



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

Case reference : **MAN/00BN/LDC/2021/0075**

Property : **Trinity Court, Higher Cambridge Street,
Manchester M15 6AR**

Applicants : **Premier Estates Limited**

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

Respondent : **Various Long Residential Leaseholders**

**Type of
Application** : **Landlord & Tenant Act 1985 - Section 20ZA**

**Tribunal
Members** : **Tribunal Judge S Moorhouse LLB
Mr J Fraser FRICS**

**Date of Paper
Determination** : **28 April 2022**

DECISION

□ CROWN COPYRIGHT 2022

DECISION

1. Pursuant to section 20ZA of the Landlord and Tenant Act 1985 the tribunal makes a determination to dispense with the requirement to consult with the Respondents on the works to Trinity Court, Higher Cambridge Street, Manchester M15 6AR described in Schedule 1.

REASONS

The Application

2. The application ('the Application') was made on 2 November 2021 by Premier Estates Limited ('the Applicant'). It seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the Act') in relation to the statutory consultation requirements prescribed by section 20.
3. Dispensation is sought to carry out certain works related to fire safety described in Schedule 1 ('the Works'). The Works are to be carried out to Trinity Court, Higher Cambridge Street, Manchester M15 6AR ('the Property'), comprising a 10 storey building with 57 residential apartments, and commercial elements to the ground floor. The Respondents are the long leaseholders of the residential apartments. Their immediate landlord is currently Landmark (Bolton) Limited. The Applicant is the management company for the Property and in that capacity is a party to each of the residential leases.
4. Directions in this case were issued on 9 February 2022. Pursuant to Directions the tribunal received a Statement of Case for the Applicant, including specialist reports relating to the Works, initial consultation notices and relevant correspondence. None of the Respondents submitted a response to the Application.
5. The Applicant requested a determination on the papers. The tribunal considered this to be appropriate because none of the Respondents opposed the Application, neither party had requested a hearing and because there was sufficient information before the tribunal to reach a decision. It was unnecessary to conduct an inspection of the Property in view of the matters in issue.

The Law

6. Extracts from sections 20 and 20ZA of the Act are reproduced in Schedule 2. Section 20ZA subsection (1) provides that the tribunal may make a determination to dispense with consultation requirements 'if satisfied that it is reasonable to dispense with the requirements'.
7. The Applicant has cited the Supreme Court case of *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 ('*Daejan*'). The tribunal considers this to be the leading case on dispensation. In *Daejan* Lord Neuberger stated that in deciding pursuant to section 20ZA whether it is reasonable to dispense with consultation requirements, a tribunal should consider whether any relevant prejudice would be suffered by the leaseholders. Lord Neuberger stated that whilst the legal burden of proof rests throughout on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered rested on the tenants.

Findings of fact and Reasons for decision

8. In this case, none of the Respondents have submitted a statement of case opposing the Application. There is no evidence before the tribunal that any of the Respondents consider a full section 20 consultation process to be appropriate, or consider that they would be prejudiced in some way if there were no such process. The tribunal finds therefore that there is no relevant prejudice identified by any Respondent, suffered as a consequence of the Applicant's decision not to follow the consultation requirements prescribed by section 20.
9. The Works are based upon the recommendations of property consultants Thomasons Partnership Limited and Design Fire Consultants who advise that the construction of the external wall system at the Property comprises combustible materials and poses a risk of fire spread. The recommendations are intended to ensure compliance with Part B to Schedule 1 of the Building Regulations 2000 and to ensure that responsible persons are compliant with the duties placed on them by the Regulatory Reform (Fire Safety) Order 2005.
10. Whilst interim steps have been taken with the installation of an automatic fire detection and alarm system and the provision of a waking watch, the findings and recommendations of the Applicant's consultants suggest that the Works should proceed as soon as possible. The Applicants refer to guidance from the former Ministry for Housing, Communities and Local Government concerning applications to the Building Safety Fund that states: *'it is essential that buildings with unsafe cladding are remediated as quickly as possible to ensure that residents are safe and feel safe in their homes'*.
11. The Applicant has registered for the Building Safety Fund and various extensions of time have been given, the deadline for submission of a full costs application having been extended on the condition that the current pace of the project continue. Not all aspects of the Works are considered by the Applicant to be eligible. Nevertheless, the benefit to the parties of securing government funding for those aspects that are eligible is more likely to be realised if delay is minimised.
12. The Applicant submits that it will be unable to adhere to formal consultation requirements as it is unlikely to receive tenders promptly due to the current pressures in the industry and upon receipt would need to appraise these to ensure they are comparable and accurate. The Applicant also submits that whilst it has now received the scope of works, there is insufficient time to re-start the consultation process with the benefit of this whilst also carrying out the Works as quickly as possible to meet MHCLG requirements. It is submitted that consultation requirements have been met in part through the issue of an initial notice and via written correspondence keeping the Respondents up to date.
13. Whether or not it would be possible to adhere to consultation requirements, the tribunal accepts that the timescale required for a full section 20 consultation would be likely to cause delay in proceeding with the Works.
14. In all of the circumstances described above, the tribunal considers it reasonable to dispense with consultation requirements. Accordingly, the tribunal makes a determination under section 20ZA of the Act to dispense with the requirement to consult with the Respondents under section 20 in relation to the Works.

