



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

Case Reference : **MAN/OOBN/LDC/2023/0043**

Property : **MoHO Building, Ellesmere Street,
Castlefield, Manchester M15 4FY**

Applicant : **MoHo Management Co Ltd**
Representative : **JB Leitch Limited**

Respondents : **Various Residential Long Leaseholders-
See Annex**

Type of Application : **Section 27A Landlord and Tenant Act
1985 – Section 20ZA**

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member J. Fraser**

Date of Determination : **29th November 2023**

Date of Decision : **29th November 2023**

DECISION

Decision

1. The application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the Works to be carried out at the Property is granted.
2. The Works are those items of remedial work required at MoHo Buildings, Ellesmere Road, Castlefield Manchester as follows:
 - a. The removal of EPS render to all elevations, bin chutes and lift and core.
 - b. The protection of areas and retention of all fittings and fixtures.
 - c. The provision of a new insulated render system to all elevations, bin chutes and lift core.
 - d. Installation of new balcony and frames.
 - e. Revisions to the parapet wall detail to head of facades.
 - f. Erection of scaffolding to all elevations to facilitate works.
 - g. Replacement of all timber cladding and timber supports to fascia; courtyards and open-end walkways floors 1-6 with aluminium cladding.
 - h. Removal of all timber cladding to all locations.
 - i. Removal of timber cladding to dining module soffits-all elevations floors 1-6.
 - j. Provision of new aluminium cladding to facades and underside of dining modules.
 - k. Provisions of new aluminium cladding to box section fixings overlooking courtyard to all levels.
 - l. Installation of Fire board to the underside of all dining modules.
 - m. Replacement of timber decking with aluminium decking to all balconies
 - n. Temporary removal of electrical fittings to facilitate the façade remediation works.
 - o. Replacement of timber louvres to balconies with aluminium louvres.
 - p. Aluminium decking to all balconies.
 - q. Temporary removal of glass panels to balconies to facilitate balcony frame repairs.
 - r. Replacement of corroded metal frames to balcony glazing where required.
 - s. Reinstatement of glazed balustrades on completion of balcony repairs.
 - t. Allowance for new glazing to balconies where required relating to balcony repairs.
 - u. Redecoration of balcony framework and columns.
 - v. Installation of new roof covering to dining module roofs.
 - w. Decoration works to internal walkways, metal balustrades, lift core panels, etc.

Background

3. This is an application made by MoHo Management Co Ltd (“the Applicant”) for the dispensation of the consultation requirements imposed by Section 20 of the Landlord & Tenant Act 1985 (“the Act”) and The Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Consultation Requirements”) for remedial works to be undertaken at the development known as MoHo Building, Ellesmere Road, Castlefield Manchester (“the

Property”). The Property is a purpose-built block of flats and has six floors. The residential properties are on Floors 1-6 with a car park and commercial units on the ground floor. The residential apartments are subject to long residential leases, the lessees being the Respondents to the application (“the Respondents”).

4. The Applicant has been made aware that works are required to the Property arising from the construction of the external wall system such that there is a risk of fire.
5. The Applicant has provided the Tribunal with copies of reports highlighting the remedial work that is required at the Property as referred to in paragraph 2 above. It has also provided details of the tenders received in respect of the work and that the one from H.H Smith has been accepted. Their costs for the Works are £8,448,976.96 (ex VAT) of which some of the costs are eligible under the Building Safety Fund (“BSF”). The eligible amount is £7,781,866.55 (ex VAT) with the remainder of the costs being the responsibility of the Respondents.
6. The Applicant served a Stage 1 Notice of Intention in respect of the Works to all the Respondents on 25th November 2020. Since that date the Applicant has continued to update the Respondents by letter and meetings.
7. The application is dated 21st June 2023 and in respect of which directions were issued on 11th September 2023 providing for the filing of any objections by the Respondents and for the application to be determined without a hearing.
8. The Applicant confirmed only one objection had been received to the application by Mr Garth Chapman and to which the Applicant filed a Statement in Reply. No other representations were received by either the Applicant or the Tribunal.
9. In a subsequent e-mail to the Applicant’s representative, Mr Chapman confirmed his concerns had been addressed and clarified.
10. The Tribunal considered the application on the written submissions on 29th November 2023.

