



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

Case Reference(s) : **MAN/00BN/LDC/2021/0084**

Property : **Melia House, 2, Hornbeam Way,
Manchester M4 4AX**

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

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

Respondents : **Various Residential Long Leaseholders
(see Annex A)**

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

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member H Lewis**

Date of Decision : **13 September 2022**

DECISION

Order

1. The Tribunal determines as follows:
 - 1.1 it is satisfied that it is reasonable in the circumstances to grant dispensation to the Applicant from the consultation requirements under s20 of the Landlord and Tenant Act 1985 in relation to “the Works” (as hereinafter defined); and
 - 1.2 the dispensation granted under paragraph 1.1 of this Order is conditional on the Applicant taking all such reasonable steps to keep the Respondents’ fully and properly informed of all matters relevant to the Respondents in connection with the carrying out of the Works, including, without limitation, the provision of a reasonably detailed description of the Works together with any amendments to the same, the finally agreed tender sum for their completion, the estimated start and completion dates of the Works and the reasons for any delays to the same, and the progress and outcome of the Applicant’s application to the BSF scheme.
2. **Background**
3. By an application dated 7 December 2021, (“the Application”), the Applicant, Adriatic Land 8 (GR2) Limited applied to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985, (“the 1985 Act”), for dispensation from the consultation requirements of Section 20 of the 1985 Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987), (together “the Consultation Requirements”), in respect of the works set out in paragraph 15a of the Applicant’s Statement of Case dated 7 December 2021, and defined as “the Works”.
4. The Respondents are the individual residential leaseholders of apartments at the Property.
5. Directions dated 28 March 2022 were issued to the parties, in response to which the Applicant submitted its Statement of Case together with its attachments, including, without limitation, a sample lease, (“the Lease”).
6. Written submissions were received from three of the Respondents.
7. A remote video hearing was held on Monday 5 September 2022 at 10:30 am at which the Applicant was represented by Ms Natalie Foster of Counsel. Also in attendance for the Applicant was Ms Lauren Walker and Mr. Robin Mussell attended on behalf of Living City Asset Management Limited, the managing agents of the Property, (“LAM”).
8. Three of the Respondents attended the hearing, namely, Ms Anna Riley (who joined late due to technical difficulties), Mr. George Van Spall and Ms Sarah Lai.
9. No inspection of the Property was undertaken by the Tribunal.

Evidence

10. The Applicant has responsibility for the management of the Property in accordance with the Lease. Its management obligations are discharged by LCAM.
11. According to the Applicant's Statement of Case, the Property is an eleven storey block comprising residential units only. The height of the topmost storey is greater than 18m. A car park is also located at the basement level. The external elevations are constructed of a mixture of masonry and metal panels and the windows comprise of timber frames clad in aluminium double-glazed units.
12. The following matters were addressed on behalf of the Applicant in oral submissions to the Tribunal:
 - 12.1 the investigations undertaken by LCAM leading to the recommendation that the construction of the building presented a medium fire risk which could be removed/mitigated by the undertaking of the Works;
 - 12.2 a summary of the tender process undertaken, including, without limitation, the limited response from the contractors approached and the selection of Insulated Render Systems (Scotland) Limited as the preferred contractor;
 - 12.3 a summary of the limited consultation process undertaken and the reasons why it was impractical to undertake a full consultation.
13. The Applicant therefore concludes that it is reasonable for the Tribunal to grant the Application because:
 - 13.1 the Works are "urgent and essential" as the investigations undertaken demonstrated that in its present state the building presented a medium risk to the health and safety of the leaseholders and further did not comply with the Approved Document B (being the relevant standard in force at the time of construction);
 - 13.2 there is no evidence before the Tribunal of any prejudice suffered by the leaseholders as a result of the Applicant's failure to consult. Two specific issues had been raised in written submissions by Respondents as follows:
 - (a) the "suspicious" nature of the tender bids by reason of their closeness in amount; and
 - (b) the failure of 3 of the contractors involved in the tender process to submit bids.
 - 13.3 With regard to (a), there was no evidence to support the claim that the closeness in the amounts of the two bids made was in any way "suspicious".

