



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

Case Reference : **MAN/OOCX/LDC/2022/0059**

Property : **Appleton Point, 1 Hamm Strasse, Bradford
BD1 4NN**

Applicant : **RMB 102 Limited**

Respondent : **Various (see list attached)**

**Type of
Application** : **s20ZA Landlord and Tenant Act 1985**

Tribunal Members : **Mr John Murray LLB
Mrs. Sally Kendall MRICS**

Date of Decision : **1 August 2023**

**Date of
Determination** : **21 August 2023**

DECISION

DECISION

The application for dispensation from consultation under s20ZA Landlord and Tenant Act 1985 is granted.

INTRODUCTION

1. The Applicant applied to the Tribunal for an order for dispensation with consultation required under s20ZA of the Landlord and Tenant Act 1985 for work in connection with spandrel panels on Appleton Point, Hamm Strasse, Bradford BD1 4NN ("the Premises").

THE PROCEEDINGS

2. Directions were made by a Legal Officer on the 25th January 2023 for the Applicant to file and serve bundles of all documents within 21 days of the directions. Any Respondents who opposed the application were invited to send statements in reply. In addition the Respondents were invited to indicate whether they wished to participate in the proceedings or not.
3. A Tribunal was appointed. Neither the Applicant nor any of the Respondents requested an inspection or a hearing, and the Tribunal convened to make this determination. None of the Respondents indicated any intention to object.
4. The Tribunal aimed to determine the matter in January 2023; however the Tribunal was postponed in March at the Applicant's request as a change in legislation changed necessitating the procurement of a FRAEW – a fire risk appraisal of an external wall.

THE APPLICATION

5. The application made under s20ZA Landlord and Tenant Act 1985 related to works required urgently following a report obtained by the Applicant from surveyors relating to essential works to the spandrel panels of the building.
6. The Applicant did not envisage that the Respondents would suffer any prejudice owing to consultation not being carried out.

THE RESIDENTIAL LEASES

7. The residential units are understood to have been originally let on residential leases by the Landlord, Mederco Limited, the Management Company, Appleton Point Management Limited and the individual lessees for a term of 999 years from 1 January 2014. The initial ground rent charges was £250 subject to review every ten years.
8. The original Management Company Appleton Point Management Limited was a third party to the lease; it dissolved on the 17 December 2019. Premier Estates Limited were appointed as managing agent to the Applicant on the 1 September 2021. Pursuant to the lease the Respondents is or would become a member of the Management Company.
9. The Respondents covenanted in the lease to pay 1/160 (or such other amount as the Landlord or Management Company, acting reasonably, deem appropriate) of the costs of the providing the Services in Part 1 of the Seventh Schedule and payable in accordance with part 2 of the Fifth Schedule.
10. The Respondents covenants to pay the insurance rent, being 1/160 (or such other amount as the Landlord, acting reasonably, deems appropriate) of the costs of the premium that the landlord expends and any other fee and other expenses that the Landlord incurs in effecting and maintaining insurance of the Building in accordance with the Sixth Schedule including professional fees for carrying out any insurance valuations.
11. Part 1 of the Seventh Schedule provides that the Management Company may renew and improve as and when necessary the structure of the Buildings on the Estate and makes provision for a number of other expenses specified.

THE LAW

12. The relevant legislation is contained in s27A Landlord and Tenant Act 1985 and s20ZA Landlord and Tenant Act 1985 which read as follows:

s27A Liability to payable service charges: jurisdiction.

(1)An application may be made to an appropriate tribunal for a determination whether a service charge is payable and, if it is, as to— .

