



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

**Case Reference** : **LON/00AU/LDC/2021/0006**

**Property** : **Island Apartments, Coleman Fields,  
London N1 8PW**

**Applicant** : **Island Islington Residents  
Management Company Ltd**

**Representative** : **Metrus  
FAO: Michael Pilling**

**Respondent** : **82 leaseholders at the property**

**Representative** : **None**

**Date of Application** : **21<sup>st</sup> December 2021**

**Type of Application** : **Dispensation with consultation**

**Tribunal** : **Mr I B Holdsworth FRICS MCI Arb**

**Date and venue of  
hearing** : **6<sup>th</sup> April 2020  
10 Alfred Place London WC1E 7LR**

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**DECISION**

The Tribunal determines to allow this application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 in respect of fire safety works necessary to remedy the defects identified in the property by the External Works Survey (EWS1) report, provided these works fall under the Landlord's obligations contained in the leases of the flats.

**This application does not concern the issue of whether any service charge costs will be reasonable or payable. The leaseholders will continue to enjoy the protection of Section 27a of the Act.**

The Tribunal directs the applicant to send a copy of this Decision to the leaseholders and to display a copy in the common parts of the building.

## **The Application**

1. The applicant made an application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act (the “**Act**”). The application affects some 82 leaseholders at Island Apartments, Coleman Fields, London N1 8PW (the “**Property**”) whose names are annexed to the application form. The applicant asserts that it is necessary for fire safety works to be carried out at this property to remedy the defects identified and described in an External Works Survey ( EWS1) report.

## **Background**

2. The six-storey block built of brick with part external cladding comprises 82 self-contained flats was built in or around 2009.
3. An EWS 1 inspection was undertaken at some time during 2021 which identified combustible cladding and inadequate fire breaks incorporated within the design of the building. The B2 rating of the building issued by the EWS1 surveyor following inspection confirmed the building failed to adequately satisfy fire safety standards, with works and interim safety measures necessary to mitigate fire safety risks.
4. The Tribunal is told it is the intention of the applicants representative and managing agent to instruct contractors to start removal of the cladding in the first quarter of 2022.
5. No copy of the EWS1 report for the property is included within the bundle submitted to Tribunal.
6. The applicants assert that until the cladding is removed the specific extent of the remedial work is not known. They do not submit any information to Tribunal on the extent of work or offer any remedial specification for this reason. No indicative costs for the prospective works are presented to Tribunal as they claim works costing cannot be prepared until cladding is partly removed from the structure to permit a more detailed and intrusive inspection of the building.
7. The applicants advise that Taylor Wimpey has committed to part fund the necessary remedial works. No documented commitment from Taylor Wimpey is submitted.
8. The applicants intends to charge the respondents their proportion of any residual cost of carrying out the necessary fire safety works after deduction of the Taylor Wimpey contribution.
9. It is the applicants contention that urgent remedy of the fire safety defects is necessary to reduce occupants risk, secure available funding and limited contractor resources whilst removing the onerous burden on leaseholders of a B2 fire safety rating. The managing agents tell

Tribunal this rating impacts on leaseholders ability to sell or re mortgage their flats.

10. The Tribunal notes that the only issue which we are required to determine is whether it is reasonable to dispense with the statutory consultation requirements.

### **The Application**

11. On 2 March 2022 the Tribunal gave amended directions. A reply form was attached to the directions to be completed by the leaseholders who oppose the application. The Tribunal notified the parties that we would determine the application on the basis of written representations unless any party requested an oral hearing. There was no request from any leaseholder or applicant for an oral hearing.

### **Statutory Duties to Consult**

12. The obligation to consult is imposed by Section 20 of the Act. The proposed works are perceived as qualifying works. The consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regulations”). Leaseholders have a right to nominate a contractor under these consultation procedures.
13. The Landlord is obliged to serve leaseholders and any recognised tenants association with a notice of intention to carry out qualifying works. The notice of intention shall, (1) describe the proposed works, (2) state why the Landlord considers the works to be necessary, and (3) contain a statement of the estimated expenditure. Leaseholders are invited to make observations in writing in relation to the proposed works and expenditure within the relevant period of 30 days. The Landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The Landlord shall respond in writing to any person who makes written representations within 21 days of those observations having been received.

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 or qualifying long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

## Determination

15. This determination relies upon a bundle of papers which included the application, the Directions, a Statement of Case and copy of a specimen lease.
16. No copy of the EWS1 survey is supplied or any specification of the proposed works. There is no written confirmation provided in the bundle by Taylor Wimpey of their intention to contribute to the remedial costs.
17. The Supreme Court's decision in the case of **Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854** clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
18. The scheme of consultation provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.
19. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder because of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
20. The burden is on the landlord in seeking a dispensation from the consultation requirements. However, the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered because of the lack of consultation.
21. The Tribunal is satisfied that the works are of an urgent nature and they are for the benefit of and in the interests of both landlord and leaseholders in the Property.
22. They noted that no leaseholders objected to the grant of dispensation. This suggests that the benefit of carrying out these works urgently is recognised by the majority of the residents of the premises.
23. The Tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to any failure to consult.
24. The Tribunal is concerned that no works specification or budget cost is available for review. It is acknowledged it will be necessary to institute

preliminary exploratory building works to gather further information before a works specification and budget costing can be prepared. For this reason the Tribunal is not persuaded the leaseholders are likely to suffer any financial prejudice because of the failure to consult at this time.

25. The Tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. In view of the circumstances under which the works became necessary the Tribunal does not consider that the leaseholders, in losing an opportunity to make observations and to comment on the works or to nominate a contractor, are likely to suffer any relevant prejudice.
26. The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are dispensed in respect of the necessary works to remedy the defects identified in the EWS1 report referred to in the applicants Statement of Case subject to these works falling under the Landlord's obligations under the leases of the flats.

**Chairman:** Ian B Holdsworth Valuer Chairman

Dated: 4<sup>th</sup> April 2022