



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

**Case Reference** : **MAN/30UG/LDC/2020/0022 A/V**

**Property** : **Waterside Apartments, St James Court West,  
Accrington, Lancashire, BB5 1NA**

**Applicant** : **Adriatic Land 3 Limited**

**Applicant's Representative** : **JB Leitch Limited**

**Respondents** : **Various (see Annex)**

**Type of Application** : **Landlord and Tenant Act 1985 (the "Act")–  
section 20ZA**

**Tribunal Members** : **Judge WL Brown  
Mr I R Harris MBE FRICS**

**Date of Decision** : **26 February 2021**

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**DECISION**

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## **The Decision**

The Tribunal determines that those parts of the consultation requirements provided for by s.20 of the Landlord and Tenant Act 1985 ("the Act") which have not been complied with are to be dispensed with.

## **The Application**

1. The Applicant seeks a determination pursuant to s.20ZA of the Act for the dispensation of all or any of the consultation requirements provided for by s.20 of the Act. The application was dated 24 April 2020. The only issue for the Tribunal is whether 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.
2. Directions of the Tribunal were issued on 16 June 2020.
3. Objections to the Application had been received from Mr Sluckis on behalf of the formally recognised Waterside Leaseholders Association, Miss R Patel (flat 17) and Mr and Mrs L&K Murray (flat 45).

## **The Hearing**

4. A hearing took place on 10 December 2020. This was a remote hearing by video and which was not objected to by the parties. Ms B Lyne, Counsel represented the Applicant, accompanied by Ms K Edwards, Solicitor and Ms M Lloyd, from RMG, the Applicant's Managing Agent, The witnesses were Ms G Price and Mr S Prescott of Urban Bubble. Attending from the Respondents were Mr J Sluckis, Mr R Dean, Mr P Robertson and Mr D Smith. With the consent of the parties, the form of the hearing was by video with all parties attending remotely using the Tribunal CVP Platform. The technology worked well, save that one of the Respondents, Mr L Murray, was unable to connect to the hearing. However, the Tribunal heard submissions from Mr Sluckis and Mr Dean to supplement those in writing. A face to face hearing was not held because of the ongoing Covid 19 pandemic restrictions meaning it was not practicable and all relevant issues could be determined in a remote hearing. The documents that we were referred to are in a core bundle of 546 pages, the contents of which we have recorded. (The parties were content with the process).

## **The Property**

5. The Property is described in the Application as a mixed use five floor building comprising 3 commercial units and 56 flats, all held on long leases. There is an adjacent external car park.

## **Preliminary**

6. The Tribunal's directions did not provide for the Respondents to make a Statement in reply to the Applicant's Statement of Case, but one was presented from Waterside Leaseholders Association dated 9 September 2020.

The Applicant objected to its admission on the basis that it largely contained repetition. However, the Tribunal considered that it provided useful context to the unrepresented Respondents' submissions and therefore permitted its admission.

## **The Background**

7. The Tribunal is grateful to all parties for their comprehensive and relatively concise written presentations and it will use extracts from those documents to record the matters leading up to the Application and the parties' respective positions. References below to the "Block" are within the Applicant's Skeleton Argument document, which describes the Block by reference only to the residential flats. The Tribunal will summarise the essential points from the parties' representations, but it is unnecessary to set them out verbatim.
8. By a notice dated 13 May 2019 the Lancashire Fire and Rescue Service ("LFRS") served on the Applicant's agent an enforcement notice on the basis that it considered that the Block was unsafe from a fire safety perspective. The notice contained a schedule requiring various actions and works to be carried out to minimise the risk of fire in the Block with remedying steps to be taken by 17 June 2019.

The Applicant's agent commissioned a report to assess fire safety compliance.

The Applicant proposed to carry out two separate schemes of work (which have now been completed), namely:

- a. The installation of a fire detection system; and
  - b. Remedial works to the automatic and manual opening vents.
- (the "works").

The Applicant's then managing agent, Urban Bubble, commenced the statutory consultation process for these sets of works by sending out stage 1 notices on 17 May 2019.

Once estimates were received, stage 2 notices were sent out in relation to the fire alarm works on 15 August 2019. Unfortunately, the figures in the stage 2 notices were incorrect.

Further stage 2 notices in respect of both sets of works were sent on 28 November 2019, but again, there were errors in the figures contained in those notices.

Stage 3 notices were not sent in relation to the works to the vents, despite being required.

It is the Applicant's case that Urban Bubble received no objections or formal responses from leaseholders.

