



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

Case Reference : **MAN/00BY/LDC/2023/0044**

Property : **BLOCKS 4, 5, & 6, KINGS WATERFRONT,
WAPPING, LIVERPOOL**

Applicant : **LIVERPOOL QUAYS MANAGEMENT LIMITED**

Respondent : **THE LONG LEASEHOLDERS**

Type of Application : **Application for an order under section 20ZA,
Landlord and Tenant Act 1985**

Tribunal Members : **Tribunal Judge A M Davies
Tribunal Member J Elliott MRICS**

Date of Decision : **5 December 2023**

Date of Determination : **18 December 2023**

DECISION

In relation to the cladding and fire protection works identified in the section 20ZA Application and intended to be carried out at Blocks 4, 5, & 6 Kings Waterfront, Liverpool (the Works) the statutory consultation procedure required by section 20 of the Landlord and Tenant Act 1985 (the Act) is to be dispensed with.

REASONS

THE APPLICATION

1. On 21 June 2023 the Applicant applied to the Tribunal for a dispensation from the consultation requirements of section 20 of the Act with regard to the Works. The Respondents are the long leaseholders of apartments in Blocks 4, 5, & 6 Kings Waterfront, Liverpool (the Property), and a list of them has been provided to the Tribunal.
2. The Respondents made no representations to the Tribunal.
3. The Tribunal has not inspected the Property. this decision has been made without a hearing on the basis of written representations, ie the application with supporting statement of case and the documents referred to in it. Each of the Respondents has had sight of these representations.

THE PROPERTY

4. The Property consists of three blocks of residential apartments forming part of a development of 7 blocks adjacent to Wapping Basin Dock in the Port of Liverpool. Each building is over 18 metres high. Blocks 5 and 6 comprise 8 floors, and block 4 comprises 7 floors. Block 4 is attached by means of balconies to block 7 in the development, but in such a way as to preclude access from one block to another. All three subject blocks of apartments are furnished with external balconies and undercroft car parks.
5. The Tribunal is told that all the long leases of apartments in the Property are in similar terms, and a sample has been provided. The leases require the Respondents to pay an annual service charge including their respective contributions towards expenditure on

“the main structural parts of the Building including the roof foundations and external parts thereof” incurred by the Applicant or its managing agents FirstPort Limited (formerly Mainstay).

6. Following the Grenfell Tower fire tragedy, the Applicant obtained reports on any fire risks present in the Property arising from its construction and/or cladding materials. Those reports were annexed to the application and have been made available to the Respondents. They are:

FR Consultants Ltd: External Façade report dated 28 February 2020

Ashton Fire: EWS1: External Wall Review dated 23 July 2020

Urban Change Group Ltd: Notice of Serious and Imminent Danger dated 28 April 2021.

APPLICATION TO THE BUILDING SAFETY FUND (BSF)

7. The reports obtained by the Applicant confirmed that there were aspects of the Property which presented a fire risk and which required remediation according to guidance issued to freeholders, namely:

(a) the Ministry of Housing, Communities and Local Government guidance “Advice for Building Owners of Multi-storey Multi-occupied Residential Buildings” issued on 20 January 2020, and

(b) “Building Safety Fund for the remediation of non-ACM Cladding Systems – Fund Application Guidance” first issued in May 2020 and last updated in August 2022 with the publication of “Fund application guidance for buildings registered in 2020” (Guidance).

The latest Guidance at the time of this application was issued in April 2022. Among other changes it amended the assessment of risk, which must now be conducted by reference to PAS9980. PAS9980 alters the remediation standard to be applied to at-risk buildings, with the result that even approved tenders could be subject to additional rejection of some costs previously found to be eligible for payment out of the Fund.

8. In December 2021 the Applicant applied to the BSF for a grant for the Works. Pre-tender support funds were awarded on 2 July 2021. A cost variation was approved in October 2022, and a Grant Funding Agreement was entered into on 7 December 2022. Pre-construction work began on site on 6 March 2023. Anticipated cost of the Work exceeds £6.1m.
9. The Project Manager and Lead/Cost Consultant advising the Applicant is Ridge & Partners (Ridge). A single tender was obtained from the main contractor Clear Line Maintenance Ltd (Clear Line). BSF funding is based on this tender which includes the cost of work (to the roof soffit and gutters and the production of certification) known to be ineligible for payment out of the Fund. The Applicant indicates that the cost of such ineligible work, so far as known in June 2023, was something over £50,000. The papers supporting the application appear to suggest a lower figure, not greatly exceeding £30,000.

THE APPLICATION

10. The application to this Tribunal for dispensation from section 20 consultation requirements was made because:
 - 10.1 the time constraints imposed by the Guidance do not allow for the delay which would be caused by consultation in accordance with the Act;
 - 10.2 given the first come first served availability of funding and the continuing risk to the Respondents in the event of a fire, the Applicant was anxious to lodge its funding request without delay;
 - 10.3 any of the Works known to be (or which might be deemed by the BSF administrators to be) outside the remediation work covered by available government funding would, unless chargeable to a third party, be payable by the leaseholders through the service charge.

