



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

Case Reference : **MAN/00DA/LDC/2023/0060**

Property : **X1 Aire
Cross Green Lane
Leeds
LS9 8BS**

Applicant : **Grey GR Limited Partnership**

Representative : **J B Leitch LLP, Solicitors**

Respondents : **The residential leaseholders of the
Property (see Annex)**

Representative : **N/A**

Type of Application : **Landlord and Tenant Act 1985
- section 20ZA**

Tribunal Members : **Judge J Holbrook
Regional Surveyor N Walsh**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **6 February 2024**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising the removal of the Property's existing cladding system; remediation of insulation and fire barriers; and installation of new non-combustible cladding.

The Applicant is directed to send a copy of this decision to each Respondent within 21 days.

REASONS

Background

1. An application has been made to the First-tier Tribunal (Property Chamber) ("the Tribunal") under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements ("the consultation requirements") are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations").
2. The application was made by Grey GR Limited Partnership, the freehold owner of land and premises on the north east side of East Street in Leeds known as X1 Aire, Cross Green Lane, Leeds LS9 8BS ("the Property"). The Respondents to the application are the long leaseholders of the residential apartments within the Property. A list of the Respondents is set out in the Annex hereto.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern the remediation of fire-safety defects relating to the Property's external wall cladding system(s), including the replacement of the existing cladding. Those works are more fully described in a Fire Risk Appraisal External Walls and Attachments report dated 3 April 2023 but, in summary, they comprise the removal of existing cladding; remediation of insulation and fire barriers; and installation of new non-combustible cladding.
5. We understand that, whilst the Applicant has not adhered to the statutory consultation requirements, its managing agents have written to leaseholders on a number of occasions to update them on the steps being taken to remediate the Property's fire-safety defects (and to obtain funding for such remediation). Each of the Respondents have been given notice of the application made to the Tribunal for dispensation and have been sent a copy of the Applicant's supporting evidence. They have also been provided with a copy of the case

management directions issued by the Tribunal on 4 December 2023. The directions required any Respondent who opposed the application to notify the Tribunal of their objection by 17 January 2024. No such notification has been received and we have determined this matter following a consideration of the Applicant's case, but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed). In this case, the Applicant has given its consent and the Respondents have not objected. Moreover, having reviewed the case papers, we are satisfied that this matter is indeed suitable to be determined without a hearing: although the Respondents are not legally represented, the application is unopposed and the issues to be decided are readily apparent.

6. The Tribunal did not inspect the Property but we understand it to comprise a purpose-built development consisting of three adjoining and interconnected blocks of differing heights: of five, eight, and thirteen storeys respectively. The Property predominantly comprises one and two-bedroom residential apartments, but there are also two commercial units.

Grounds for the application

7. Following investigatory works, fire safety defects have been discovered relating to the design and construction of the Property's external wall system and compartmentation. Combustible materials were used in the original construction which pose an unacceptable fire risk. The Applicant is proposing to carry out works to remediate these defects and has appointed a project team to implement a design and build contract procurement process and, at the same time, is progressing an application to the Government's Building Safety Fund in an attempt to obtain full funding for the works.
8. The Applicant's case is that dispensation from the statutory consultation requirements should be granted:
 1. So that the necessary remediation works can be progressed urgently in order to remediate the issues with the external façade as soon as possible, to safeguard the Property and its residents.
 2. Because the statutory requirements are at odds with the tendering approach which the Applicant has adopted.
 3. So that the works may be commenced within any period stipulated as a condition of funding provided by the Building Safety Fund.

Law

9. Section 18 of the Act defines what is meant by “service charge”. It also defines the expression “relevant costs” as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

10. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either–
(a) complied with in relation to the works ... or
(b) dispensed with in relation to the works ... by the appropriate tribunal.

11. “Qualifying works” for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3) of the Act and regulation 6 of the Regulations).

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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

13. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord to:

- give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
- obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;

- make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
- give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

Conclusions

14. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. They also ensure that leaseholders are protected from paying for inappropriate work, or from paying more than would be appropriate for necessary work. It is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.
15. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed until the requirements have been complied with. In the present case, we are satisfied that each of the factors noted at paragraph 8 above is indeed a good reason why the statutory consultation requirements should be dispensed with in relation to the works. This matter concerns a complex and high value project for which detailed and complex project management arrangements have been put in place. The Respondents have been made aware of the need for the works to be done and of the Applicant's proposals for implementing them. The fact that no Respondent has opposed this application suggests that they agree that it would be reasonable to dispense with the usual consultation requirements, and we are satisfied that this is so.
16. Nevertheless, the fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that we consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard – but we do consider it appropriate to make the following general observations in the particular circumstances of this case:
 - First, as with any claim for service charges, leaseholders of the Property will only be liable to contribute towards the costs of remediating the Property if and to the extent that such costs (i) are

contractually payable under the terms of their leases; and (ii) are reasonably incurred.