In light of the urgency of the required works, the Applicant went ahead with the works despite the inadequacies with the consultation process and made the Application for dispensation on a retrospective basis with support from RMG, its replacement managing agent,

### **The Law**

9. Section 20 of the 1985 Act requires a landlord to carry out a statutory consultation process in relation to qualifying works where the cost of those works exceeds the statutory limit (currently £250 per leaseholder) and the costs of which may be recoverable under the service charge. The consultation process is governed by the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regs”).
10. The consequence of failing to carry out the consultation or obtain dispensation is that the landlord will not be entitled to recover more than £250 for each leaseholder in respect of the qualifying works.
11. Via s.20ZA(1) of the 1985 Act the landlord may apply to the Tribunal for an order dispensing with all or any of the consultation requirements if the Tribunal is satisfied that it is reasonable to do so.

### **The Applicant’s Case**

12. It is argued that there is no dispute from the Respondents about the need for the works to be carried out. The works were necessary and appropriate. The main thrust of the Applicant’s argument is that there is no relevant financial prejudice to the Respondents in failing to follow the consultation requirements, in line with *Daejan Investments Limited v Benson and others* [2013] UKSC 14.
13. Due to the absence of a full-scale fire alarm system, fire marshals have had to be engaged to ensure efficient fire detection and effective evacuation of the building in the event of an emergency. Completion of the works have meant that there ceased to be a need for the marshals, saving an expense.
14. A witness statement dated 29 June 2020 was presented from Ms Gemma Price, Head of Property Management of Urban Bubble, which had been manager of the Property until the role was passed to Residential Management Group on 31 December 2019. She stated that a report had been commissioned from Design Fire Consultants identifying interim and remedial fire safety measures to fulfil the enforcement notice of the Fire Service. Quotes for the works were sought and consultation began, but she accepted that the consultation process failed to comply with the requirements of the Consultation Regs, including provision of incorrect quotation information to the Respondents. First City Fire & Security Ltd was commissioned to undertake both schemes of qualifying works, which she described as urgent, to minimise the risk to the Property and residents from fire and to permit removal of the waking watch from site. First City Fire & Security Ltd provided the cheapest Option 1 quote for the installation of the fire alarm system, and the same contractor was chosen for the remedial works to the automatic and

manual opening vents, because they were already on site and could commence work soonest. Although its quotation for the vent works was not the cheapest, there was relatively little difference between the quotes, and this difference would be offset by the earlier removal of the waking watch. At the date of her statement the works were described as “*almost complete*”, in consequence it would be illogical and costly to recommence now the consultation process.

15. The Tribunal was informed at the hearing that the waking watch was removed from site on 18 September 2020.
16. A witness statement dated 19 August 2020 was presented from Mr Stewart Prescott, Property Manager of Urban Bubble. He accepted that the consultation exercise was flawed. He advised that he had been unable to locate any response from Mr and Mrs Murray during the consultation process. He addressed a concern raised by the Respondents that the purported stage 2 notice letter dated 28 November 2019 from Urban Bubble in the consultation process had not been received by any of them. His evidence was that it had been dispatched by Urban Bubble’s digital mailing system.
17. Addressing the allegation that there had been delays in making the Application it was stated that initially the Applicant’s managing agent had expected to be able to fulfil the consultation requirements and that a prospective application before quotations were available would have been unhelpful. The Application was made just over four months after RMG took over management of the block.

### **The Respondents’ Case**

18. While accepting that the works were necessary and they had no alternative cheaper costing to propose, the Respondents submitted that they had been misled over the actual cost. They believed the information in the stage 2 notice of 15 August 2019 meant the total costs would be around £34,000 plus VAT, whereas the more accurate sum was in the region of £90,000 plus VAT. (The actual cost of the two schemes of works was £86,433.37 including VAT). Had they been accurately informed during the purported consultation process, particularly about the extent of the elements of the works, they would have been more likely to raise objections during it. No Respondent had received the stage 2 notice letter of 28 November 2019 from Urban Bubble containing crucial financial information. The consequence of its non-receipt was that the Respondents were denied an opportunity to fully engage in the consultation process.
19. Further, they were unaware of the fire risk assessment. They presented criticism of the time taken to complete the works, due in part to transfer of the managing agent contract and the delay in removing the waking watch, the cost of which had not been fully disclosed until presentation of the 2020 service charge budget. Further, they indicated that the waking watch provided poor service. They criticised the delay in making the Application (April 2020) when the Fire Service notice was in May 2019.

20. Additional specific objections from Miss Patel concerned the amount of the service charge and from Mr and Mrs Murray concerned also alleged mismanagement of the Property, dating back to building control approval for the development. Mr Sluckis and Mr Dean both emphasised the delay in completion of the works.

