



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

Case Reference	:	LON/00AC/LDC/2023/0218
Property	:	Charlotte Court, 153-155 East Barnet Road London EN4 8QZ
Applicants	:	Gap C Properties Ltd
Representative	:	Veronica Corrigan
Respondents	:	The 30 leaseholders of the property named on the application
Representative	:	None
Type of Application	:	Dispensation from consultation
Tribunal	:	Mr I B Holdsworth FRICS MCI Arb
Date and venue of hearing	:	20 February 2024 Remote hearing

DECISION

The Tribunal determines to allow this retrospective application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (the “**1985 Act**”) in respect of works specified in the Polyteck Building Services Works quotation to remedy the defective cladding and balcony decking provided these works fall under the Landlord’s obligations contained in the leases of the flats. The total costs of the cladding work to leaseholders is advised as £429,684 inclusive of VAT.

This application does not concern the issue of whether any service charge costs arising from the cladding works will be reasonable or payable under the possible application or the effect of the Building Safety Act 2022 (the “2022 Act”) or the 1985 Act. The leaseholders will continue to enjoy the protection of Section 27a of the 1985 Act and the relevant provisions of the 2022 Act.

The Tribunal directs the applicant to send a copy of this Decision to the leaseholders and to display a copy in the common parts of the building.

The Application

1. The Applicant made an application to dispense with the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (the “**1985 Act**”). The application affects 30 leaseholders at Charlotte Court, 153-155 East Barnet Road London EN4 8QZ (the “**Property**”) whose names are annexed to the application form. The Applicant asserts that it is necessary for works to be carried out at this property to remedy defective ACM cladding.

Background

2. The Property is a six-storey purpose built block of 30 self-contained flats with a gym at ground floor and car park at the rear. It occupies a corner site in a mixed commercial and residential area.
3. The Tribunal is told that the Aluminium Composite Material Panels (ACM) fixed to the exterior of the building and the materials used as balcony decking do not satisfy current fire regulations and Building Safety Act 2022 requirements. The applicant refers to an undated report prepared by Beto Chartered Surveyors Ltd, a fire safety consultant that advised the existing cladding and balcony decking must be removed and replaced to ensure safety compliance.
4. The Tribunal understand Beto Chartered Surveyors prepared a remedial works scheme which was submitted to Polyteck Building Services, a building contractor to review and price. They submitted a price quote for the works (under reference Q79346) dated 23 November 2022 of £429,684 inclusive VAT. There is no evidence of competitive quotes for the work being sought by applicant. A copy of the Polyteck quotation is provided in the non-paginated bundle submitted with the application. The quote includes the cost of the consultants fire safety reports, a structural steel design report and a contingency sum of £10,000.
5. The Application to Tribunal was made on 18 August 2023 and the Tribunal are told works had already commenced at that time.
6. It is the Applicants contention that urgent remedy of the cladding defects was necessary to mitigate the identified fire risk to residents. The Applicants rely solely on the contents of their application form and make no Statement of Case or supply further justification for the urgency of the works. The bundle does not include a copy of the Fire Safety consultant’s report.
7. The Tribunal is told by the Applicant in their application no Section 20 consultation was carried out due to the need to commission urgent cladding replacement works. The Applicants now seek dispensation from the statutory consultation scheme for those works.
8. The Tribunal notes that the only issue which we are required to determine is whether it is reasonable to dispense with the statutory consultation requirements.

The Tribunal Application

9. On 23 November 2023 the Tribunal gave directions. A reply form was attached to the directions to be completed by the leaseholders who oppose the application. The Tribunal notified the parties that we would determine the application on the basis of written representations unless any party requested an oral hearing. There was no request from any leaseholder or applicant for an oral hearing.

Statutory Duties to Consult

10. The obligation to consult is imposed by Section 20 of the Act. The proposed works are perceived as qualifying works. The consultation procedure is prescribed by Schedule 3 of the Service Charge (Consultation Requirements) (England) Regulations 2003 (“the Consultation Regulations”). Leaseholders have a right to nominate a contractor under these consultation procedures.
11. The Landlord is obliged to serve leaseholders and any recognised tenants association with a notice of intention to carry out qualifying works. The notice of intention shall, (1) describe the proposed works, (2) state why the Landlord considers the works to be necessary, and (3) contain a statement of the estimated expenditure. Leaseholders are invited to make observations in writing in relation to the proposed works and expenditure within the relevant period of 30 days. The Landlord shall have regard to any observations in relation to the proposed works and estimated expenditure. The Landlord shall respond in writing to any person who makes written representations. within 21 days of those observations having been received.
12. Section 20ZA (1) of the Act provides:

“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.”

Determination

13. This determination relies upon a bundle of papers which included the application, the Directions, and copy of a specimen lease.
14. The Supreme Court's decision in the case of **Daejan Investments Ltd v Benson and Ors [2013] 1 W.L.R. 854** clarified the Tribunal's jurisdiction to dispense with the consultation requirements and the principles upon which that jurisdiction should be exercised.
15. The scheme of consultation provisions is designed to protect the interests of leaseholders, and whether it is reasonable to dispense with any requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose. The purpose of the consultation requirements is to ensure that leaseholders are protected from paying for works which are not required or inappropriate, or from paying more than would be reasonable in the circumstances.
16. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any prejudice has been suffered by any leaseholder because of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.
17. The burden is on the landlord in seeking a dispensation from the consultation requirements. However, the factual burden of identifying some relevant prejudice is on the leaseholder opposing the application for dispensation. The leaseholders have an obligation to identify what prejudice they have suffered because of the lack of consultation.
18. The Tribunal is satisfied that the works were of an urgent nature, and they benefited the interests of both landlord and leaseholders in the Property.
19. They noted that no leaseholders objected to the grant of dispensation. This suggests that the benefit of carrying out these works urgently is recognised by the majority of the residents of the premises.
20. The Tribunal addressed its mind to any financial prejudice suffered by the leaseholders due to any failure to consult.

21. The Tribunal notes that although a works specification and price quote is available for review in the submitted bundle no competitive quotes for the work were obtained. The Tribunal accepts the Applicants explanation that it was necessary for the works to be carried out promptly to reduce any potential fire safety risk to the residents. For this reason, the Tribunal is not persuaded the leaseholders were likely to suffer any financial prejudice because of the failure to consult at this time.
22. The Tribunal has taken into consideration that the leaseholders have not had the opportunity to be consulted under the 2003 Regulations. In view of the circumstances under which the works became necessary the Tribunal does not consider that the leaseholders, in losing an opportunity to make observations and to comment on the works or to nominate a contractor, are likely to suffer any relevant prejudice.
23. The Tribunal having considered the evidence is satisfied that it is reasonable to retrospectively dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are retrospectively dispensed in respect of the works specified in the Polyteck Works and quotation to remedy the cladding and balcony decking defects at the Property, subject to these works falling under the Landlord's obligations under the leases of the flats and the relevant provisions of the Building Safety Act 2022.

Chairman: Ian B Holdsworth Valuer Chairman

Dated: 20 February 2024

Rights of appeal

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.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such application 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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).