



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

Case Reference : **LON/00AM/LDC/2021/0291
P: PAPERREMOTE**

Property : **Graphite Apartments,51 Provot
Street,25 Murray Grove, London N1
7FB**

Applicant : **Adriatic Land 5 Limited**

Representative : **J B Leitch Limited**

Respondents : **The leaseholders listed in the
schedule to the application**

Representative : **Unrepresented**

Type of Application : **Section 20ZA Landlord and Tenant
Act 1985
Dispensation with consultation
requirements**

Tribunal member(s) : **Mr M Taylor MRICS (Valuer Chair)**

**Date of Paper
Determination** : **18th January 2022**

Date of Decision : **18th January 2022**

DECISION

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a Statement of Case 375

pages and a bundle of 395 pages, the contents of which I have noted.

Decision of the Tribunal

- (a) The Tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') for proposed fire remediation works to the external wall system and balconies at the Graphite Apartments 51 Provot Street, 25 Murray Grove, London N1 7FB ('the Property').**
- (b) No terms are imposed on the grant of dispensation.**
- (c) The applicant shall send a copy of this decision to each of the respondents, either by email, hand delivery or first-class post and shall send an email to the Tribunal by 28th January 2022, confirming the date(s) when this was done.**

The application

1. The applicant seeks dispensation from the consultation requirements imposed by section 20 of the 1985 Act.
2. The application was submitted on 4th November 2021 and directions were issued on 22nd November. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 18th January 2022.
3. The relevant legal provisions are set out in the appendix to this decision.

The background

4. The Property comprises purpose-built flats and commercial units and parking over 9 floors. It is constructed with a metal/concrete frame/core, with cross-laminated wooden structural framing supporting insulated curtain walling. There are internal balconies to the corners of the building with wood decking. The height of the property is just under 27 metres. There are 29 residential units; which are held on long leases. The respondents are the underlessees of these units. A sample lease has been provided.
5. The applicant seeks dispensation from the statutory consultation requirements for proposed works to the external wall system, which contains combustible materials and poses a risk of fire spread. The applicant relies on reports from Façade Remedial Consultants ('FRC')

latest revision April 2021, which initially identifies the main areas of risk as:

- (i) Phenolic foam insulation;
 - (ii) Cross- laminated timber framework;
 - (iii) Timber decking to balconies.
6. Detailed specifications for the works have not yet been obtained. A design-and-build procurement route is intended for the following works ('the Works'):
- (i) Remove and reinstate fibre cement cladding system and new insulation.
 - (ii) Remove insulation and membrane etc.
 - (iii) Remove CLT wall.
 - (iv) Remove and reinstate top copings
 - (v) Remove and reinstate windows, doors and new EPDM to perimeter.
 - (vi) Remove timber decking to balconies and replace with Aluminium decking
 - (vii) New SFS framework
 - (viii) Sheathing board
 - (ix) Insulation within studwork
 - (x) New flashings to perimeter of openings and base of cladding.
 - (xi) Cavity barriers to windows
 - (xii) Horizontal and vertical fire barriers.
 - (xiii) Other matters set out in FRC reports including associated works preliminaries and design costs.
7. The estimated pre-tender cost of the Works is £6,637,369.80, including professional fees and VAT. The preference is to procure these works via a Design and Build route. The Property has been registered with the BSF, eligibility accepted on the 12th April 2021 and has been approved to proceed to Stage 2. The applicant accepts that there are elements which may not qualify and the report by FRC identifies some £1.6 m as eligible. The most recent BSF guidance required works to commence by 30th September 2021. Although there is scope on a case-by-case basis for the MHCLG to extend that date, it is not known at this stage whether that discretion might be exercised. There is no evidence of the reasons why

the tender/procurement has not progressed to a more advanced stage or why the deadline set by MHCLG for the works to start by 30th September 2021 was not achievable, irrespective of the section 20 consultation process.

8. The applicant sent a stage 1 notice of intention letter to all respondents on 12th October 2020. No response was received from the tenant respondents.
9. 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.**

The grounds of the application

10. The grounds are set out in a detailed statement of case dated 4th November 2021 and final undated bundle but submitted on 6th January 2022 and can be summarised as follows:
 - (a) There is a Health and Safety risk and as such the works should not be further delayed.
 - (b) The applicant has complied with the spirit of the section 20 consultation requirements. However, the design-and-build procurement route does not satisfy the strict requirements.
 - (c) If the scope of the Works changes, there will be insufficient time to complete a new consultation and comply with the terms of the BSF.
 - (d) There is no prejudice to the respondents.
 - (e) The applicant is seeking to comply with the BSF requirements and secure government funding for a proportion of the cost of the Works. Further, it has engaged with the leaseholders and has complied with section 20, as far as practicable. If dispensation is refused, the applicant may be unable to secure the funding from the BSF, in which case the full cost of the Works will be payable by the leaseholders (via their service charges).
11. Paragraph 2 of the directions gave the respondents an opportunity to object to the dispensation application by completing and returning reply forms and serving statements, setting out their grounds of opposition. None were submitted to the applicant or directly to the Tribunal.

The Tribunal's decision

12. The Tribunal grants dispensation for the Works. No terms are imposed on the grant of dispensation.

Reasons for the tribunal's decision

13. The Tribunal accepts that the Works are necessary, given the contents of the FRC report, including the Type 4 Fire Risk Assessment, the BSF deadline (30th September 2021) and the health and safety risk to residents. The design-and-build procurement route does not satisfy the strict section 20 consultation requirements. The applicant has made some effort to comply with the spirit of these requirements and engaged with the leaseholders, although this has, in terms of evidence presented, been limited.
14. No leaseholders have opposed the dispensation application.
15. Having regard to the particular facts of this case and the guidance in *Daejan Investments Limited v Benson [2013] UKSC 14*, it is reasonable to dispense with the strict consultation requirements.
16. This decision does not address the cost of the Works, or whether the respondents are liable to contribute to the cost via their service charges. Nothing in this decision prevents the respondents from seeking a determination of 'payability', pursuant to section 27A of the 1985 Act.

Name: Mark Taylor MRICS
Valuer Chair

Date: 18th January 2022

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
2. 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 Tribunal at the regional office which has been dealing with the case.

3. 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.
4. If the application is not made within the 28-day time limit, such application must include a request for 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.
5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (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) the appropriate 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 or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of 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.
- (2) In section 20 and this section –
“qualifying works” means works on a building or any other premises, and
“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any

specified description, a service charge would be payable for the costs and, if it would, as to -

- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.