



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

Case reference : **MAN/00BY/LDC/2023/0030**

Property : **Bracken House, 44-58 Charles Street,
Manchester M1 7BD**

Applicant : **Grey GR Limited Partnership**
Applicant's Representative : **JB Leitch Limited**

Respondents : **Various Long Residential Leaseholders**

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

Tribunal Members : **Tribunal Judge S Moorhouse LLB
Mr J Platt FRICS**

Date of Paper Determination : **11 September 2023**

DECISION

□ CROWN COPYRIGHT 2023

DECISION

1. Pursuant to section 20ZA of the Landlord and Tenant Act 1985 the tribunal makes a determination to dispense with the requirement to consult with the Respondents on the works to Bracken House, 44-58 Charles Street, Manchester M1 7BD described in Schedule 1.

REASONS

The Application

2. The application ('the Application') was made on 18 April 2023 by Grey GR Limited Partnership ('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 to carry out certain fire safety works described in Schedule 1 ('the Works'). The Works are to be carried out to Bracken House, 44-58 Charles Street, Manchester M1 7BD ('the Property'), comprising 115 self-contained residential apartments in a 10 storey block, with a basement, and with a nursery, staff room and utilities room on the ground floor. The Applicant is the freehold proprietor of the Property and the Respondents are the leaseholders of the 115 residential apartments. A sample lease evidences a lease term of 250 years from and including 1 January 2014.
4. Dispensation in relation to consultation requirements was given previously for other works related to fire safety in a decision of the First-tier Tribunal dated 14 March 2021. Those works included the replacement of the facade of the block, window replacement, lift replacement, works to existing fire escape and works to the ground floor entrance. In that case 98 of the leaseholders were represented and opposed to the application. Conditional dispensation was granted.
5. Directions in the present case were issued on 28 June 2023. The Applicant submitted a bundle of papers including a statement of case and supporting documents. HMCTS has confirmed that none of the Respondents submitted a statement opposing the Application, nor are any Respondents represented in the present case.
6. The Applicant indicated that it would be content with a determination on the papers. The tribunal considered this to be appropriate because none of the Respondents opposed the Application, neither party had requested a 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

7. Extracts from sections 20 and 20ZA of the Act are reproduced in Schedule 2. 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'.
8. The Applicant submitted a copy of the Supreme Court case of *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 ('*Daejan*') and referred to tribunal to this. The tribunal considers this 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.

Findings of fact and Reasons for decision

9. In this case, none of the Respondents have submitted a statement of case opposing the Application. There is no evidence before the tribunal that any of the Respondents consider themselves to be prejudiced in any way by the absence of a section 20 consultation exercise.
10. Indeed the Works are required to be undertaken under the terms of an Enforcement Notice issued by Greater Manchester Fire and Rescue Service dated 25 October 2022, and any delay would increase the risk to health and safety arising from the defects within the compartmentation identified in the notice.
11. The Applicant proceeded with a tender exercise but received only a single bid. The Applicant would therefore have been unable to comply fully with the statutory consultation requirements without repeating the tender exercise. Even then there would be no guarantee of additional bids, or that the single contractor would remain available. Even if multiple bids had been received, a section 20 consultation exercise would have delayed the remediation of the compartmentation issues.
12. The Applicant has engaged with the Respondents, but has instructed the Works without meeting the statutory consultation requirements, thereby avoiding delay in complying with the Enforcement Notice. The cost of the Works is in the order of £4.05M, with a contract period of 34 weeks.
13. The tribunal finds that there is no relevant prejudice identified by any Respondent, suffered as a consequence of the Applicant proceeding with the Works without first carrying out the section 20 consultation.
14. The Respondents have made no representation as to any condition the tribunal might impose in granting dispensation, and there is no evidence of any cost being incurred by the Respondents that should appropriately be met by the Applicant.
15. In these circumstances, the tribunal considers it reasonable to dispense with consultation requirements unconditionally. Accordingly the tribunal makes a 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.
16. 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 amount sought to be recovered by way of service charge is payable, within the meaning of sections 19 and 27A of the Act. The tribunal's decision does not include or imply any determination of such matters.

S Moorhouse

Tribunal Judge

Schedule 1

‘the Works’

Following the issue of the Enforcement Notice a Type 4 Fire Risk Assessment was carried out by Keystone Fire Safety Limited. The report dated 28 November 2022 identified that the following control measures were absent at the Property:-

- (a) lack of fire separation and compartmentation provisions;
- (b) lack of effective and compliant fire doors;
- (c) AFD system not working effectively;
- (d) emergency lighting not working effectively;
- (e) AOV (automatic opening vents) unknown working condition;
- (f) no PEEP records (or GEEP records for holiday let/student accommodation) are kept to determine if the evacuation policy is effective; and
- (g) no adequate security provisions to deter or prevent break-ins and deter arson attacks and drug use.

A subsequent Fire Risk Appraisal External Walls and Attachments report, adopting PAS9980 methodology, prepared by CHPK Fire Engineering and dated 18 January 2023 made recommendations in respect of remedial works. A specification for those works was produced by White Hindle and Partners Limited in a report also dated January 2023.

The Works subject to the Application are those described collectively in the CHPK Fire Engineering report and the White Hindle and Partners Limited specification, and summarised in the tender documentation of Firecrest Construction as follows:-

Scope of Works:

Construction

Internal compartmentation remediation, fire door replacement, reconfiguration of basement and ground floor areas, new lift, Construction of new bin store, fall arrest works to external fire escape, all to current Fire and Building Control Compliance.

- Compartmentation Works as Per Reports from TECL
- Internal Room Compartmentation Works as per report from ICS
- Fire Doors Works
- Dry Riser Adaptions
- Barrier Matt/Adaptions to Existing floor Finishes
- Bin Store

- Lift Works – Spec to be agreed (Provisional Sum)
- Entrance Lobby Works (Provisional Sum)
- Internal Nosing's adaptations
- External Stair Work Adaptions (Provisional Sum)
- Windows Fire Protection (Excludes Access)
- Basement Works (Provisional Sum)
- Preliminaries, Body Cams, Skips/Waste

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.