- (a)the person by whom it is payable,
- (b)the person to whom it is payable,
- (c)the amount which is payable,
- (d)the date at or by which it is payable, and
- (e)the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to an appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and.
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant, .
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, .
- (c) has been the subject of determination by a court, or.
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on an appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

s20 ZA Consultation requirements: supplementary

(1) 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.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

- (a) if it is an agreement of a description prescribed by the regulations, or
- (b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

- (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
- (b) to obtain estimates for proposed works or agreements,
- (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
- (d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
- (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

- (a) may make provision generally or only in relation to specific cases, and
- (b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament

SUBMISSIONS

THE APPLICANT'S STATEMENT OF CASE

13. The Applicant filed a statement of case dated 9 November 2022 prepared by its solicitors. That statement confirmed that the Applicant is the Landlord and Freeholder of the Premises.
14. The Premises were originally provided as student accommodation consisting of 160 individual apartments. The height of the topmost storey exceeds 18 m above ground level. A car park is present on the lower grounds floor.
15. The Applicant was aware of works required to the Premises for fire safety requirements; combustible materials had been used in construction presenting a risk of fire spread.
16. Thomasons Partnership Limited had been instructed to facilitate remedial works to replace the ACM cladding and related fixtures and fittings and fire barriers at the Premises. As remedial works had progressed, further intrusive investigation was possible due to improved access to external walls which identified various deficiencies in respect of the glazed spandrels. It was recommended they be replaced and a schedule of works was prepared.
17. Thomasons were instructed to produce a Tender Appraisal Report in March 2022 which was issued to contractors. Only one contractor tendered, Buildzone. The Applicant said that Thomasons has undertaken a costs comparison with tendered costs received on "other similar schemes" and concluded the tender from Buildzone was in line with current market rates.
18. The total project cost was estimated at £449,515 although costs could vary until such a time as a Works contract was entered into.
19. The Applicant had submitted an application for a grant to the Building Safety Fund seeking the full costs, but was aware that the full funding required might not be granted. No further information was available about the likely success or otherwise of the application, but the contractor would need to be in place to commence the works quickly.
20. Furthermore the Applicant was aware that a shortage of contractors could lead to further delays with these works if a further consultation exercise was carried out.

21. The Applicant's managing agents had updated leaseholders in respect of the works with letters on 25 April and 11 August 2022 updating leaseholders with the BSF application, explaining that the cost of the Works "ought to" be eligible against the funding criteria.
22. The grounds of the application were summarised by the Applicant as follows:
 - a. The works were required as soon as possible. There were health and safety issues for the Premise as constructed.
 - b. The design and build route did not satisfy procurement as only one tender had been obtained. However restarting consultation would cause unnecessary delays.
 - c. Leaseholders would not be prejudiced; the Applicant was applying for government funding and complying with BSF requirements.
 - d. The Applicant had engaged with leaseholders and was willing to respond to any queries.
 - e. Leaseholders could still challenge the reasonableness of costs through s19.

THE RESPONDENTS

23. The Respondents were invited to notify the Tribunal if they objected to the application. No objections were filed.

THE DETERMINATION

24. The only issue for the Tribunal to consider is whether it was reasonable to dispense with consultation requirements, and not whether the service charges for the works in question were reasonable and/or payable.
25. The work was clearly urgently required, in order to allow the Premises to be occupied; there was a need to procure the works quickly given the shortage of qualified contractors.
26. Dispensation was considered in depth by the Supreme Court in *Daejan v Benson* [2013] UKSC14 which concerned a retrospective application for dispensation. Lord Neuberger confirmed that the Tribunal has power to grant a dispensation on such terms as it thinks fit, providing that the terms are appropriate in their nature and effect.
27. Lord Neuberger also confirmed that conditions could be imposed as to costs, aside from the Tribunal's general powers to award costs, (which at that time were limited), drawing a parallel to the Court's practice to making the payment of costs a condition of relief from forfeiture.

