending the installation of a full-scale fire alarm system. The fire marshals would assist in the evacuation of the Property in the event of a fire. However, the Applicant wishes to carry out all the proposed works as soon as possible in order to comply with the guidance it has received, to remove the need for the fire marshals, and to return the Property to a "stay put" policy in the event of fire.

Law

9. Section 18 of the Act defines what is meant by "service charge". It also defines the expression "relevant costs" as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

10. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either—
(a) complied with in relation to the works ... or
(b) dispensed with in relation to the works ... by the appropriate tribunal.

11. “Qualifying works” for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3) of the Act and regulation 6 of the Regulations).

12. Section 20ZA(1) of the Act provides:

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.

13. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to:

- give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
- obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;
- make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
- give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

Conclusions

14. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. It is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.
15. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for swift remedial action to ensure that occupiers of the Property are not placed at undue risk and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before major works begin. It must consider whether this balance favours allowing the works to be undertaken immediately (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in carrying out the works which that will require). The balance is likely to be tipped in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.
16. In the present case, it is obvious that essential works to ensure that the Property has adequate fire safety measures should be undertaken as soon as possible: this is appropriate not only to minimise risk to the health and safety of the occupiers of the Property, but also to minimise the cost of stop-gap protection in the form of on-site fire marshals. We have no hesitation in finding that the balance of prejudice favours permitting such works to proceed without delay.
17. In reaching this conclusion, we note that the Applicant has not yet completed the task of selecting contractors to carry out the works and that the anticipated overall costs of the works are as yet unknown. Neither of these factors detract from the fact that the proposed works are of an urgent nature, and we note also that the developer of the Property, Redrow Group Services, has provided the Applicant with a “without prejudice loan” to begin the works. The Applicant is currently proceeding on the basis that this loan will have to be repaid and that the cost of the works will ultimately be borne by the respondents as service charge payers.

18. We also note that, whilst the Applicant has not fully complied with the statutory consultation requirements, it has provided each Respondent with an initial notice of its intention to carry out the works. Moreover, although three individual Respondents have made representations in response to the present application to the Tribunal, none have expressed opposition to the grant of dispensation (indeed, two of them indicated their support). The common theme in the representations received was concern about where ultimate liability for the cost of the works should fall: should the cost be borne by the leaseholders or should it be met by the developer? Although it is quite understandable that leaseholders should be concerned about this, it is not a matter for the Tribunal to rule on in these proceedings. Nor does it go to the question whether we should grant the application for dispensation.
19. Nevertheless, the fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that we consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard.

Judge J Holbrook
6 February 2020

ANNEX
(List of Respondents)

Mr Bagnall
Mr Jones
Joseph Archer
Mr & Mrs Sandiford
Mr Channa
Dr D J Kaminski
Dr D J Kaminski
Declan O'Hara
Rehab 95 Limited
Messers Johnson & Jackson
Mr Lissen
Mr D Bentley and Mrs K Bentley
Mr Dunning
Ms Quin & Ms Samson
Dr Wasim Ahmed
Dr Sawal & Dr Hussain
Mr P Flood
Mr Neil Michael Murray
Ms Alice Smith
Mr Luke Halliwell
Mrs Gray
Mr Blair and Ms Taverna
Mr K Morley
Dr Rohaj Kent Mehta
Mr Walker
Kinza Iqbal Jaffri
Ms Mooney
Ms Abhi Kandola
Mr Silver
Ms Edgar & Mr Black
Stewart Marsh
Miss Mary L Bason
Mr C Morally
Peter Elliot Fry
Heather Aspinall
Mr Dunning
Mr Stephen Gold
Mr Christopher A Gold
Mr Absolom
P&CE Joyner
Mr C Lamb
Deklon Lowe
Mr Rawson & Mr Mercer
Oystercatcher Properties
Mrs Chapman
Mrs Matin
Mr A Stillhard
Mr Dunning

