



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

**Case Reference** : **MAN/00BN/LDC/2021/0048**

**Property** : **39 Potato Wharf, Castlefield, Manchester  
M3 4BD**

**Applicant** : **Adriatic Land 8 (GR2) Limited**

**Representative** : **J B Leitch Limited**

**Respondents** : **The residential leaseholders of the Property**

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

**Tribunal Member** : **Judge J Holbrook**

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

**Date of Decision** : **29 April 2022**

**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 works described in paragraph 4 of the following reasons.**

### Background

1. On 29 July 2021, 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 Adriatic Land 8 (GR2) Limited and relates to premises known as 39 Potato Wharf, Castlefield, Manchester M3 4BD (“the Property”). The Applicant owns the head-leasehold interest in the Property and is the landlord under the long leases of the residential apartments within it. The Respondents to the application are the long leaseholders of those apartments and are listed 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 dispensation is sought concern the following fire safety works to the Property which are necessary following the identification of combustible materials in the construction of the Property:
  - a) Interim works which are required until the hazard has been removed or remediation implemented, namely the installation of a category L5 alarm system.
  - b) Removal/Strip Out works
    - i. The removal of high-pressure laminate and combustible Cellotex foam insulation and disposal of these off site.
    - ii. The removal of combustible timber decking, balustrade and partitions and disposal of these off site.
  - c) New Cladding Support Systems and Reinstatement Works
    - i. The supply and installation of rock panel or similar to achieve a minimum class A2-s1, d0 rating or better.

- ii. The replacement of previously removed timber with aluminium core composite panels to achieve a minimum class A2-s1, d0 rating or better.
- d) New Fire Barriers
  - i. The supply and installation of siderise closed state cavity barriers; vertical; account timber openings
- 5. Each of the Respondents have been given notice of the application and have been sent a copy of the Applicant's supporting evidence. One Respondent has submitted a response to the application, and I consider the content of their response below.
- 6. I have determined this matter following a consideration of the Applicant's case and of the response received, but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant has given its consent and the Respondents have not objected. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing: although the Respondents are not legally represented, the issues to be decided are readily apparent, as are the parties' respective positions. Determining this matter does not require me to decide disputed questions of fact.
- 7. I should mention the delay in progressing this matter. As mentioned, the application was lodged in July 2021. The Applicant's solicitor stated at the outset that the need for dispensation was urgent (so that the interim works in question could begin promptly) and asked the Tribunal to deal with the case through the fast track. It is very clear that this did not happen due to administrative delays within the tribunal system. Directions for the conduct of the proceedings were not issued until 9 February 2022. This is a matter of considerable regret and, if the Applicant has felt compelled to carry out the works in the interim, and to now seek dispensation retrospectively, that would be understandable.

### **Grounds for the application**

- 8. The Tribunal did not inspect the Property, but I understand it to be a nine-story building including the basement and ground levels and contains residential units only. The height of the topmost storey is greater than 18m and the external elevations are clad in a mixture of masonry, aluminium, timber and high-pressure laminate panels.
- 9. Following guidance relating to the construction of the external wall system and some investigatory works ordered by the Applicant, it has been

discovered that the construction comprises of combustible materials and poses risk of fire spread. The Applicant instructed Thomason Partnership Limited who in turn appointed Design Fire Consultants to make recommendations in respect of the interim and remediation works that are required to ensure compliance with the Regulatory Reform (Fire Safety) Order 2005 and Ministry of Housing, Communities & Local Government (MHCLG) guidance. At the time of the application, the Applicant had registered the premises in respect of the Building Safety Fund. The Applicant has since provided an update to the Tribunal that the building wall elements meet the eligibility requirements for the Building Safety Fund, therefore this application has now progressed to stage one. The Applicant issued a stage one notice of intention on 15 October 2020 to all Respondents in respect of the cladding works required and upon receiving observations from the Potato Wharf Cladding Action Group issued a frequently asked questions guide to the leaseholders. The Applicant states that they have also held residents meetings in relation to the proposed works and any ongoing fire safety management matters and have provided regular updates in respect of the works via a tenant portal.