- 13.4 With regard to (b), there was no merit in the claim that the failure to submit bids, or the submission of late bids, in any way invalidated a tender process.
- 13.5 The Applicant's choice of a design & build contract, ("D&B Contract"), is incompatible with full compliance with the s20 consultation requirements but the Applicant has made some partial compliance, eg the issue of a 1st stage consultation letter in October 2020, and has, and intends to continue, to comply with the "spirit" of the legislation by keeping the leaseholders informed of the progress of the Works eg by meetings and via the online portal.
- 13.6 There is a significant risk of prejudice to the leaseholders if the Applicant fails to secure some or all of the funding for the Works by a successful application to the BSF, and this requires the Applicant to meet deadlines imposed by DHLUC. The time needed to follow a full consultation risks missing such deadlines.
- 13.7 Further, it is a requirement of the BSF application that either a consultation exercise is completed or dispensation is obtained.
14. In response to questions from the Tribunal, the Applicant confirmed as follows:
 - 14.1 Insulated Render Systems (Scotland) Ltd remains the preferred contractor but no contract has been entered into to date. The tender price will require to be updated;
 - 14.2 pre-tranche funding has been received from BSF;
 - 14.3 it was decided that undertaking further investigation by way of further sampling ran too great a risk of failing to meet BSF deadlines;
 - 14.4 the incompatibility of the D&B Contract route is founded on the inability to provide for consultation purposes a detailed description of the works to be undertaken;
 - 14.5 with regard to the Applicant's intention to keep leaseholders updated, the Applicant is aware of dispensation conditions requiring the provision of regular information to leaseholders on eg progress of the BSF application.
15. The Respondents present at the hearing made the following oral submissions:
 - 15.1 Ms Anna Riley: Ms Riley expressed some doubts about the extent of the Applicant's compliance with the "spirit" of the consultation requirements. Whilst acknowledging that she had been unable to access the online portal and to attend the leaseholder meetings convened by LCAM but that her email requests for copies of the minutes had not been responded to. A request by Ms Riley for the hearing of the Application to be adjourned to enable a consultation to be undertaken on the understanding that it could be halted if the time

constraints of the BSF application demanded was subsequently withdrawn by her in the face of objections by the Applicant.

- 15.2 Ms S Lai and Mr. G Van Spall: both Ms Lai and Mr. Van Spall expressed concerns about the sufficiency of the information which they have received from the Applicant. Mr. Van Spall considered that this restricted his ability to determine whether or not the leaseholders were being prejudiced by the lack of any formal consultation.
16. There were also written objections from three of the Respondents as follows:
 - 16.1 Mr. Michael Hopkins: Mr. Hopkins referred to what he called a lack of “meaningful consultation” by the Applicant and challenged the contention that the Respondents were liable to meet these costs as service charge.
 - 16.2 Ms Stella Osarumwense: Ms Osarumwense challenged the need to undertake the Works at all exacerbated by the failure by the Applicant to provide sufficient detail of them so that any assessment of them could be undertaken. She also regarded the closeness in the tender amounts of the 2 contractors who submitted tenders as “suspicious” and as indicative of a lack of competition.
 - 16.3 Mr. George Van Spall: in his written submission Mr. Spall expressed a general concern about the lack of consultation which he considered to be necessary.

Law

17. Section 18 of the 1985 Act defines “service charge” and “relevant costs”.
18. Section 19 of the 1985 Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
19. Section 20 of the 1985 Act states:-

“Limitation of service charges: consultation requirements

Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited.....unless the consultation requirements have either:-

- a. complied with in relation to the works or
- b. dispensed with in relation to the works by the First Tier Tribunal

This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.

20. “The appropriate amount” is defined by regulation 6 of the Regulations. As “...an amount which results in the relevant contribution of any tenant being more than £250”.