Christopher Andrew Bauer
Karan and Raghav Bhatia
Gopinder Lalia
Mr & Mrs James
Dr A M Ismail
Ms Kirstie Wilson
Messers Ming Y Pan
Mr Parry & Mr Harris
Mr S Alam
Masud Shirin
Mr & Mrs Whalley
Mr Ahmed Din
Mrs Dasu
Mr Yusuf
Mr C & Mr R Kershaw
AWM Property Investment Limited
Foremost Estate Limited
Mrs Fatona
Mr Haigh
Mr Jones
Rahul Sharma & Panna Sharma
Mrs Gray
Rehab 95 Limited
Rehab 95 Limited
Mrs Blair & Mr Taverna
Mr and Mrs Lee
Mr Thompson & Ms Hughes
Mr Bagnall
Ms Freya Elizabeth Hoyle
Mr & Mrs Hall
Mr Roach
Gabriel Feldman
Messers Morris
Mr John Roscoe & Hsien-Min Hsieh
Mr James Cunningham
Mr & Mrs Saini
Mr Jonathan Wilmot & Miss Leoni McLachlan
Mr & Mrs Sinclair
Mr & Mrs Hussain
Jiva & Hussain Properties
Mr Bowie
Stuart James Parkinson
Shaun Gelsthorpe
Mr Ajmal Nasir
Jiva & Hussain Properties
Mr and Mrs Bonacina
Mr L Athie & Ms H Athie
Zulfikar Mustafa Karimjee
Zhe Song & Ms Rong Zheng
AWM Property Investment Limited
Mr Junyong Mei

Mr and Mrs D Henderson
Mr D Probyn
Mr Edwards
Ms Sabita Ballack
Ms Marian Cole
Pradeep Chopra & Anurandha Chopra
Mr S Canning
Ashley Singh
Naresh Chopra and Tina Chopra
Mr J Clarke
Mr B R Kitchin
Mr N A Luck
Mr Quinn & Ms Carolan
Mr & Mrs K Chopra
Mr & Mrs D Keep
Mr P Kitchin
Fiona Wise
Mr Phillip Eckersley
Mr and Mrs Stephen Eyre
Ms J Lawson
Mr B Kitchin
Timothy Daniel Clarke & Holly Amanda Smith
Mr B K Raven
Constance Adoley Annan
Parth Consultants
Mr Craig
Mr & Mrs Price
Martin Copeland
Mrs Yuk Ching Lee
Mr Grunsell
Malcolm Gibson
Mr and Mrs Briggs
Mr M Hamer & Mrs V Hamer
Mr Hayhurst
Katharina Rebecca Ausborn
Mr & Mrs Smith
Mr Fellows
Mr William Rowlands & Ms Tarciana Peel
Mr Matt Wilden
Mr & Mrs Igoe
Mr Russell Croker
Holly Jones
Mark Jones
Mr & Mrs Houghton & Mr & Mrs Price
Conor Clafferty
Mr Kumar
Mr & Mrs Igoe
Mr & Mrs Igoe
Mr Guest
Mr Andrew Mark Jepson
Mr Swindells

Susannah Warrington
Mr Parker
Mrs Pauline Bamber
Mr & Mrs Southam
Mr & Mrs Southam
Mr & Mrs Southam
Mr I P Jones and Mrs K C Jones
Mr Milne
Toby Taylor Osborne Lindsay
Ms Gerrard
The ASIS Partnership
Mr Brock & Mr Neary
Nicholas John Simons
Mr Roberts & Mr Gillespie
Mr Robertshaw & Ms Hawitt
Mr and Mrs Chatterjee
James Morris
Mr Yip
Robin A V Higson
Mr T Harris & Ms H Armstrong
Mr Shahad Zafar
Katherine Norton
Matthew Robert Morrison
Mr Stephen Dawson & Miss Cheryl Ballance
Mr and Mrs Mak
Mr Andrew Morris
Mr Sean McCleary
Nicola Murphy
Mr Ruben Wolff
Joanna Hall
Mr Chambers and Miss Rothwell
Mr and Mrs Mak
Mr and Mrs Carrington
Mr Dearden
Mr McGlynn
AWM Property Investment Limited
Mr Smith
Francesca Kate See
Mr & Mrs I Lasplace
Mr & Mrs Broadley
Mr Andrew Morris
Hassina Begum
Mr Liam Anthony McDaid
Ms Antonia Oxley
Mr & Mrs Saini
Mr Terry Jackson
Mr Newell John
Mr Martin Hugh Lafferty
Mr & Mrs Redmond
Mark Christian Kirschstein
Miss Elaine Man Chuan Wong

Mr Ahmed Din C/O Lloyds Banking Group
Mr Adrian Pak Wai Hung
Mr & Mrs Ip
Dr Chakrabarti
Mr and Mrs Briggs
Mr & Mrs Ratcliffe
Ridley Thaw LLP