



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

Case Reference : MAN/00DA/LDC/2024/0071

Property : Carr Mills, Mill Block, Meanwood Road,
Leeds LS7 2HY

Applicant : Carr Mills RTM Company Limited

Representative : TLT LLP

Respondent : The Residential Long Leaseholders

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

Tribunal Members : I Jefferson
K Usher

Date of Decision : 25 November 2024

DECISION

- 1 Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to further additional works identified on site such as fire stopping works, and associated enabling works, uncovered as part of the recladding to 4 stairs/lift shafts added to the rear of the building.

Background

- 2 The Background is set out in the grounds of the Application dated 14 September 2024, Pages 8 and 9, attached see Appendix A.

Grounds for the Application

- 3 The grounds for this Application are as set out in the Applicant's three page Statement of Case, page nos. 29-31, attached as Appendix B.

The Law

- 4 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.

- 5 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.*

- 6 "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 in 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).

- 7 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.

- 8 Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) 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.

Reasons for the Decision

- 9 The Tribunal must decide whether it is reasonable for the works to proceed without the Applicant first complying in full with the s.20 consultation requirements. These requirements ensure that leaseholders are provided with the opportunity to know about the works, the reason for the works being undertaken, and the estimated cost of those works. Importantly, it also provides leaseholders with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.
- 10 The Tribunal had regard to the principles laid down in Daejan Investments Ltd. v Benson [2013] 1 WLR 854 upon which its jurisdiction is to be exercised.
- 11 The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord decides to undertake qualifying works. 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.
- 12 It follows that, for the Tribunal to decide whether it was reasonable to dispense with the consultation requirements, there needs to be a good reason why the works should not be delayed. In considering this, the Tribunal must consider if any prejudice had been caused to leaseholders by not undertaking the full consultation while balancing this against the risks posed to leaseholders by not taking swift remedial action. The balance is likely to be tipped in favour of dispensation in a case in which there is an urgent need for remedial action, or where all the leaseholders consent to the grant of a dispensation.
- 13 In the present case there is no doubt that the works were necessary and pressing for the occupiers of the apartments. The Tribunal finds that it is reasonable for the works to proceed without the Applicant first complying in full with the s.20

consultation requirements. The balance of prejudice favours permitting such works to proceed without further delay.

- 14 The Applicant served the Respondents with the application and none of the Respondents have responded to it.
- 15 The Tribunal would emphasise the fact that it has solely determined the question of whether or not it is reasonable to grant dispensation from the consultation requirements. This decision should not be taken as an indication that the Tribunal considers that the amount of the anticipated service charges resulting from the works is likely to be recoverable or reasonable; or, indeed, that such charges will be payable by the Respondents. The Tribunal makes no findings in that regard and, should they desire to do so, the parties retain the right to make an application to the Tribunal under s.27A of the Landlord & Tenant Act 1985 as to the recoverability of the costs incurred, as service charges.

List of Respondents

- 16 See Appendix C

Dispensation Order

- 17 The Tribunal determines that compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the works as set out in Appendix A and B as attached to this Decision.
- 18 The Tribunal has had due regard to the Practice Direction from the Senior President of Tribunals: Reasons for decision dated 4 June 2024. In particular paragraph 6:

Providing adequate reasons does not usually require the First-tier Tribunal to identify all of the evidence relied upon in reaching its findings of fact, to elaborate at length its conclusions on any issue of law, or to express every step of its reasoning. The reasons provided for any decision should be proportionate, not only to the resources of the Tribunal, but to the significance and complexity of the issues that have to be decided.

Chairman
25 November 2024

Appendix A

14. STATEMENT OF TRUTH

The statement of truth must be signed and dated.

I believe that the facts stated in this application are true.

Signed: D. Geronzi

Dated: 14/09/2024

GROUND'S FOR SEEKING DISPENSATION

Please use the space below to provide information mentioned in section 7 of this form.

You will be given an opportunity later to give further details of your case and to supply the Tribunal with any documents that support it. At this stage you should give a clear outline of your case so that the Tribunal understands what your application is about. Please continue on a separate sheet if necessary.