The Law

11. Section 20 of the Act provides:

(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 or under the agreement

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement-

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be the appropriate amount-

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined”

12. In the event the requirements of section 20 have not been complied with, or there is insufficient time for the consultation process to be implemented, then an application may be made to the First-tier Tribunal pursuant to section 20ZA of the Act.

13. Section 20ZA of the Act provides:

(1) Where an application is made to a tribunal for a determination to dispense with all or any 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 section (3) an

agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

14. In **Daejan Investments Ltd v Benson [2013] UKSC 14** it was determined that a Tribunal, when considering whether to grant dispensation, should consider whether the tenants would be prejudiced by any failure to comply with the Consultation Requirements.
15. In **Wynne v Yates and others [2021] UKUT 278 LC** Upper Tribunal Judge Elizabeth Cooke said:

“There must be some prejudice to the tenants beyond the obvious fact of not being able to participate on the consultation process.”

Submissions

16. The Applicant has submitted the Works need to be undertaken as soon as possible due to the risks posed at the Property. They have complied, so far as is possible, with the consultation requirements of s 20 of the Act, although they cannot be strictly complied with given the Design and Build procurement route does not allow for this. Further, if dispensation is not granted then funding from the BSF may not be available, such that the whole cost of the Works would become the responsibility of the Respondents.
17. The Tribunal noted there had been no objections from the Respondents, other than the issues raised by Mr Chapman, which had been answered.

Determination

18. The Tribunal is being asked to exercise its discretion under section 20ZA of the Act. Section 20ZA (1) provides the Tribunal may do so where *“if satisfied that it is reasonable to dispense with the requirements”*.
19. The Tribunal, having considered the submissions made by the Applicant, is satisfied there is good reason to dispense with the Consultation Requirements. The Works are necessary for the safety of the Property. The cost of the Works are to be mitigated by government funding but the procedure whereby that can be accessed does not allow for full compliance with s20 of the Act.
20. The Tribunal has taken into account the Applicant has engaged with the Respondents, explained what steps it is to take and no substantive objections have been received.
21. The Tribunal does not find, from the submissions made to it, there has been any prejudice to the Respondents.
22. The granting of dispensation does not affect the Respondents’ rights to the challenge the reasonableness or the payability of the service charges under a separate application pursuant to section 27A of the Act.

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission to appeal must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28 day time limit, such applications must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.
5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

List of Leaseholders

A C Smith	L1 UK Property Nominee A1 Pty Ltd &
A J Potts	Miss M Hazelwood & Mr H J J Sheriff
RJ Potter	Manchester Methodist Housing Association
Adam Fenton	Mr B B Lancashire & Ms S R Moxon
AJ Yacoubian	Great Places Housing Association
B Dixon	Mr B Hodgkiss & Ms O H Hilton
B Khaliq	Mr J A S Kearns & Mrs W L Kearns
BLo8 LLP	Mr J G Robson and Ms J E Boyd
TR Sewell	Mr M J Boardman & Mrs C A Boardman
C E Barrett	Mr M Neasham & Mr K James
Chun Ho Fan	Mr P D Quinn & Miss S Salvart
SJ Coss	Mr R C Stone and Mr S Leahy
D J Knowles	Quatrefoil Ventures Limited
D M Ajuh	R S Property Holding Limited
D McGreevy	Sandown Place Limited
G M P Chapman	SF Barclay & R Lander
GJ Tuffy	T R Pelham-Dawson
Gavin John Reid	Blakethorne Estates Limited
H S R Lindloff	Chymoor Properties Limited
J Arnold	M Steadman & H Steadman
J M Stopford	Mr C E Fell & Ms R E White
J Y Kinsha LLP	Mr J & Mrs R Ruparelia
Joseph Lau	Mr L Daley & Mrs C Daley
Joseph D Walsh	J M Harper & G Kuperan
K Evans	Mr R Sethi and Mrs B Sethi
Ka Man Cheang	Rosenallis Properties
Kishwer Iqbal	AJ Saxton and SL Saxton
Luke Anthony Ong	Planet Properties Ltd
M Morar	CR Andrews & S Andrews
M W Halkon	Stefan Pushkin Shaw
Marco Bucci	Ellesmere Street LLP
MJ Leese	Mr S Lee & Mrs Y Lee
SW Styles	N Farag
T Nancollis	P G Connor
S Cochrane	S Huddlestone
S Ghose	SK Chumber
R Bastl	Wai Lim Ng
R Cavallaro	Xiaoling Xie
R G Lockett	B J Dunkley