



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

**Case reference** : **MAN/00CH/LDC/2023/0024**

**Property** : **Friars Wharf Apartments, Green Lane, Gateshead  
NE10 0QX**

**Applicant** : **Adriatic Land 5 Limited**

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

**Respondents** : **Various Residential Long Leaseholders  
as listed in the Application**

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

**Tribunal  
Members** : **Tribunal Judge S Moorhouse LLB  
Mr IR Harris BSc FRICS**

**Date of Paper  
Determination** : **2 October 2023**

**Date of  
Determination** : **13 October 2023**

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**DECISION**

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## **DECISION**

1. Pursuant to section 20ZA of the Landlord and Tenant Act 1985 the tribunal makes an unconditional determination to dispense with the requirement to consult with the Respondents on the works to Friars Wharf Apartments, Green Lane, Gateshead NE10 0QX described in Schedule 1.

## **REASONS**

### **The Application**

2. The application ('the Application') was made on 27 March 2023 by Adriatic Land 5 Limited (incorporated in Guernsey) ('the Applicant'). It seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the Act') in relation to the statutory consultation requirements prescribed by section 20.
3. Dispensation is sought for the carrying out of certain works related to fire safety described in Schedule 1 ('the Works'). The Works are to be carried out to Friars Wharf Apartments, Green Lane, Gateshead NE10 0QX ('the Property'), comprising two four-storey buildings with a total of 85 residential apartments and residential car parking accessed on the ground floor. The Applicant holds the Property under the terms of a lease dated (and commencing) 12 June 2003 for a term of 125 years. The reversionary freehold interest rests with Gateshead Borough Council. The Respondents are the leaseholders of the apartments. A sample lease provided by the Applicant shows the term to be 125 years (less 7 days) from 12 June 2003. A response to the Application was filed by Muckle LLP acting for Pudding Chare Developments Limited ('the First Respondent'), the leaseholder of apartments 6, 36, 40, 63 and 67.
4. Directions were issued on 15 June 2023. The tribunal has the benefit of the Applicant's statement of case and accompanying documents, the First Respondent's response and a reply to that response by the Applicant.
5. The Applicant company indicated that it would be content with a determination on the papers. The tribunal considered this to be appropriate because only one Respondent had responded to the Application, the representative for that Respondent had indicated that they did not wish to attend an oral hearing and because there was sufficient information before the tribunal to reach a decision. It was unnecessary to conduct an inspection of the Property in view of the matters in issue.

### **The Law**

6. Extracts from sections 20 and 20ZA of the Act are reproduced in Schedule 3. Section 20ZA subsection (1) provides that the tribunal may make a determination to dispense with consultation requirements 'if satisfied that it is reasonable to dispense with the requirements'.
7. The tribunal considers the Supreme Court case of *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 ('*Daejan*') to be the leading case on dispensation. In *Daejan* Lord Neuberger stated that in deciding pursuant to section 20ZA whether it is reasonable to dispense with consultation requirements, a tribunal should consider whether any relevant prejudice would be suffered by the leaseholders. Lord Neuberger stated that whilst the legal burden of proof rests throughout on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered rested on the tenants. Lord Neuberger went

on to hold that a tribunal is permitted to grant dispensation on terms, including compensating leaseholders for any prejudice suffered by requiring a landlord to reduce the amount claimed as service charge, and including an order for costs.

## **Submissions**

8. The Applicant's statement of case states that they commissioned a report from Michael A Fox Associates Limited which was dated 16 April 2020 and identified whether external walls to the Property were compliant with the building regulations applicable at the time of construction and with Government advice. The recommendations included the remediation of fire cavity barriers.
9. CHPK Fire Engineering Limited were then instructed to carry out a fire compartmentation survey of the Property to assess the general condition of passive fire protection, including compartmentation and fire stopping. CHPK concluded that the general standard of fire resisting construction between apartments and escape routes, and within risers, was observed to be substandard and that there were significant breaches in the compartmentation strategy for the Property.
10. CHPK issued invitations to tender to four contractors in relation to the Works and 3 tenders were received, 2 of which were compliant with the invitation. CHPK recommended the preparation of a detailed costs plan with Kerr Interiors. The Applicant submitted to the tribunal that the carrying out of a full consultation exercise would frustrate the commencement of the Works, and that the Design & Build contract procurement route is incompatible with the strict requirements of section 20. The Applicant stated that Notice of Intention was nevertheless issued to the Respondents in respect of the Works (under cover of letters dated 27 March 2023) and that a welcome letter issued on 1 June 2022 mentioned the Works also.
11. The objections to granting dispensation raised by the First Respondent are set out in detail in its statement of case. The conclusions can be summarised as follows:
  - (a) the design and build procurement procedures are not incompatible with the statutory consultation requirements of section 20 and the Works are not of sufficient urgency to justify dispensation;
  - (b) the cost of the Works is not payable as service charge under the terms of the underleases since the Works relate to areas for which the Applicant has no repairing obligation - the Application should therefore be dismissed and an Order for costs made in favour of the First Respondent on the basis that it was unreasonable to bring these proceedings;
  - (c) should dispensation be granted, various conditions should be attached relating to costs, the provision of a detailed plan and cost of the Works, the opportunity to make observations and for these to be taken into consideration, monthly progress meetings with leaseholders regarding the Works and costs and the provision (at those meetings) of information concerning proposed additional works to cladding; and
  - (d) an application is made by the First Respondent under section 20C of the Act and under paragraph 5A, Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('CLARA').
12. In its 'reply' the Applicant points out that the factual burden of identifying some relevant prejudice rests on the leaseholders and cites the Upper Tribunal case of

*Wynne v Yates and others [2021] UKUT 278 (LC)* in which UT Judge Elizabeth Cooke states ‘...There must be some relevant prejudice to the tenants beyond the obvious fact that of not being able to participate in the consultation process’.