28. The correct approach to prejudice to the tenants is to consider the extent that tenants would “relevantly” suffer if an unconditional dispensation was accorded. The Tribunal needs to construct what might happen if the consultation proceeded as required - for instance whether the works would have cost less, been carried out in a different way or indeed not been carried out at all, if the tenants (after all the payers) had the opportunity to make their points.
29. The Tribunal took into account that not one of the 160 leaseholders objected to the application; no prejudice to any of the leaseholders had been identified, and there was no reason not to grant unconditional dispensation.
30. Any perceived prejudice that a leaseholder was concerned with might be reviewed by a future Tribunal pursuant to s19 Landlord and Tenant Act 1985.
31. The application for dispensation under s20ZA is granted.

**Tribunal Judge
John Murray**

1 August 2023

The Estate of Mr G Mirza
The Estate of Mr Ernest Cook
Sharwin Properties Ltd.
Serious Property Limited
Ms Zoe F Harding
Ms Ticer
Ms T Hoon
Ms S Naqvi
Ms R Zannettou
Ms R Ansemous
Ms P Georgiou
Ms N Kaynia
Ms M Petrou
Ms M Kulazhenkova
Ms Llantada
Ms Llantada
Ms Lipova
Ms K Chua
Ms H Sanghrajka
Ms G Heggie
Mrs P Rouse
Mrs Hendry
Mrs Dormand
Mr White
Mr Warren
Mr W & Mrs R Knowles
Mr W & Mrs R Cherrie
Mr V & Mrs G Kulbaka
Mr Simon Carter & Mrs Pauline Carter
Mr Sherratt
Mr S Ramasamy
Mr S Feiring
Mr R Suriyya
Mr R Pankratov
Mr R Jukanti
Mr Padma
Mr P Waddingham
Mr P & Mrs L Moran
Mr Nunikov
Mr M Puzyrev
Mr M Ali & Ms T Iftikhar
Mr Lau
Mr L Zhivetskiy
Mr L Heng
Mr Kevin Wood

Mr K Patel
Mr K Jasani
Mr K & Mrs M Yeung
Mr James Whiting
Mr J Sherratt
Mr J Desch & Ms R Jahn
Mr Fewtrell
Mr D Barminov
Mr Cheung
Mr Chan
Mr C Mui
Mr B Flanagan
Mr Andrew Foster & Mr Chris Walker
Mr Alexander Trostyanetskiy
Mr Adrian King
Mr A Petrov
Mr A Konsolakis
Mr A Cheung
Mr A Chernyy
Mr A Agafonov
Mr & Ms Zhivetskaya
Mr & Ms Zhao
Mr & Ms Zarjitskiy
Mr & Ms Zannetti
Mr & Ms Yong
Mr & Ms Xu
Mr & Ms Wei
Mr & Ms Vora
Mr & Ms Underwood
Mr & Ms Syed
Mr & Ms Starostina
Mr & Ms Stamenkovic
Mr & Ms Sheyfer
Mr & Ms Samra
Mr & Ms Robinson
Mr & Ms Rafi
Mr & Ms Patel
Mr & Ms Papakostas
Mr & Ms Pang
Mr & Ms Osinuga
Mr & Ms Ogunmakin
Mr & Ms Morey
Mr & Ms Mok
Mr & Ms Lomakin
Mr & Ms Lois
Mr & Ms Lin
Mr & Ms Jelovsek

Mr & Ms J Desch
Mr & Ms Grewal
Mr & Ms Fournaris
Mr & Ms Fejer
Mr & Ms Eroshkina
Mr & Ms Eroshkin
Mr & Ms Du
Mr & Ms Cheung
Mr & Ms Chao
Mr & Ms Bartley
Mr & Ms Amarnani
Mr & Ms Abideen
Mr & Mrs Vafin
Mr & Mrs Stamenkovic
Mr & Mrs Somosi
Mr & Mrs Papagiannopoulos
Mr & Mr Singh
MPS Properties Ltd.
Miss Delphine Raymond
Mederco Ltd.
Kendraco Ltd.
Hindes-Boyd Properties Ltd.
Financial Mgmt Account Pro-Active Sols Ltd.
AP 02 Properties Limited