21. Section 20ZA(1) of the 1985 Act states:-

"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 the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

Reasons

Partial compliance/compliance with the "spirit" of the consultation requirements

22. A dispensation application under s20ZA of the Act 1985 presupposes that no compliance has been made with the consultation requirements. Partial compliance/compliance with the "spirit" of the consultation requirements, as submitted by the Applicant, is of no relevance to the Tribunal in its determination of the substantive Application. Either there has been a consultation (in which case no dispensation is required), or there is no consultation in accordance with the consultation requirements (in which case dispensation is required).

Dispensation

General

23. In determining whether it is reasonable to grant an application under s20ZA of the 1985 Act, the Tribunal should consider the rationale for a consultation exercise, namely, to ensure that leaseholders are protected from:

23.1 paying for inappropriate works; or

23.2 paying more than would be appropriate.

24. The Tribunal was satisfied on the evidence before it that remedial works were required to the Property although it considered that there was some uncertainty regarding the Applicant's decision not to undertake further sampling to better identify the scope of the Works.

25. However, it accepted that the Applicant's decision in this respect needed to be viewed in the context of the BSF application and that a successful BSF application would be of financial benefit to the leaseholders. It therefore accepted the Applicant's submission that to have undertaken further investigations ran an unacceptable risk of delay which, in turn, might have risked compliance with the deadlines for the BSF scheme and the failure of the Applicant's application for funding of the Works, in whole or in part.

D&B Contract

26. The Tribunal was unpersuaded by the Applicant's submissions that the D&B Contract route is not "compatible" with compliance with the s20 consultation requirements. In particular, the Tribunal was not persuaded by the following claims of incompatibility:
 - 26.1 the need for the main contractor to "facilitate" sub-contractors: no satisfactory explanation of why this precluded compliance was provided to the Tribunal;
 - 26.2 the possibility that further works might be needed in the future: this is not a situation unique to D&B contracts and there is ample case law on this for the Applicant to have understood the risks, and the necessary action, should it have arisen;
 - 26.3 the Applicant's inability to provide a sufficiently detailed description of the Works for use in a consultation exercise: no satisfactory explanation of why the tender appraisal report could not have been used by the Applicant was provided to the Tribunal.
27. The Tribunal is not satisfied therefore that it is reasonable to grant dispensation from the consultation requirements by reason only of the Applicant seeking to effect the Works by way of a D& Build Contract.

BSF

28. The Tribunal had relatively limited information regarding the Applicant's application to the BSF scheme, and, in particular, how the timetable for applications/commencement of works, and its revisions, impacted on the Applicant's decision not to undertake a consultation process.
29. The Tribunal accepted the Applicant's position that a successful application to the BSF scheme, whether to fund the whole or a part of the costs of the Works, was of financial benefit to the Respondents.

Prejudice

30. The Tribunal considered both the written and oral submissions received from certain of the Respondents. In particular the Tribunal noted as follows:
 - 30.1 that despite the Applicant's submission to the Tribunal that it had been complying with the "spirit" of the consultation requirements, almost all of the Respondents who had made submissions complained of a lack of information;
 - 30.2 Ms Osarumwense's concerns about the scope of the Works and/or the desirability of undertaking further investigations was mirrored by the Tribunal's own concerns in this respect, (see paragraph 24 above).

31. However, the Tribunal was satisfied that, on balance, none of the Respondents' objections had identified any financial prejudice to the Respondents by reason of the Applicant's failure to undertake a consultation in accordance with the consultation requirements.

