



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

Case Reference : **MAN/00DA/LDC/2021/0064**

Property : **Timblebeck, Fearn Island Mills, East Street, Leeds LS9 8EE**

Applicant : **Grey GR Limited Partnership
(represented by JB Leitch Limited)**

Respondent : **Various Leaseholders**

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

Tribunal Member : **(Judge) Mr Phillip Barber
(Valuer) Mr N Swain**

Date : **25 July 2022**

DECISION AND REASONS

Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to urgent works as set out in the Applicant's statement of case at paragraph 12.

Reasons

Background

1. The First-tier Tribunal received an application dated 05 October 2021 under s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a decision to dispense with the consultation requirements of s.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 on behalf of Grey GR Limited Partnership (“the Applicant”), in respect of Fearn Island Mills, East Street, Leeds LS9 8EE (“the Property”). The Respondents to the application are the long leaseholders of the flats within the building. A list of the Respondents is set out in the annex hereto but for reasons which were set out in Directions of the 07 April 2022 and as amended on the 10 May 2022, the application only affects the leaseholders of flats in the property known as Timblebeck due to a disparity between some of the leases on the development and the various definitions contained therein. Whilst that issue concerned us at the notification stage, as this Decision and Reasons does not affect payability and reasonableness of the service charge under section 27A of the 1985 Act, nothing further will be said about it herein.
3. Accordingly, the only issue for the Tribunal to determine is whether it is reasonable to dispense with the consultation requirements.
4. The application identifies the subject property as Timblebeck and sets out the following as to the scope of the works and the reason why dispensation is required:

Following guidance relating to the construction of the external wall system it has been discovered that the construction comprises combustible materials and poses a risk of fire spread. Accordingly, remediation works are required to the external facade at Timblebeck in line with Government Guidance (“the Works”). The Applicant's agent began the consultation process in relation to the Works. Due to the nature of the Works, the

Building Safety Fund deadlines and the Design & Build method adopted, the Applicant is unable to complete the consultation process.

5. Following investigatory works, the Applicant discovered that the construction of the external wall system at Timblebeck comprised of combustible materials and that there was a number of compartmentation breaches within the building which posed a risk of fire spread. The extent of the fire risk and breaches is set out in a number of reports obtained for the purpose of these investigatory works and were contained in the papers. Wintech Limited was instructed in August 2020 to carry out an intrusive survey of the external walls of Timblebeck and its report is reproduced at pages 76 through to 101 of the bundle. Subsequently, Tenos was instructed in July 2021 to carry out a survey of the compartmentation issues at the property and its report is at pages 102 through to 213 of the Applicant's bundle.
6. As set out in paragraph 8 of the Applicant's statement of case, Wintech identified a number of issues with the façade at Timblebeck including timber to the top floor and other parts of Timblebeck being non-compliant with building requirements; the existence of non-compliant polystyrene, and organic foam at the soffits. Paragraph 10 of the statement of case sets out the findings in the Tenos report including the presence of combustible and inadequately sealed insulation; unsealed cable penetration through fire resisting wall; inadequate internal lining in the protected escape route lobby; a lack of slab edge firestopping and inadequate fire doors (paraphrased). Works were also identified in Engine House and Dye works, but the application, as set out above does not extend to these works.
7. In response to these items paragraph 12 of the statement of case sets out the following works:
 - a. Removal and replacement of external wall systems.
 - b. Removal and replacement of combustible cladding.
 - c. Removal and repair or replacement of combustible balcony installations.
 - d. Removal and repair or replacement of any external wood elements.
 - e. Any other works recommended by a Fire Engineer as necessary to ensure the safety of the building.
 - f. The compartmentation works recommended in the Tenos Survey.

8. Paragraph 15 of the statement of case informs the Tribunal that the external works are to proceed via a JCT Design and Build contract, 2016 Edition and in September 2020, TFT were instructed to obtain tenders for the external works at Timblebeck and stage one tender documents were issued to 4 contractors on the 12 October 2020 in relation to these works. Two contractors submitted a tender, ADI and Robertson as set out on page 309 of the bundle. Robertson were selected to proceed with the stage two tender and a tender figure of £1,267,452.53 (excluding contingency and professional fees) as set out on page 311 of the applicant's bundle and following a recommendation from TFT to accept this tender, Robertson has been instructed to proceed with the stage two tender works in accordance with the requirements of the Wintech report.
9. In relation to the compartmentation works no further steps appear to have been taken after the Tenos report.
10. The Applicant, acting through its managing agent, Centrick Management, has registered the Property with the Government Building Safety Fund (BSF) seeking a proportion of cost of the remedial works, aware that full funding may not be granted. The steps already taken in relation to the application is set out in paragraph 23 of the statement of case and the relevant parts of the application guidance is set out in paragraph 24.
11. At the time of writing the statement of case, the Applicant had been informed that the registration of the application had been successfully completed and that the application had been put forward to the MHCLG Funding Approval Board. The statement of case informs us that it is not known when this will be decided, the contractor will need to be in place to commence works at short notice with the costs of the works agreed. The Applicant has been advised that there is insufficient time for the project to be fully designed and follow the traditional tender route whilst complying with BSF deadlines. For this reason, the Applicant intends to follow a design and build procurement route which is not compatible with s.20 consultation requirements.
12. The Applicant began the s.20 consultation process by sending the stage 1 Notice of Intention to all the Respondents in relation to the external works on 25 August 2020. In response to this notification one contractor nomination was received, Carter Construction, but following consultation with TFT it was concluded that Carter Construction did not hold the relevant experience, capability nor turnover to be expected to be able to carry out the external works and they were discounted.