15. The tribunal expresses no view as to whether any costs associated with the Works are reasonable in amount, whether the Works are of a reasonable standard or whether any service charge is payable, within the meaning of sections 19 and 27A of the Act. The tribunal's decision does not include or imply any determination of such matters.

S Moorhouse

Tribunal Judge

Schedule 1

'the Works'

The Works are as follows:-

- (a) the replacement of White Cladding and Grey Cladding;
- (b) the replacement of Timber Cladding;
- (c) the replacement of Grey Textured Cladding;
- (d) the replacement of Brickwork;
- (e) the use of fire rated board at interfaces with untreated steel superstructure;
- (f) the replacement of Timber Walkways and their Balustrades (including the introduction of imperforate metal plates);
- (g) the replacement of Flat Entrance Doors;
- (h) the replacement of Balcony Decking;
- (i) the replacement of Balustrades to Timber Decking; and
- (j) the replacement of the paint treatment to exposed steel at ground floor level

in each case, (a) to (j), to achieve compliance with current fire safety standards.

Schedule 2

Extracts from legislation

Landlord and Tenant Act 1985

Section 20

(Subsections (1) and (2):)

(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) a 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 under the agreement.

Section 20ZA

(Subsection (1))

(1) Where an application is made to a 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.

Annex A

Mr Kai Niu
Dr H Li and Mr Y Zhou
Julie Caroline Horrocks
Mrs Chuk Tin
Ms Shizhu Jin
Ms Xiaolin Qin
Mr Zhiming Lyu
Mr D C I Cowpe
Mr J Paik
Laura & Patrick O'Keeffe
Miss Xiaomei Li
Ms Shirley Noel
Mr Baohong Cui
Mr B & Mrs C O'Connor
Mr J & Mrs D Byrne
Ms Denise Byrne & Mr Joseph P Byrne
Mr Paul Stephen Walker
Paul S Walker
Raj & Co
Ali Ramazankhani
Craig Paul Walker
Mr P S Walker
Paul Stephen Walker
Mr C P Walker
Mr Paul Stephen Walker
Kenneth Lau & Chun Leong Tan
Miss Linfeng Fu
Mr E & Mrs F Dunn
Fuqiang Chen
Fei Xu
Mrs Sui Shum
Ms Lijuan Tang
Mr Tallal Tntoush
Beresford Asset Management Limited
Mrs Christine Cooke
Mr & Mrs B Bentley
Xiaoyan Feng
Dr Hang Li & Mr Yu Zhou
Hong Zhou and Xiaoyan Feng
Zulopower Limited
Dr Dalu Li
Mr M L A Chung
Raj & Co Ltd
Mrs Yanyan Liang
Ms Barbara Kelly
Mr PD & Mrs G Stirrat
Mrs Lijuan Tang
Joseph Michael Keyes
Xiangjie Wu
Colin Smith, Steven Smith & Kathryn May White
Ms Xuan Yu
Mr Jun Du & Mrs Ya Xu