11. The leaseholders should note that, provided they qualify, any contribution to these costs which might otherwise have been due from them under the terms of their leases will be subject to the provisions set out at Schedule 8 to the Building Safety Act 2022 and The Building Safety (Leaseholder Protections) (England) Regulations 2022.

THE LAW

12. Section 20 of the Act and regulations made under that section set out requirements for consultation in the event that work carried out at a property is expected to cost any leaseholder, through the service charge, more than £250. If those detailed requirements are not complied with, any leaseholder at the property can apply to the Tribunal for an order that his or her contribution to the cost of the work is limited to £250.
13. The consultation procedure is relatively lengthy, in that at both stages the landlord must allow at least 30 days for leaseholders to respond to his proposals.
14. Section 20ZA(1) states:
“ Where an application is made to the appropriate Tribunal for a determination to dispense with all or any of the consultation requirements in relation not any qualifying works the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”
15. The leading case on section 20ZA applications is *Daejan Investments Ltd v Benson and others* (2013) UK SC14. The Supreme Court in that case provided guidance as to the correct approach to the grant or refusal of dispensation, and this can be summarised, for the purposes of this decision, as follows –
 - (a) The consultation requirements are not an end in themselves: they are intended to protect tenants from paying for inappropriate work or from paying more than would be appropriate;
 - (b) The Tribunal should therefore focus on whether the Respondents will be prejudiced in either of these ways if the consultation is not carried out;

- (c) The decision should not be affected by the financial consequences it might have on the Applicant;
 - (d) If the Respondents claim that they have suffered, or would suffer, some relevant prejudice, they must identify it. The Applicant must then attempt to convince the Tribunal that dispensation is nevertheless appropriate;
 - (e) The Tribunal can grant dispensation on such reasonable terms as it thinks fit.
16. It follows that the only issue before the Tribunal is whether it is reasonable to dispense with the section 20 consultation requirements. This does not involve deciding whether the Applicant has acted reasonably, but only whether the Respondents will be prejudiced by the lack of consultation and cannot be adequately compensated.
17. Specifically, this Tribunal is not deciding whether the Works, or any of them, are or will be properly undertaken by the Applicant, or whether the cost of them is reasonable, or whether the Works are or will be carried out to a reasonable standard. Those issues can be raised by any leaseholder at a later date, when and if the cost of any of the Works – or any of the fees and costs paid by the Applicant in relation to the Works – is included in the service charge account. At that point an application to the Tribunal for a determination as to the amount and payability of the service charge can be made under section 27A of the Act.

DECISION

18. The Tribunal accepts that following the Grenfell disaster a new awareness of flammable materials and fire risks has arisen and needs to be addressed to ensure so far as possible the safety of those living in high rise buildings. The Tribunal also accepts that the perceived urgency in addressing these issues, together with the BSF procedures for applying for funding and administering the resulting construction contract, rendered it impossible for the Applicant to consult in accordance with section 20 of the Act before proceeding on the basis of Clear Line's tender. The government has capped the total sum which may be demanded of some leaseholders as a contribution to remediation costs but has not protected them entirely from large potential increases to their service charge accounts as a result of such works. It is therefore for the benefit of the Respondents that the Applicant has applied for BSF funding. In the event that work

is carried out unnecessarily, the cost of it can be challenged by leaseholders under section 27A of the Act as indicated at paragraph 17 above.

19. The Tribunal has noted that only one tender was obtained prior to the BSF application whereas competitive tenders would normally be expected. It is generally understood that there is a dearth of appropriately qualified construction companies capable of undertaking at relatively short notice the extensive pre-contract and subsequent construction work required at the Property. In February 2022 the Applicant's managing agents reported to the Respondents "[In October 2020] BSF required all Stage 2 applications to be submitted by the end of December 2020. The application needed to include the Full Works Cost..... Ridge sourced relevant consultants and.... ultimately proposed engaging with Clear Line, a contractor known to them and with a track record of undertaking similar work of this scale & complexity." Ridge have also prepared a Value for Money Statement which recommends "We consider the tender received from Clear Line to be bona fide and representative of current market conditions. In our opinion therefore, Clear Line's tender is a competitive tender, which.... can be accepted for this project." The Tribunal makes no finding as to whether the contract price is reasonable, but does not consider that the lack of alternative prices is a reason to refuse dispensation in the circumstances of this case.
20. None of the Respondents have alleged that they have been prejudiced by the lack of section 20 consultation. The Tribunal therefore finds that there is no evidence that the Respondents will be prejudiced by an order dispensing with compliance with the consultation procedure set out at section 20 of the Act and the regulations made under it. To the contrary, the prompt actions of the Applicant which have rendered it impossible for them to follow that procedure are designed to make the building safer as soon as possible, and to save the leaseholders from a substantial part of the contribution to the cost that they would otherwise be required to make under the service charge provisions in their leases.
21. The Applicant has taken steps to keep the Respondents informed of progress towards carrying out any necessary safety measures. The Tribunal does not consider it necessary to attach conditions to the dispensation.