10. The Applicant's case is that , in the particular circumstances of this case, it was commercially expedient to enter a design and build contract for the works notwithstanding the fact that this would preclude full compliance with the statutory consultation requirements. The deadlines set by the MHCLG may also prevent the applicant from fully consulting. The Applicant believes that it has complied with the section 20 consultation process as far as it possibly can, given the circumstances, and has sought to be as transparent as possible, intending to comply with the spirit of consultation. The Applicant submits that they are complying with the requirements of the Building Safety Fund and the specified deadlines in the hope that they will secure government funding for a proportion of the cost of the works. It follows that if dispensation were not granted, the premises may lose funding from HMCLG under the Building Safety Fund resulting in a significant increase in service charges due to be paid by the Respondents. It is argued therefore that the Applicant is acting in the best interest of the leaseholders. The Applicant submits that the Respondents have suffered no prejudice caused by the fact that the Applicant is unable to fully comply with the consultation requirements.

## **Law**

11. 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.*

12. 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.*

13. “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).

14. 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.*

15. 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.

## Discussion and conclusions

16. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying fully with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord 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. They also ensure that leaseholders are protected from paying for inappropriate work, or from paying more than would be appropriate for necessary work. 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.
17. 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 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.
18. In the present case, it is obvious that the works concerned are of an urgent nature and should be undertaken as soon as possible to ensure the safety of the Property and its occupiers: this is appropriate not only to minimise risk to the health and safety of the occupiers of the Property, but also to maximise the chances of obtaining grant funding for the works in question. I have no hesitation in finding that the balance of prejudice favours permitting such works to proceed without delay. I therefore conclude that dispensation should be granted.
19. In reaching this conclusion, I have taken account of the objections to the application which have been raised by the Respondent Peng Peng Zhu (leaseholder of one of the apartments within the Property) and the statement in reply to those objections sent by the Applicant. I make the following observations in this regard:
  - 19.1 Peng Peng Zhu raised a number of points concerning the cladding works that are required at the Property, however they appear to be in favour of the cladding works being completed without delay (which therefore appears to support the Applicant's case). Peng Peng Zhu pointed out that they feel very strongly in objecting to the application for the simple reason that the professional reports provided in support of the application showed that there is a significant health and safety risk to the residents at the premises and that this is a cause for concern that requires immediate remediation. It

is argued that the Respondents will suffer prejudice due to the fact that the consultation cannot be carried out, because in the event of a fire, the residents health and safety is at risk, but that this could be prevented if the cladding works are undertaken. Peng Peng Zhu submits that if they decide to sell their apartment, this work will have a big impact on the value of the property, therefore the cladding works should be undertaken. It is suggested by Peng Peng Zhu that the work continues and are paid for by the Applicant whilst waiting for funding from the MHCLG.

- 19.2 Peng Peng Zhu comments that they have been asked to pay £400 per year for the building and terrorism insurance cover. However, these proceedings do not concern the payability and reasonableness of service charges: instead, they are confined to the question of whether the consultation requirements should be dispensed with in relation to the particular works in question.
- 19.3 In the Applicant's statement in reply, it is suggested that the objection by Peng Peng Zhu appears to be based on a fundamental misunderstanding of the Applicant's application. I suspect that this is indeed the case. The Applicant clarifies that they intend to carry out cladding works hence the necessity of the application seeking dispensation. The Applicant maintains that it has at all times acted in the best interest of the leaseholders and is seeking dispensation from the consultation requirements as a result of the design and build procurement to ensure that it has the best possible chance of securing a proportion of funding for the works through the Building Safety Fund. The Applicant submits that no Respondent has provided any evidence of relevant financial prejudice suffered as a result of the lack of a complete consultation process nor as to the steps they would have taken had a full consultation been carried out.
20. The fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that I 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. I make no findings in that regard.