Determination

32. For the reasons set out in paragraphs 24, 27 and 29, the Tribunal concludes that, in accordance with Section 20ZA(1) of the 1985 Act, it is reasonable to dispense with the consultation requirements under s20 of the 1985 Act.
33. The Tribunal considered that, in view of the concerns expressed by certain of the Respondents regarding the lack of and/or inadequacy of information regarding the Works provided to leaseholders to date, it was reasonable to impose conditions to its dispensation requiring the Applicant to ensure that leaseholders are kept fully and properly informed on an ongoing basis. These conditions are set out in paragraph 1.2 of this Decision.
34. Nothing in this determination shall preclude consideration of whether the Applicant may recover by way of service charge from the Respondents any or all of the cost of the Works or the costs of this Application should an application be received under Section 27A of the 1985 Act. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.

C Wood
Tribunal Judge
13 September 2022

Annex A

Respondent Long Leaseholders

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| Mr D Hay | Mr A Hemmings | Mr H Makwana & Mrs S Makwana |
| Mr D Sherling | Mr B Bennett | Mr C Wand-Tetley & Mrs J Wand-Tetley |
| Mr D Singh | Mr A Bhardwa | Mr J Colleran & Ms M Colleran |
| Mr E Owen | Ms F Mattia | Mr J G Ierston & Ms V L Ierston |
| Mr G Van Spall | Ms K Carey | Mr J Macdonald & Mrs M T Macdonald |
| Mr C Eyre | Ms K Winter | Ms ED Ould-Okojie & Mr L Hatfield |
| Miss L Wilson | Ms L McTernan | Mr M Hopkins & Mrs G Hopkins |
| Miss R Moss | Mr J Waterhouse | Mr M Shah, Mr A Shah, Mr S Shah |
| Mr & Mrs Searle | S Musa & M G Tan | Mr R Chotai & Mrs D Chotai |
| Mr S Gill | Mrs N Kapur | Mr R Litherland & Mrs L Litherland |
| Mr S Kumar | Mrs S Tipping | B W Roberts & D N Roberts |
| Mr Y Xu | Mr M Al-Dawoud | Biondi Corporation Ltd |
| Mr J Poole | Ms S Osarumwense | Branchmax Investments Ltd |
| Mr M Choi | Ms A Wilson | Bricklane Residential REIT plc |
| Mr M Cornwell | Mr H Sachdeva | D L Campbell & W T Campbell |
| Mr M Custance | Mr I McIntosh | Ms CA Marshall & Mr KA Marshall |
| Ms S Davies | Mr J McHugh | Ms M Sadreddini & Ms S Sadreddini |
| Ms S Lai | Mr J Patel | Mr B U Ghauri & Mrs J Y Ghauri |
| Ms M Daly | Mr J Persaud | Mrs C Spaanjaars & Mr A Spaanjaars |
| Ms T Edwards | Ms M Larmour | S Bains, M Awan, R Anhal, D Solanki |
| Ms Y Trimble | Mr J Vestdam-Crowe | Mr C Foden & Ms CL Simpson |
| Ms Y Xu | Mr L Hennin | Mr C M Tang & Mrs L S L Tang |
| Ms Z Duan | Mr C Brennan | Mr P W Oatham & Mrs J S Oatham |
| Ms Z Richards | Dr A Khan & M Khan | Dr K M Thanda & Dr K Lynn |
| Mr B Manjra | Dr F Odeka | R S Property Holdings Ltd |
| Mr B North | Mr & Mrs Ellis | Mrs N Mr G Yates Jafferalli |
| Dr S Alsawy | MCR Real Estate Ltd | Z & M Management Ltd |
| Mr O Wright | Mr D Bryan | Mr JD Cowen & Ms SA Boden |
| Ms C Lin | Mr M Howison | Messrs Bennett, Buckton, Buckton & Clark |
| Mrs Y Cox | Mr P Wigley | Dr Z Dabir & Mrs N Dabir |
| Ms A Riley | Mr R Atkinson | Mr B Shah & Mrs S Shah |
| Mr A Case | Mr S Anwar | Mrs L Hogan & Mr A Kelly |
| Mrs K Sung | Mr S Chakraborty | Mr H P Yeung & Ms S Y Lee |
| Ms E Ahmad | R K Bisla-Ballam | |