



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

Case Reference : **MAN/00BN/LDC/2024/0038**

Property : **Chatsworth House, Lever Street,
Manchester M1 1BY**

Applicant : **Adriatic Land 8 (GR2) Limited**

Applicant's Representative : **JB Leitch Limited**

Respondent : **Various Leaseholders (see Annex)**

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

Tribunal Members : **Mr John Murray LLB**

Date of Order : **1 October 2024**

ORDER

DETERMINATION

The Tribunal determines that dispensation from consultation for the works as detailed in the application be granted pursuant to s20ZA Landlord and Tenant Act 1985.

INTRODUCTION

1. An application was made on 16 May 2024 by the Applicant for dispensation of the consultation requirements of s20 of the Landlord and Tenant Act 1985 and The Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Consultation Requirements”) relating to a contract for major Fire Safety works at Chatsworth House Lever Street Manchester M1 1BY ("the Property"). The Property was described in the application as a nine storey residential building (including car park level) comprising of 66 apartments. It was described in the Applicant's statement of case as an eight storey building comprising of 64 apartments and 2 commercial units. The Respondents are the leaseholders of the residential units, and, according to the Applicant, all occupy on leases in identical terms for the purposes of this application. At 27 metres tall, and with eight (or nine) storeys, the Property is a Higher Risk Building for the purposes of the Building Safety Act 2022.
2. The Applicant stated that the qualifying works involved the replacement of the building's fire alarm system, which has several critical faults which could not be remediated. The system was described as inoperable which presented immediate health and safety risks in the event of fire; the Applicant could not delay the works for the consultation process and consequently sought the order for dispensation. The Applicant provided a copy of the report they had obtained from electrical contractors identifying the problems.
3. The Applicant told the Tribunal it had arranged to obtain three quotes for the works, for £13468.75, £12117.26 and £16458.94. They determined to go with the lower quote, by Northlands Electrical. The Applicant emailed all of the leaseholders on the 28th March providing details of the quotes, indicating a dispensation application was to be made, and inviting leaseholders to contact the Managing Agent for the Property LC with any queries. No contact was made by any leaseholders.
4. Works were scheduled to start on the 15th April 2024.
5. Directions were made by a Legal Officer of the Tribunal on the 9th August 2024. The Applicant was directed to send a complete copy of its case to each Respondent within 14 days of the date of the directions (21 August 2024) and to confirm to the Tribunal it had done so. The Applicant's solicitors confirmed on the 21st August they had sent the case by way of a bundle of documents to the Respondents.
6. Any party who opposed the application were invited to submit a statement in response to the Tribunal within 21 days of receipt of the Applicant's case above (11 September 2024). One of the Respondents, Ms. Chan submitted an email on the 15th September in response. Her comments were that the works to the fire alarm system should be included in the service charge and the leaseholders

should not be asked to pay separately. A reserve fund existed which could be used for the works. The service charges were £400 per month which was high enough. The works had already been completed and she did not agree with the s20 application.

7. Any party wishing to make representations at an oral hearing before the Tribunal were to inform the Tribunal office in writing within 42 days of the date of the directions (18 September 2024). No further representations were received.
8. The Tribunal stated its aim to determine the matter in or shortly after the week commencing 30 September 2024 by a determination on the papers. There was to be no inspection unless the Tribunal considered one was necessary at a later date.

THE LEGISLATION

The relevant legislation is contained in s20ZA Landlord and Tenant Act 1985 which reads as follows:

s20 ZA Consultation requirements: supplementary

(1) 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.

(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 subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,

(b) to obtain estimates for proposed works or agreements,

- (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
- (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
- (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament

THE DETERMINATION

1. The Tribunal has jurisdiction to dispense with consultation under Section 20ZA (1) which provides the Tribunal may do so where “*if satisfied that it is reasonable to dispense with the requirements*”.
2. The only issue for the Tribunal to consider under section 20ZA is whether or not it is reasonable to dispense with the consultation requirements. The application does not concern the issue of whether any service charge costs resulting from the contracts are reasonable or indeed payable and it will be open to lessees to challenge any such costs charged by the Applicant under section 19 of the Act, if, for example they did not believe the Applicant was entitled to charge for utilities under the terms of their occupancy agreement.
3. This was confirmed by HHJ Huskinson in the Upper Tribunal who considered the jurisdiction for prospective dispensation under s20ZA in the case of **Auger v Camden LBC [2008]**. The Upper Tribunal confirmed that the Tribunal has broad judgment akin to a discretion in such cases. The dispensation should not however be vague and open ended. The exercise of discretion to grant dispensation requires the clearest of reasons explaining its exercise.
4. Dispensation was considered in depth by the Supreme Court in **Daejan v Benson [2013] UKSC14** which concerned a retrospective application for dispensation. Lord Neuberger confirmed that the Tribunal has power to grant a dispensation on such terms as it thinks fit, providing that the terms are appropriate in their nature and effect.
5. At paragraph 56 Lord Neuberger said it was “clear” that a landlord may ask for dispensation in advance for example where works were urgent, or where it only becomes apparent that it was necessary to carry out some works whilst contractors were already on site carrying out other work. In such cases it would be “odd” if the (LVT) could not dispense with the Requirements on terms which

