



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

**Case Reference** : **MAN/00BN/LDC/2021/0049**

**Properties** : **41 Bengal Street, Manchester, M4 6AF**

**Applicant** : **Premier Estates Ltd.**

**Representative** : **JB Leitch Ltd.**

**Respondents** : **Various – see annex**

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

**Tribunal Members** : **Judge P Forster  
Mr N Swain FRICS**

**Date of Decision** : **21 July 2022**  
**Revised 6 September 2022**

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DECISION

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## Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to urgent works specified in the attached schedule.

## Reasons

## Background

1. The First-tier Tribunal received an application on 16 August 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 Premier Estates Ltd. (“the Applicant”), in respect of “Loom Street” 41 Bengal Street, Manchester, M4 6AF (“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.
3. 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 an eight storey building of 48 residential apartments and a commercial unit.
5. The works in respect of which a dispensation is sought are specified in the attached schedule.
6. Investigatory works discovered that the construction of the Property fails to meet relevant building regulations and comprises combustible materials and poses a risk of fire spread. This is set out in a report dated 10 August 2018 prepared by Design Fire Consultants Ltd. and a report dated 28 April 2019 prepared by Complete Wall Solutions Ltd. Together these reports identify the necessary remediation works.
7. The Applicant has registered the Property with the Government Building Safety Fund (BSF) seeking the full cost of the remedial works, aware that full funding may not be granted. The Applicant has adhered to the BSF timescales. The deadline for the works to begin was extended to 30 September 2021. The

works are expected to cost in the region of £2,240,000 excluding VAT and professional fees. This is based on a tender submitted by Precision Facades Ltd. (Precision).

8. The Applicant intends to appoint Precision to carry out the works as preferred contractor due to the urgent nature of the works owing to the safety of the Property and the residents and because they are likely to comply within deadlines imposed by the BSF. It is not known if the Applicant is eligible for full or partial funding and when this will be decided. The contractor needs to be in place to start work at short notice with the costs of the works agreed.
9. The Applicant began the s.20 consultation process by sending the stage 1 notice of intention to all the Respondents on 4 December 2020. No responses or observations were received from the Respondents. In addition, the Respondents have been informed on a number of occasions about the progress of matters.
10. The Applicant seeks dispensation because the remedial works are urgent and should not be delayed further. Further, the deadlines imposed by the BSF which will secure a large part of costs of the works may prevent the Applicant from fully complying with the consultation process. The Applicant does not envisage any financial prejudice to the Respondents due to the fact that the consultation is not carried out to its full extent.
11. The proposed works are “qualifying works” within the meaning of section 20ZA(2) of the Act.
12. On 7 February 2022, the Tribunal issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and the Tribunal therefore convened on the date of this decision to consider the application in the absence of the parties. The directions included at paragraph 5 a provision that required the Applicant to write to each of the Respondents informing them of the application and providing them with information about the application process. The Applicant’s representative confirmed that this was done on 5 April 2022 and that the deadline for responses from the Respondents passed on 29 April 2022. The Applicant states that no responses have been received from the Respondents.

#### Grounds for the application

13. The Applicant’s case is that it is necessary to undertake these works quickly to adequately protect the occupants of the apartments in the Property and to secure funding from the BSF. By implication, the Applicant’s case is that the

works relate to common parts of the Property which the landlord is obliged to maintain under the terms of the leases, with the costs associated therewith being recoverable from the tenants via service charge provisions incorporated within the leases. The Tribunal was provided with a specimen copy of the lease relating to plot 6.1.

14. The Applicant asks the Tribunal to grant dispensation in respect of the works, which it considered to be so urgent as to warrant avoiding the additional delay that compliance with the consultation requirements would be entailed.

#### The Law

15. 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.*

16. 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.*

17. “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).

18. 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.*

19. 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

20. 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.
21. 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.
22. 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.

23. 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.
24. In deciding to grant a dispensation, the Tribunal has had regard to the fact that no objections were raised by the Respondent leaseholders in compliance with the Tribunals Directions of 12 January 2022.
25. 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.

**21 July 2022**

**6 September 2022**

**Judge P Forster**

## **Annex**

### **Removal**

- a. Removal of existing render system and associated components, back to sheathing board
- b. Removal of existing timber cladding system and associated components, back to sheathing board
- c. Removal of existing timber decking system and associated components, back to sheathing board
- d. Removal of existing sheathing board and loose fill insulation to SFS framing
- e. Removal of existing roof level edge detail

### **Sheathing board, membranes and EPDMS**

- f. Installation of new non-structural sheathing board and associated sundries to outer face of SFS walls and internal parapet upstands including insulation between SFS framing
- g. Installation of new breather membrane to new sheathing board areas
- h. Installation of new FR EPDM membranes to new sheathing board areas around openings within timber cladding areas

#### Render Works

- a. Installation of WBS system generally to main wall areas
- b. Installation of WBS horizontal movement joint detail
- c. Installation of WBS vertical movement joint detail
- d. Installation of WBS building corner detail
- e. Installation of WBS window/door head and jamb details
- f. Installation of WBS sill abutment detail
- g. Installation of WBS base profile detail
- h. Patching render system to ties

#### Timber Effect Cladding System

- a. Installation of new thermal insulation to courtyard cladding areas
- b. Installation of new thermal insulation to high level terrace cladding areas
- c. Installation of new thermal insulation to courtyard soffit cladding areas
- d. Installation of Rockpanel rainscreen cladding system to courtyard cladding areas
- e. Installation of Rockpanel rainscreen cladding system to high level terrace cladding areas
- f. Installation of Rockpanel rainscreen cladding system to courtyard soffit cladding areas

#### Decking

- a. Installation of new balcony decking and associated support system to all terraces and central courtyard main area
- b. Installation of new balcony decking and associated support system (including adaptations to structural steelwork) to raised balcony terraces within central courtyard

#### Firestopping

- a. To render areas, install WBS FF102/25 intumescent strip
- b. To render areas, install WBS/TENMAT NVFB
- c. Install new siderise mineral wool rigid batts, type RH25s/30
- d. Install new siderise mineral wool rigid batts, type RV90/30
- e. Install new siderise mineral wool rigid batts, type RV120/120

#### Aluminium Flashings/Cappings

- f. Install new PPC window cills

- g.** Install new abutment flashing at interface between render and timber cladding
- h.** Install new feature flashing at 2nd floor level to replicate existing
- i.** Install new base cill profile to render areas
- j.** Install new Aluminium capping system to terrace areas and roof areas

#### Other Works

- a.** Install new SFS upstands including sheathing board detail at roof level
- b.** Install new waterproofing detail to existing roof membrane
- c.** Carry out leak detection tests to all roof and terrace areas
- d.** Removal of existing aluminium plank and existing support frame and replacement with new aluminium hanging support system
- e.** Install new thermal insulation to soffits of ground floor car park areas

#### Provision Sums

- a.** Remove existing timber ladder framing and install new SFS downstand below 2<sup>nd</sup> floor beam to receive new sheathing board and render system
- b.** Allowance for removal of timber/internal drylining framing systems used to infill steel beams and replace with suitable SFS or aluminium framing
- c.** Remedial works to existing fire treatment to steelwork
- d.** Repairs to existing waterproofing membranes to roof and terrace areas
- e.** Install new thermal insulation to steel beams within soffit areas