



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

Case Reference : **MAN/00BN/LDC/2022/0011**

Property : **Vantage Quay, 3-5 Brewer Street,
Manchester, M1 2ED (Flats 1-118 (excluding Flat 13,
which is not enumerated))**

Applicant : **Vantage Quay Management Limited**

Representative : **Urbanbubble Ltd**

Respondents : **The Leaseholders of Flats 1-118 (excluding Flat 13)**

Type of Application : **An application under section 20ZA of the Landlord
and Tenant Act 1985 for dispensation of the
consultation requirements in respect of qualifying
works.**

Tribunal Members : **Judge T N Jackson
Mr W Reynolds MRICS**

**Date of Paper
Determination and
Decision** : **28 October 2022**

DECISION

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Decision

To the extent that the statutory consultation requirements were not complied with, the Tribunal grants dispensation from the consultation requirements of section 20 Landlord and Tenant Act 1985 in respect of the Works to remove external wall and balcony elements which do not comply with fire regulations, the reinstatement of these elements and other associated works to comply with Approved Document B and the Regulatory Reform (Fire Safety) Order 2005.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable.

Reasons for decision

Introduction

1. By application received by the Tribunal on 8 February 2022, the Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') of the consultation requirements provided for by section 20 of the same Act.
2. The application relates to the need to undertake works required to address the inadequacy of the external cladding system and to remove the render system and timber trellis and associated insulation.
3. Directions were made on 9 June 2022. Direction 5 required any Respondent who objected to the application to complete an attached reply form and submit a statement to the Tribunal and the Applicant stating the reason for their objection together with any documents and witness statements upon which they seek to rely.
4. The Tribunal has not received any objections to the application.
5. The only issue for determination is whether we should dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be payable or reasonable.
6. References to page numbers in this Decision relate to the pages of the Applicant's bundle.

Hearing/Inspection

7. After considering the papers, we determined that an inspection was unnecessary. Neither party requested a hearing and we determined the matters on the papers.

Background

8. The Property is a purpose-built development of 117 flats. The building was completed in 2002 and has a ground floor with 7 stories, (the height of the top storey exceeds 18 metres). The Respondents are the leaseholders of the 117 residential flats.
9. The flats within the Properties are the subject of leases granted on similar terms. We have been provided with a copy of the Lease relating to 19 Vantage Quay dated 30

September 2004 made between City Lofts (Piccadilly) Limited (1), Vantage Quay Management Limited (2) and Mira Parikh and Seema Parikh (3) under which the flat is demised for 999 years less three days from 1 January 2002. We have also been provided with a copy of the Leases relating to 50 and 117 Vantage Quay dated 7 October 2004 and 23 December 2004 respectively which are in similar terms.

10. Under Clause 7.2.1 of the Lease, the Applicant is required to provide Management Services throughout the term of the Lease. Clause 7.1 defines 'Expenses on Management Services', to include costs in connection with:
 - (a) inspecting, cleaning, maintaining, treating, repairing, rebuilding, decorating and replacing the Buildings and all structural parts thereof;
 - (b) inspecting, maintaining repairing amending improving renewing and reinstating and (where appropriate) decorating treating cleaning heating lighting and supplying hot and cold water to the Common Parts;
 - (c) to (ii) ...
11. By Clause 5.2.1 of the Lease, the Respondents are required to pay the Management Company the 'Service Charge Estimate' which is defined as the total cost of the Applicant carrying out their obligations under Clause 7.1 above.
12. Following a survey, by report dated 10 March 2019, (Exhibit 3 pages 51-116), Thomasons Partnership Limited identified that the render construction does not achieve an adequate resistance to spread of fire between flats. Paragraphs 3.1.5 to 3.1.9 of the Survey details the lack of resistance to fire in parts of the building and the dangers it poses to the residents. The report included an External Wall Assessment by Design Fire Consultants in which they made recommendations to ensure the safety of the building and its residents (pages 66-116).

Proposed Works

13. The Applicant proposes to carry out the following qualifying works to the Property, namely removal of external wall and balcony elements which do not comply with fire regulations, the reinstatement of these elements and other associated works to comply with Approved Document B and the Regulatory Reform (Fire Safety) Order 2005 as more particularly described in A13 (pages 147-148) of the Tender Documents.