required the Landlord, for instance (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary works, or (ii) to comply with stage 1 and/or stage 3, but with (for example 5 days instead of 30 days for the tenant to reply.

6. The correct approach to prejudice to the tenants is to consider the extent that tenants would “relevantly” suffer if an unconditional dispensation was accorded. The Tribunal needs to construct what might happen if the consultation proceeded as required - for instance whether the works would have cost less, been carried out in a different way or indeed not been carried out at all, if the tenants (after all the payers) had the opportunity to make their points.
7. The Tribunal is satisfied that the works were urgently required given the nature of them and the risk to residents of living in a higher risk building with no functioning fire alarm in place.
8. The Applicant had obtained (and shared) three estimates for the works with a view to achieving the best prices for the people ultimately paying the costs; the consultation process itself would be more likely to prejudice the payees as the would be left without space and water heating for a longer period and possibly enforcement action by the Local Authority.
9. The Tribunal noted the representations forwarded by Ms. Chan. The consultation process would not impact on the level of the service charges or whether payment will be taken from the sinking fund. The Tribunal noted that Ms. Chan did not object to the works themselves, or the contractor who had been selected. The Tribunal noted that the works had already been completed; but retrospective dispensation is permissible under s20ZA.
10. Dispensation from consultation is granted.
11. This judgement does not address whether the costs are either payable, under the terms of the lease, or reasonable in terms of amount and quality of works, and any leaseholder who has concerns in any of those respects has a right to apply to the Tribunal pursuant to s27A Landlord and Tenant Act 1985.

Tribunal Judge J Murray LLB

1 October 2024

Annex A

Leaseholders

Lauren Anne Hunter	Vishal Wilde
Ka Cheng	Theresa Yong
Mr Ross Mathieson	Mrs W E Natale
Mrs Selina Redmore	Ms Suk Man Leung
Miss B Walker	Prof G Osuide
Lindsay Armaou	Reyhood Farhan
Mr P Walker	Mr S H Jackson
Ranj Baines	S F Wong
Mr L S Arawwawala	Mr O O Kuti
Miss E Farrell	Karen Vezer
Miss C J Gledhill & Miss J R Gledhill	Koi Human Tenants Ltd
Mr C Jones	Mr H W Yip & Mrs S Y Yip
Mr M Farhan & Mrs A Farhan	Syed Asad Abbas Zaidi
Ms S Assan & Miss A Meniru	Mr A G Kay & Mr R W Blasky
Mr EC Wilson	Mr S Puri
Mr & Mrs M Alade	Yuet Kam Li
Mr Madden & Mrs Madden	Mr A Popat
Polly Jane Downton	Mr M Gill
Mr M McCallum	Mr D Kaye
Mr Darton & Mr Lea	Yat Ping Amy Chan
JM & AD Rosenberg	Mrs E Stern
Xinling Jiang & Billy Bonds Grant	Jeff Blair
Mr Peter Hill Mrs Jeanne E Hill	Mr Kernal Asik
Mr Z W Yan	Unique Collections Ltd
Simon Davidson Holdings Ltd	Mr A Sardar
Mei Wa Poon	Yuen Mei Chan
Sun Min Jeon	Ying Kei Tse & Kon Hung Tse
XiEstates Limited	Mr K Wan
Mr C & Mrs C Day	Sinnan Farhan
Mr C Robinson & Miss L Flaherty	Mei Wa Poon
Jonathan Grupman & Benjamin Marsh	Amir Parsa Salahi
J A B Kamani & MJF Pension Trustees Limited	Ms L Wong
Mr A C Boggiano & Ms C M Boggiano	Carmen Partington
Mr A Pelekanou & Mrs S Pelekanou	