13. Subsequently, various updates were also issued to the leaseholders in relation to the external works and have been summarised in paragraph 32 of the statement of case. On the 11 January 2021 a meeting was also held with the leaseholders via Zoom.
14. The Applicant now seeks dispensation because the remedial works are urgent and should not be delayed further and also because the BSF time constraints did not allow enough time for consultation to take place.

Grounds for the application

15. The Applicant's case is that it is necessary to undertake the external works and the compartmentation works quickly to adequately protect the occupants of the apartments in the Property and to secure funding from the BSF in a timely manner. The Applicant asks the Tribunal to grant dispensation in respect of the external works and compartmentation works, which it considered to be so urgent as to warrant avoiding the additional delay that compliance with the consultation requirements would be entailed.

Responses to the Application

16. The Tribunal received a number of responses to the application from a number of leaseholders at Timblebeck. A number of leaseholders sent in a pro-forma letter dated 06 March 2022 opposing the application. That letter raises a number of issues which it is stated place the leaseholders at significant disadvantage and expose them to significant costs, payable at short notice. In particular the letter raises the following considerations:
 - A. The Building Safety Bill may have an impact on the finance of the works.
 - B. The leaseholders need time to seek independent views on the necessity of each part of the works as well as the proposed costs.
 - C. Grey GR's track record of delays in the installation of a linked fire alarm led to significantly increased costs in the continuation of the waking watch.
 - D. The remedial works will have an impact on those living in the property and this will require proper engagement.
 - E. The information to date from Grey GR has not been consistent or transparent and does not instil faith and trust.

- The first they saw of the various documents was at the start of the Tribunal process and time is required to read the same.
- F. The DLUHC has requested freeholders stop issuing section 20 applications.
- G. Grey GR's assertion that there is a requirement from the DLUHC to waive the consultation process in order to gain Government funding is misguided.

The Law

17. 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.

18. 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.

19. "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 in 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).

20. 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.

21. 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.

Conclusions

22. The Tribunal must decide whether it is reasonable for the works to proceed without the Applicant first complying in full with the s.20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about the works, the reason for the works being undertaken, and the estimated cost of those works. Importantly, it also provides tenants with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.
23. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord or management company decides to undertake qualifying works. 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.
24. It follows that, for the Tribunal to decide whether it was reasonable to dispense with the consultation requirements, there needs to be a good reason why the works should and could not be delayed. In considering this, the Tribunal must consider the prejudice that is caused to tenants by not undertaking the full consultation while balancing this against the risks posed to tenants by not taking swift remedial action. The

balance is likely to be tipped in favour of dispensation in a case in which there was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

25. In the present case there is no doubt that the works are necessary and pressing for the occupiers of the apartments. The Tribunal finds that it is reasonable for these works to proceed without the Applicant first complying in full with the s.20 consultation requirements. The balance of prejudice favours permitting such works to have proceeded without delay.
26. In deciding to grant a dispensation, the Tribunal has had regard to the objections received from a number of the leaseholders but in our estimation of the grounds we decided the following:
 - A. The Building Safety Bill is now the Building Safety Act 2022 and we are satisfied that this Act does not make a material difference to the outcome of this appeal.
 - B. Whilst we appreciate that the leaseholders might want to consider alternative views, we note that of the one stage 1 contractor submitted, this organisation was deemed inappropriate to be asked to tender. We also note the very difficult market in which the Applicant is having to work and we cannot see how dispensing with the balance of the consultation process would prejudice the Respondents for this reason.
 - C. We note this reason, but it plays no part in our decision making process.
 - D. We appreciate that the remedial works will have an impact on the lives of those living in the development but we weigh this against the very significant risks within the development in relation to the absence of these works. They are urgent and necessary.
 - E. We note the issue of transparency. Even if the leaseholders first became aware of the documents at the start of this dispensation process, they have now had these for a number of months. Further, for the reasons set out in the final paragraph of this Decision and Reasons, the leaseholders still have the option of the section 27A procedure.
 - F. We are unaware of any such request and in any event this is not relevant to our considerations.
 - G. We accept the assertion that the BSF processes are not necessarily inconsistent with the section 20 consultation procedure but given the urgent need for these works to be carried out together with the requirement to meet a potentially

tight BSF timetable we think it is in the interests of the leaseholders for dispensation to be granted.

27. The Tribunal would emphasise the fact that it has solely determined the question of whether or not it is reasonable to grant a retrospective dispensation from the consultation requirements. This decision should not be taken as an indication that the Tribunal considers that the amount of the anticipated service charges resulting from the works is likely to be recoverable or reasonable; or, indeed, that such charges will be payable by the Respondents. The Tribunal makes no findings in that regard and, should they desire to do so, the parties will retain the right to make an application to the Tribunal under s.27A of the Landlord & Tenant Act 1985 as to the recoverability of the costs incurred, as service charges.

Signed Phillip Barber

Date: 25 July 2022

Tribunal Judge