Procurement Process

14. A copy of the tender documents is included at Exhibit 5 (pages 123-199). The Applicant has obtained one quote for the Proposed Works from P. Casey & Co Ltd whose cost for the works is £2,525,394.57 including VAT. Including professional fees, the costs are £3,744,734.72 including VAT. A full breakdown of the costs is included at Exhibit 6 (pages 201-203).

Consultation

15. The Section 20 consultation process was commenced only with the issue of the Notice of Intention on 12 August 2020, a copy of which has been provided (Exhibit 4

pages 120-121). The Notice sets out a brief description of the proposed Works and advises that a description of the works to be carried out may be inspected at a specific address or requested via email.

16. The Notice invites the leaseholders to make observations on the proposed Works and to provide the Applicant with the name of any of person from whom the Applicant should try to obtain an estimate for the carrying out of the proposed Works.
17. The letter invites observations to be made to the Applicant in writing within the consultation period which ends on 18 September 2020.

The Law

18. Section 20 of the 1985 Act, as amended by the Commonhold and Leasehold Reform Act 2002, sets out the procedures landlords must follow which are particularized, collectively, in the Service Charges (Consultation Requirements) (England) Regulations 2003. There is a statutory maximum that a lessee has to pay by way of a contribution to 'qualifying works' (defined under section 20ZA (2) as works to a building or any other premises) unless the consultation requirements have been met. Under the Regulations, section 20 applies to qualifying works which result in a service charge contribution by an individual tenant in excess of £250. In accordance with section 20ZA (1) of the 1985 Act, the Tribunal may dispense with the consultation requirements 'if it is satisfied it is reasonable' to do so.
19. The proper approach to the Tribunal's dispensation power was considered by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854. In summary, the Supreme Court noted the following:
 - i. Prejudice to the tenants from the landlord's breach of the requirements is the main, and normally the sole question for the Tribunal in considering how to exercise its discretion under section 20 ZA (1).
 - ii. The financial consequences to the landlord of not granting the dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - iv. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some 'relevant prejudice' that they would or might have suffered is on the tenant. It is not appropriate to infer prejudice from a serious failure to consult.
 - v. The court considered that 'relevant' prejudice should be given a narrow definition: it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.

- vi. Once the tenants have shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.
- vii. Compliance with the requirements is not an end in itself. Dispensation should not be refused solely because the landlord departs from the requirements (even seriously). The more serious and/or deliberate the landlords' failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- viii. In a case where the extent, quality and cost of the works were in no way affected by the landlord's failure to comply with the requirements, the dispensation should be granted in the absence of some very good reason.
- ix. The Tribunal can grant a dispensation on such terms as it thinks fit provided that they are appropriate in their nature and effect.
- x. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord application under section 20 ZA (1).

Submissions

The Applicant

- 20. The Applicant submits that due to the timescales required in applications to the Building Safety Fund (BSF), only one quote for the works was obtained and the section 20 consultation procedure could not be completed. They have updated residents on the progress regarding the funding application, areas of non-compliance on the Property and consultation process via formal written updates and zoom meetings.
- 21. The Applicant submits that the contractor selected is a trusted contractor with over 40 years' experience. The Applicant has made consistent efforts to find a grant or funding to assist the Respondents in covering the cost of the works and confirms that all the works identified will be funded by the BSF and the Respondents will not be required to contribute to the cost of the Works. They further submit that no Respondent has objected to the works going ahead and they do not envisage that any Respondent will suffer any prejudice due to the fact that consultation has not been carried out to its full extent.
- 22. It is proposed that the Works would take 9 months and 2 weeks with completion expected 2 June 2023. The Applicant advises that the Works commenced on 3 May 2022.

The Respondents

- 23. The Tribunal has not received any objection to the application from any of the Respondents.

Deliberations

24. We are satisfied that it is reasonable to dispense any outstanding consultation requirements in the circumstances of the present case, for the following reasons:
- i. The Works relate to fire prevention measures and are required for health and safety purposes to ensure the safety of the Property, the residents and users.
 - ii. The cost of the works is to be borne by the BSF rather than the Respondents.
 - iii. No Respondent objected to the application to the Tribunal.
 - iv. We do not consider that the Respondents are prejudiced or will suffer any loss of opportunity as a result of the dispensation of the statutory consultation requirements.

Determination

25. The Tribunal therefore determines that, to the extent that the statutory consultation requirements were not complied with, the consultation requirements are dispensed with in relation to the Works.
26. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are payable or reasonable.

Appeal

27. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

Judge T N Jackson
28 October 2022