- Second, as the Property is a “relevant building” within the meaning of section 117 of the Building Safety Act 2022, and as the costs in question appear to relate to measures taken to remedy relevant defects, the liability of leaseholders to contribute thereto cannot be determined without regard being had to the provisions of Schedule 8 to that Act. Schedule 8 provides, among other things, that certain service charge amounts relating to relevant defects in a relevant building are not payable.
 - Third, in any event, leaseholders should not expect to be required to contribute to remediation costs if and to the extent that those costs are met by grant funding under the Building Safety Fund.
17. Finally, and for the sake of completeness, we note that the works in respect of which dispensation from the consultation requirements is now granted are also the subject of other proceedings presently before the Tribunal: as many of the Respondents will probably be aware, the Secretary of State has made an application for a remediation order in respect of the Property under section 123 of the Building Safety Act. That application will be determined in due course and is unaffected by this grant of dispensation.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 6 February 2024

ANNEX
(List of Respondents)

Dean Lawrence	Catherine Nicol
George Abouda	Khalid S Choudhry & Rifuth Saeed
Yanni (John) Acavalos	Lee Romang
Derek Jones	Nazeer Ahmad
Owen Lewis and Claire Lewis	Anthony Rostant
Zubair Ali	Chandres Tejura
Prime Investments (2015) Ltd	Julian Pull
Ada Babalola	Estates International Limited/Lei Lei Chen
Debra Dixon	John Stuart Hogg (Deceased)
Owen Lewis	Lowry Propco
Mohamed Moustafa	MCM Estates Limited
Abulkassim Sanalla	Martin & Debbie Anderson
Eric France	Matt Traynor
Taqi Sultan	Matt Priestley
Martin H Sanchez & Jaqueline E Sanchez	John Frederick Myatt & Janet Patricia Quigley
Deborah Marks	Konstantinos Daniil Tsavdaridis
David Shaw Discretionary Trust No.11	Zhan Yuin Ong
Mohammed Fahad J Alharthi	Jayker Baloobhai Vaya & Meena Jayker Vaya
Ahmad Hussain	Martin John Brady
Anton Neville Marais	Muhareb Alduwaish
Margaret Anne Freegard	Mrs Tanvir Butt
TLT Management Limited	David Hinsley
Cathy Kennedy	Justin Casey and Mamta Casey
Andy Hague	Kiu Yan Karen Lau
Mike Ford	Andrew Bakica
Bridget Lewis	Phil Tierney
Giuzel Aldoshina	Nihal Shah
Bobby Lane	Christine Helmke
Mrs Margaret Anne Freegard	John Stephen Vance
Richard Lines	Anthony Rylands
John Anthony Shaw	Rory Aram
Paul Richards	Mustaf Aldarwish
Paul Turner	BADJE Limited

ANNEX
(List of Respondents)

David Woolmer	Rachel Breckner & Sarah Jones
Prasad International Ltd	Peter Tuckey
Asef Mousa Mah'd Albahti and Reehana Albahti	Mohammed Hamed D Khteb & Abdalmalek M Khateeb
Michael Wyllie	Lesie & Clara Mtariswa
ZEM Properties Ltd	Matthew Woodgate
Mohammed Almustafa Salih	William Shaylor
Bradley Lander	Louisa Stevens
Flavio Simonutti	Amarjit Singh
Jan Ratib	Liu KitShan
Nisha Anil Shivdasani	Jan Southwood
Stoyan Kolev	Deborah Anne Silk & David Baxter Silk
Ram Gupta	Ebrahim Yusuf Abdulrasul Palkhi
Patrick J & James C Hemmaway	Michael Mckenna
Mohammed Faruk Kara	Green Harbour
Kenneth Grime	Waleed Zarei Mohammed
Joseph Ng Ching Wan & Michael Ian Blissett	Luke Benjamin Walker and Rachel Kim Walker
Devshi Vasani	John Power
JLL City Living Properties Limited	Waqas Asad Sheikh
Khalid Abdulrasoul	Paul Sutcliffe
Bo 90 Limited	Mohamed Al-Lawati
Ashley Skaanild	Omatson Aluko
Nigel Preece	Martin Copeland
Daniel Carter	Iqbal Osman
Adel Almishri	Mustafa Aldarwish
Paul Johnston	X1 Management Limited
Yujun Luo	Wallace Estates Limited
Nicholas Peter Quin	Domenico Martini
Zahir Din	Connect Housing Association Limited
Khalil Ahmed	Read Project Consultancy Ltd
Domus 1966 Investments Ltd	Lahiri Properties Limited
Jacqueline Tracy Williams	