Signed: J Holbrook  
Judge of the First-tier Tribunal  
Date: 29 April 2022

## **Annex A**

Ms Jessica Jackson  
Shaun David Gelsthorpe & Linda Linacre  
Kim Meadowcroft  
Shaun David Gelsthorpe & Linda Linacre  
Yin He, Chao Sheng He & Mei Ling Wang  
Graham Rushworth & Margaret Rushworth  
Laura Chadwick & Gareth Lewis  
Trevor Jones & Frances Beards  
Chadwick Lewis Ltd  
Medius Suites Ltd  
Naomi Capper  
Philip Chung Yue Cheng & Luxi Chen  
Mumtazuddin Haider & Saeeda Haider  
Pendle Consultancy Ltd  
Frances Eithne Hampson  
Paul Moody & Dianne Moody  
Pierre Le-Chapois & Verity Bond  
Antonia Danielle Phoenix  
Andrew Moore & Gillian Moore  
Rakrah Properties Ltd  
Nadia Watkins  
Guidem Ltd  
Ms Ting Gong  
Jacqueline Jackson & Robert Jackson  
Ruth Wilkinson  
Margaret Elizabeth Gallagher & Patrick Thomas Gallagher  
MC Falcon Investments UK Ltd  
Andrew Wilson & Anne Wilson  
Ms Irum Khan  
Tie Li & Fei Long  
Chloe Ellerby  
Dr Nadeem Iqbal & Dr Naushaba Nadeem  
Louise Gallagher  
Aimee Archer  
Xin Yiang & Yan Qiu  
Alastair Harry Regan  
Melanie Monk  
Simon Tharma Richard  
Rachel Jane Bold  
Robert Jordan & Helen Jordan  
Charles Farr Singlehurst  
Edward Coen  
Peng Peng Zhu & Lucy Kar Ling Man  
PJA Estates Ltd  
Emma Jane Rose



Wai-Tong Wong & Yuchan Zhang  
Zachary Mendelsohn  
Dennis Tams & Janet Tams  
Rebecca Jane Ellacott  
Yuen Mai Pamela Tam  
Oystercatcher Properties Ltd  
Michael Wilcox  
Chung Yiu  
Victoria Mitchem  
Alexander Narey  
Wai-Tong Wong & Yuchan Zhang  
Paul Bradbury & Susan Bradbury  
Kevin Murray & Karen Murray  
Philip Bonner  
Gareth Hilton  
Selina Chan  
Fayyaz Muhammad & Tayyiba Fayyaz  
William James Mann Wordie  
Robert Arbuckle  
David Mercado  
Yin He, Chao Sheng He & Mei Ling Wang  
Andrew John Michael Davidson & Rachael Louise Davidson  
Dr Samuel Hainsworth  
Kan Sau Lam  
Benjamin Daniel Gittins  
Yasmin Annabelle Mobley  
Jeremy Davidson & Jane Davidson  
Daniel Drummond  
Nitesh Patel & Shirali Patel  
Ms Jordan Jeffrey & Ms Josephine Whitehead  
Jennifer Cawthorne  
Jane Wood & Jeremy Wood  
Adam Philip Steinbeck & Scott Lee Cash  
Graham Smith & Christine Smith  
Amandeep Singh Khag  
Mark Gardner  
George James Gill  
George Henry Holborow  
Rosanne Wild  
Shan Zhao  
Kam-Ho Law & Bo-Yee Law  
Joanna Louise Codling  
Mahesan Nirmalan & Vinayak Nirukshan Nirmalan  
Nayyar Naqvi & Nasreen Naqvi  
Sarah Adlan  
Stephen Hall  
Aadil Jalal Bachh

Adonis Adoni  
Nathan Smith  
Jack Brazier & Sarah Farrell  
Margaret Anne Roberts  
Stephen Frood & Ruth Frood  
Eamon Milne Gall  
Kim Elizabeth Greene  
The Manchester Young Men's Christian Association  
Heng Yuan Bai