### **Tribunal's Decision**

21. It is important to record here, as the Tribunal did at the hearing, that the Application is very limited in its scope. It is solely to determine whether it is reasonable to dispense with the requirements set out in the Consultation Regs and in so assessing the Tribunal must consider whether any prejudice has been suffered by the Respondents by the Applicant failing to comply with the consultation requirements.
22. The Respondents may have every opportunity to question, for example, (a) the apportionment of the costs between the various lessees, (b) whether the costs are payable at all under the service charge provisions in the lease, (c) whether cost of the works is reasonable, (d) whether the works have been carried out to a reasonable standard and (e) whether (by reference to the facts of the scenario at issue) other costs arising in connection with the consequences of the Fire Service notice are recoverable from the leaseholders, in whole or part. However, such matters were not within the jurisdiction of the Tribunal in the Application.
23. Counsel for the Respondent expressed the purpose of the Consultation Regs as a bolster to leaseholders' rights so as to protect the paying party from inappropriate works and inappropriate costs. The legal burden of proof in relation to dispensation applications lies with the party seeking the protection. While the Tribunal may have sympathy with the Respondents' concerns, it will only be if those concerns can be found to amount to some "relevant" prejudice that leaseholders would or might suffer and importantly, that they are causally linked to the failure to consult, might the Application fail. The burden to show a credible case for prejudice and the causal link lies on the Respondents. It was common ground between the parties that the S20 consultation process was defective.
24. Despite the Respondents' contention that as lay people they could not be expected to provide alternative costing for the works, they provided no evidence that the works were inappropriate. In questioning at the hearing, Mr Sluckis was clear that he was not arguing that the works did not need to be carried out. The Tribunal found that the works relate to fire prevention measures and are required for health and safety purposes to ensure the safety of the Property, its residents and users. The Respondents consider that protestations during the consultation would not have made a difference in any event to the works. However, the Tribunal was alert to the misinformation communicated to the Respondents about the costs. However, that failure in the process had not caused consequential loss, because the works in their entirety were found to be necessary. These arguments may have relevance in any challenge to the reasonableness of the service charge. However, the Tribunal found that the Respondents have not identified prejudice arising

from the costs of the works due to defective consultation. We record that Counsel for the Applicant confirmed at the hearing that the final invoices for the works amounted to £86,433.37, exactly as per the total of the quotes received, reflecting no increase in cost due to alleged delays in completing the works.

25. Their principal complaint about delay in the completion of the works was that they were facing excessive charges for the waking watch. It was indicated that First City Fire and Security Ltd had complained it took 7 months to gain necessary access to four flats, which one of the leaseholders had to resolve. It was suggested that First City Fire and Security Ltd could have begun the vent-related works sooner as it was on site. The Tribunal considered carefully whether these points amounts to financial prejudice, which it found it may do, but it could not be found to arise from the defective consultation. The initiation of the works to which the consultation requirement applied is not connected to the length of time for which the waking watch subsequently was engaged.
26. We are satisfied on all the evidence that the Respondents have been unable to demonstrate any prejudice to them, or any of them, as a result of the failure to comply with the consultation requirements.
27. Taking into account all of the Respondents' arguments, outlined here, but in detail as identified in the papers and at the hearing, despite having sympathy for the Respondents, the Tribunal is satisfied that, in the particular circumstances of this case, it is reasonable to dispense with the consultation requirements of the works.
28. Finally, it is yet again emphasised that the Tribunal's determination is limited to this application for dispensation of consultation requirements under section 20ZA of the Act.

WL Brown  
Tribunal Judge  
26 February 2021

## Annex

### Leaseholders

Globe Enterprises Ltd  
D & M Shaw (represented by Weightmans LLP)  
D & D Smith  
H. Ticer  
Jeffrey Rawlins  
Kelly Sherlock  
Ravjit Jagdev  
M. Marzooqi  
C & E Hudson  
Andrew Powell  
T. Fell-Smith  
Leah Campbell  
D & M Shaw  
A. Raja  
Roshni Patel  
M. Sluckis  
P. Robertson  
A. MacLean Lawson  
S & V Watson  
R & A Dean  
Suzanne Flanagan  
Ascend Properties ltd  
Blubrix Ltd  
J. Cottam White  
S. Brown  
O. Ishtaiwi  
A. Ogbuchi  
S & K Padki  
Jun Ye  
Coalcrest Ltd  
Zainul Macci & Umehari Macci  
Jubilee Portfolio Ltd  
Aroraveld Ltd  
C. Mahankalirao & S. Rao  
Velvet Chocolate Ltd  
Tommac Properties Ltd  
Woodlawn Properties Ltd  
L & K Murray  
Y. Zhuang  
Qun-Rea Liu  
Christopher Parsons  
P. Robertson  
Rachel Huntris  
H. Seager  
Sarvjeet Jagdev