



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

Case Reference : **LON/00BG/LDC/2021/0307**

Property : **Panoramic Tower, Hay Currie Street, London E14 6GF**

Applicant : **Adriatic Land 9 Limited (“the Landlord”)**

Representative : **JB Leitch Ltd, solicitors**

Respondents : **All leaseholders of the premises (“the tenants”)**

Representative : **the leaseholder represented by Blake Morgan LLP known as the Group of Leaseholders**

Type of Application : **For dispensation from the consultation requirements under section 20ZA Landlord & Tenant Act 1985**

Tribunal Member : **Tribunal Judge Dutton
Mr R Waterhouse BSc (Hons) LLM
Property Law MA FRICS**

Date of Decision : **24 February 2022**

DECISION

This has been a remote paper determination, which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable and no one requested same.

The documents the Tribunal were referred to were in a bundle of some 425 pages, together with two witness statements the contents of which had been noted.

Decision

- (1) We determine that unconditional dispensation should be granted from the consultation requirements from stage 2 onwards under s20 of the Landlord and Tenant Act 1985 (the Act) and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the property Panoramic Tower, Hay Currie Street, London E14 6GF (the Property) for the reasons we have stated below.**
- (2) We make an order under s20C of the Landlord and Tenant Act 1985.**
- (3) We make no determination as to the reasonableness of the costs of works, these being matters which can be considered, if necessary, under the provisions of s27A and s19 of the Act.**

The application

1. The applicant landlord sought dispensation from the consultation provisions in respect of the fire safety works at the Property. The Property is a modern purpose-built construction of twenty storeys containing 112 flats, held by the Respondents on long leases.
2. The application was dated 26 November 2021 and indicated an urgency. The reasons stated in the application are as follows. *“Following guidance relating to the construction of the external wall system it has been discovered that the construction comprises combustible materials and poses a risk of fire spread. Accordingly works are required including remediation of the external wall system, balconies and associated works within the Urban Change Report in line with Government Guidelines (“the Works”). The Applicants agent began the consultation process in relation*

to the Works. Due to the nature of the works and the Design & Build method due to be adopted, the Applicant is unable to complete the consultation process.”

3. The Directions provided for the tenants and sub lessees to be informed of the application and to be provided with copies and we are told by the managing agent that this was done. Indeed, that must be the case as there has been a detailed response from the solicitors acting for the Group of Leaseholders, of which there appear to be 61 (GoL), whose identities are disclosed in a schedule annexed to a letter from Blake Morgan LLP dated 5 January 2022 addressed to the tribunal.
4. The tribunal did not consider that an inspection of the Property was necessary, nor would it have been proportionate to the issues in dispute.
5. The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

Documents

6. The matter came before us for consideration on 16 February 2022. We had before us a bundle of some 425 pages. These included the Applicants statement of case, the directions, the Respondents solicitors’ letters on behalf of the GoL of 4 and 5 January 2022, the first in time being sent to JB Leitch Ltd acting to the Applicant, a reply thereto by the Applicant dated 12 January 2022 and a reply thereto by the solicitors for the GoL dated 28 January 2022. In addition to the above we were provided with a letter sent by Blake Morgan to the managing agents Rendall and Rittner dated 22 December 2022. We have read these documents as well as having reviewed the annexes to the Applicant’s statement of case, which included the report by Urban Change dated 2 September 2021. An updated version of this report dated 7 December 2021 was included with the GoL reply.
7. It is appropriate to record at the outset that the Respondents, whether those in the GoL or separately, either do not object to the application before us, or have made no representations objecting. It is noted that by a letter dated 12 January 2022, HomeGround, for the Applicant Landlord confirmed formal recognition of The Panoramic Tower Tenants & Residents Association.
8. We have considered the statements made on behalf of the Applicant and those on behalf of GoL. There are some seven conditions the GoL seek to

impose. They are to be found in the initial letter to the tribunal. They are as follows:

(A) The Respondents request that the FTT imposes as a condition on the granting of any dispensation order that the Applicant be required to (i) obtain proof that D&B Facades' tender represents fair value by obtaining appropriate cost comparables and expert advice/opinion from a firm of Chartered Quantity Surveyors experienced in similar fire safety related remedial works and (ii) provide copies of the tender documents, cost comparables, QS evidence (etc) to the Leaseholders within a reasonable period of time.