13. It is submitted for the Applicant that the Works are in their very nature urgent, relating as they do to fire safety, and that no relevant prejudice has been evidenced.

### **Determination**

14. The tribunal considered first the First Respondent’s argument that the cost of the Works is not payable as service charge (and therefore the Application should be dismissed). Issues concerning the interpretation of the underleases and whether the cost of the Works would be recoverable as service charge fall to be addressed pursuant to section 27A of the Act should such an application be made.
15. The tribunal has an overriding objective pursuant to Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (‘the Procedure Rules’) to deal with cases fairly and justly. It would not be in the interest of fairness or justice for the tribunal to address section 27A issues, even if it had the power to do so, given that only one Respondent is participating in these proceedings and that any determination concerning the interpretation of the underlease could have significant consequences for all leaseholders. In any event it would have been open to the First Respondent to make an application under section 27A(3) for a determination of whether, if costs were incurred, they would be payable as service charge.
16. On the dispensation application, applying the principles in section 20ZA and in *Daejan*, the tribunal determines that it was reasonable to dispense with consultation requirements because the Works to the Property have been recommended following a professional survey as being necessary for the purposes of fire safety and to remedy defects in compartmentation. A full section 20 process would involve statutory periods for consultation, delaying the Applicant’s ability to proceed with the Works. Having reached this decision it was unnecessary for the tribunal to go on to consider the compatibility of the preferred procurement route with section 20.
17. The tribunal therefore turns to the question of whether any relevant prejudice would be suffered as a consequence of the issues raised in the Responses if the tribunal were to grant dispensation unconditionally.
18. The tribunal found that no relevant prejudice had been identified by the First Respondent beyond the inability to participate in a full section 20 consultation. It is in the interests of all of the residents that the Works proceed with minimum delay. The submissions include various criticisms by the First Respondent and explanations by the Applicant concerning actions to date and the process so far, however these do not amount to ‘relevant prejudice’ that would be suffered if dispensation were to be granted. No alternative proposal for the carrying out of the Works has been put forward that would allow these to be completed more quickly, to a higher standard or more cost effectively.
19. Whilst legal costs have been incurred by the First Respondent it has not been demonstrated that these were incurred as a consequence of any ‘relevant prejudice’ and the tribunal sees no reason to make an order for costs as a term of granting dispensation.

20. Accordingly the tribunal makes an unconditional determination under section 20ZA of the Act to dispense with the requirement to consult with the Respondents under section 20 in relation to the Works.
21. The tribunal's decision relates to the section 20ZA application only and the related issues around evidence of prejudice. In the context of section 19 and section 27A of the Act the tribunal expresses no view as to whether any costs associated with the Works are reasonable in amount, whether the Works are of a reasonable standard or whether any service charge that does arise is payable. The tribunal's decision does not include or imply any determination of such matters.

### **Costs**

22. Within the First Respondent's statement of case it is submitted that the Application should be dismissed because the cost of the Works is not payable as service charge under the terms of the underleases and that there should be an order for the Applicant to pay the First Respondent's costs on the basis that it was unreasonable to make the Application. The tribunal has the power to make an order for costs under Rule 13 of the Procedure Rules where a person has acted unreasonably in bringing, defending or conducting proceedings.
23. The circumstances in which the First Respondent seeks this order for costs (i.e. the Application being dismissed) have not arisen and in view of the tribunal's granting of unconditional dispensation the tribunal sees no reason to make an order against the Applicant under Rule 13.
24. Similarly, in the light of the tribunal's unconditional granting of dispensation, the tribunal makes no order under section 20C of the Act or under paragraph 5A, Schedule 11 to CLARA. Should any Respondent wish to challenge any costs sought to be recovered from them by way of service charge or administration charge, then 27A of the Act and section 158 / schedule 11 of CLARA provide a mechanism to do so.

### **S Moorhouse**

Tribunal Judge

## **Schedule 1**

### **'the Works'**

The scope of the Works is defined by the Applicant in the Applicant's statement of case as follows:

- Provision of appropriate staffing to complete the Works.
- Extensive opening up works to facilitate fire compartmentation upgrades.
- Removal of defective fire compartmentation where required.
- Installation of new fire compartmentation to replace defective and/or missing components.
- Making good opening up works.
- Localised decorative treatments to the full ceiling/wall where impacted.
- Renewal of defective compartment partitions and/or upgrades to the same to meet required fire standards.
- Upgrades/repairs to doors to meet necessary fire standards.
- Cleaning of site.

## **Schedule 2**

### **Extracts from legislation**

#### **Landlord and Tenant Act 1985**

##### Section 20

(Subsections (1) and (2):)

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either -

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a tribunal.

(2) In this section 'relevant contribution', in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works under the agreement.

##### Section 20ZA

(Subsection (1))

(1) 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.