The response to this is found in the Applicant's statement of Reply which states as follows:

The Applicant has obtained a Cost Validation Report produced by CLoSE UK who are a firm of Chartered Quantity Surveyors. Therefore, the tender submitted by D&B Facades has been assessed and the Applicant is satisfied that the tender represents fair value. The report is explicit that it is only to be used by the Applicant and may not be shared with any other party without written consent of CLoSE UK. The Applicant is currently seeking the requisite consent and agrees to provide the report and/or details of the findings of the report to the leaseholders upon receipt of such consent, if received.

(B) In the event that any further reports are obtained/procured by the Applicant in respect of the fire safety of the Development, then, subject to the usual rules of privilege, we would respectfully request that the Applicant be required to provide copies to the lessees within a reasonable period of time.

The response is again contained in the Statement in Reply

The Applicant agrees to provide copies of any further reports that are obtained/procured by the Applicant in respect of the fire safety of the Development to the leaseholders within a reasonable period of time subject to the rules of privilege. The Applicant is not currently aware of any additional reports and contends that such a condition being imposed upon any grant of dispensation would be unnecessary and such a request for this information to be provided for an indefinite period of time would not be reasonable.

(C) The Respondents request that, subject to the usual rules of privilege/confidentiality, the Applicant be required to provide the Leaseholders with copies of all correspondence with, and documentation submitted to, the BSF within a reasonable period of time. Further, the Respondents request that copies of the Design & Build Contract (including the Employer's Requirements, Contractor's

proposals and other design documents) and a fully particularised scope of works be provided to the Leaseholders within a reasonable period of time (once available).

The response thereto was as follows:

The Applicant is liaising with Urban Change and agrees to provide leaseholders with the particularised scope of works within a reasonable period of time upon receipt of the document. The Applicant shall agree to provide the Respondents with an executive summary of the Building Safety Fund applications within 28 days of the date of the Order. The leaseholders are a not party to the Design & Build contract therefore the Applicant does not agree to provide copies of the same and does not consider that such a condition is reasonable. As part of its ongoing dialogue with the lessees the Applicant will continue to provide leaseholder updates as and when appropriate.

- (D) The Leaseholders would like to have the opportunity to obtain expert advice on the Urban Change report and on the Applicant's scope of works/design (when provided). Further, the Leaseholders would respectfully request that the Group of Leaseholder's reasonable costs relating to obtaining such expert advice be paid by the Applicant.

The response is *This is not an appropriate or reasonable condition of dispensation*. The response goes to detail why this is the view of the Applicant and we have noted all that is said

- (E) The Respondents request that any dispensation order made is expressly and strictly without prejudice to the issue of whether any service charge costs will be reasonable or payable.

The response is that the Applicant agrees with this submission and notes that the Tribunal's directions dated 6 December 2021 confirm that the application does not concern the issue of whether any service charge costs will be reasonable or payable.

- (F) The Respondents request that the FTT imposes as a condition on the granting of any dispensation order in this matter that the Group of Leaseholder's reasonable costs relating to the review of this application to the FTT be paid by the Applicant (such costs to be assessed, if not agreed between the parties).

The response is as follows: *The Applicant notes that the Respondents request is completely unquantified and that no breakdown or schedule of costs has been provided. In order for the Applicant to consider the proposed*

condition, the Applicant requests that the Respondents provide details of the costs incurred in connection with the application and the basis upon which costs are sought considering there is no evidence of prejudice provided by the Respondents.

Notwithstanding the above and without prejudice to the position set out at paragraph 24, the Applicant alternatively suggested that if the Tribunal is minded to impose such a condition then the Applicant proposes the following wording in respect of the Respondents' reasonable legal costs:

“The Applicant must pay the Respondents' reasonable costs of responding to the Applicant's dispensation application. It is directed that within seven days of the date of this Decision, the Respondents are to serve a statement of costs including a breakdown of such costs on the Applicant. Within seven days thereafter the Applicant is to serve any objection to the Respondents' costs. If these costs cannot be agreed within seven days thereafter, they are to be referred to the tribunal for a paper determination of the costs payable unless either party requests an oral hearing.”

- (G) Finally, the represented leaseholders are seeking an order under section 20C Landlord and Tenant Act 1985 and Sch 11, para 5A Commonhold and Leasehold Reform Act preventing the Applicant from recovering its legal costs via the service charge.

The response is: It appears that the represented leaseholders are seeking that an order be made which precludes the Applicant from recovering its legal costs through the service charge as a whole. Pursuant to section 20C of the Landlord and Tenant Act 1985 the represented leaseholders are entitled only to make a section 20C application in respect of their own individual service charge contributions.

The Applicant opposes the section 20C application made by the Respondents on the basis that the legal costs associated with the application are recoverable as a service charge item pursuant to clause 4(3)(b) of the Leases and as stated above, no evidence of prejudice has been provided.

9. These responses by the Applicant resulted in the solicitors for the GoL replying on 28 January 2022 in some detail. We have noted all that has been said.

Findings

10. We are, of course, aware of the judgment in *Daejan Investments Limited v Benson and others* [2013]UKSC 14. The history of that case is very different to this application. Works have not been commenced, other than preparatory to the fire safety works, which are said to be required as evidenced by the reports of Urban Change. The application for dispensation is not challenged. The Applicant has, as can be seen from the responses to the seven issues raised, agreed to provide documentation and to keep the Respondent leaseholders informed as to the progress of the works and the claim to the BSF. We consider that is appropriate and shows good management.
11. The Supreme Court (Lord Neuberger at para 50) accept that there must be real prejudice to the tenants. Indeed, the Respondents do not oppose the application. It is accepted that we have the power to grant dispensation on such terms as we think fit. However, the Landlord is entitled to decide the identity of the contractors who carry out the work, when they are done, by whom and the amount. The safety net for the Respondents is to be found in sections 19 and 27A of the Landlord and Tenant Act 1985.
12. Although much has been made of the conditions as set out in the statements from the GoL it is not possible to discern the prejudice it is said they would suffer if dispensation were granted. These works involving the cladding and other issues at the Property, the involvement of the BSF, which must be to the Respondents benefit and the other avenues being investigated, which are alluded to in the letter by Blake Moore to Rendall and Rittner in December of last year. These we find indicate to us that the Applicant is proceeding with these works in a manner which does not cause prejudice to the Respondents. The Design and Build basis is not, in our experience, an unusual way of dealing with these matters given the investigations required, the need to find appropriate contractors and time constraints that may be imposed by the Government on applying to the Fund.
13. It seems to us that much of the information being sought by the GoL is more appropriate for a claim under s27A of the Act, the right, which is course, is reserved by our decision.
14. Accordingly, we find that unconditional dispensation should be granted save that we order that s20C shall apply to the Landlord's ability to recover the costs of these proceedings as a service charge as against the members of the GoL. We consider this to be just and equitable, in the light of our refusal to require the Applicant to pay all or part of the Respondents costs. In making our decision we have borne in mind the various reports to which we were referred, which in our finding clearly indicate that works are required at the Property. We are satisfied that the Design and Build concept is reasonable and that this does not sit with the consultation

process under s20 of the Act. Further there needs to be flexibility to accommodate the requirements, when they engage, of the BSF, which is clearly in the lessees' interests.

15. Our decision is in respect of the dispensation from the provisions of s20 of the Act only. Any concern that a Respondent has as to the standard of works, the need for them and costs will need to be considered separately and their position is not affected by our decision on this application.

Andrew Dutton

**Name: Tribunal Judge
Dutton**

Date: 24 February 2022

ANNEX – RIGHTS OF APPEAL

- 1. 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 at the Regional Office which has been dealing with the case.**
- 2. 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.**
- 3. If the application is not made within the 28-day time limit, such application must include a request to 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.**
- 4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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**