1. Describe the qualifying works or qualifying long-term agreement concerned, stating when the works were carried out or planned to be carried out or in the case of a long-term agreement, the date that agreement was entered into or the proposed date it is to be entered into.

The Works

1. External and internal lift shaft remedial works, including fire stopping works in lift shafts nos 1,2,3 and 4. All works to be undertaken in full accordance with BS EN 81-72:2020, BS 7671:2018 and Approved Document B 2019 Volume 1 'Dwellings', Section 9. Fire stopping works are to be provided with appropriate certification on completion. Such works to include:

- (i) works to seal/fill in gaps/holes in the exposed block work which were revealed when contractors removed sections of wooden cladding to exterior of lift one or more of the lift shafts. These exposed holes need to be appropriately filled, and RSJ beams to be appropriately checked and supported, if necessary and required fire-retardant material to be used;
- (ii) removing and later re-fixing any cladding to allow clear access to the relevant beams to create bearing pockets;
- (iii) carefully dislodge and remove all loose material in the bearing pockets, adjacent to the embedded steel members. Clean away all dust and debris as necessary to leave clean, dry openings to be infilled.
- (iv) In those locations where the pocket openings penetrate completely through the blockwork wall, tightly pack any cavities between the wall and the internal decorative plasterboard dry lining with mineral fibre quilt insulation or similar non-combustible material, to prevent subsequent mortar loss into the cavity during infilling work.
- (v) prepare and treat all exposed steel surfaces with 2 No. coats of 'Cromar', equal and approved, black bitumen paint, allowing each coat to dry thoroughly before proceeding, in accordance with the manufacturer's recommendations.

2. Associated enabling works, including the provision of:

- (i) temporary lighting and protective boarding to enable a safe working environment for contractors;
- (ii) temporary propping using extendable steel 'Acro' props to support the ends of the main floor landing beams and the half-landing pans, continuously from ground floor level to the underside of fourth floor level. To position the props internally within the stair tower to cause a minimum of obstruction to the stairway and wrap all temporary props with split tubular expanded polythene foam.
- (iii) Erecting of scaffolding, ladders, working platforms, etc.

3. Any other works as may be identified by the relevant contractor or fire safety specialist to complete the works to the necessary to achieve the relevant certification.

Leasehold 5 Application for the dispensation of all or any of the consultation requirements provided for by section 20 of the Landlord and Tenant Act 1985 (05.24)

(together the Works)

The applicant has obtained a quotation for the works and these are costed in the region of £21,667 (which includes a contingency of £3,000).

RMT's right to undertake the Works

On 1 August 2008 Carr Mills RTM Company Ltd (06673393) (the applicant) was incorporated under section 73 of the Commonhold and Leasehold Reform Act 2002 with a view to exercising the right to manage of the Building and the management functions of the Building were transferred to the RTM by the Landlord.

It is the RTM's position that the scope of the works required to be undertaken fall within part one of Schedule 4 of the Apartment Lease.

To the extent legally required, the immediate landlord, NJoy Accommodation Management 3 Limited (Co. Regn. No. 11428367) consent to the RTM undertaking the Works at the RTM's discretion.

2. Describe the consultation that has been carried out or is proposed to be carried out.

In June 2024, the RTM followed the section 20 process in respect of the Major Works relating to the partial removal of cladding. Following the consultation process and having secured all necessary planning and listed building consents, works commenced on site in August 2024.

The above additional Works were identified only following the commencement of removal of part of the cladding.

Whilst this application has been made to the Tribunal, the RTM has nonetheless served Section 20 Notices on the leaseholders/the Respondents in respect of these works whilst confirming that an application for dispensation of the consultation requirements has been made. A copy of the template and covering letter section 20 notice served is included.

The proposal is to use the same contractors which are currently undertaking works at the Building and who were appointed following a full section 20 consultation process.

3. Explain why you seek dispensation of all or any of the consultation requirements.

The need for dispensing all consultation requirements under the LTA 1985 and associated Regulations is because:

(a) The nature of the Works required to the Building are required in order to minimize the potential for fire and smoke to spread through the lift shaft in the unlikely event of a fire within the lift shaft.

(b) these Works were identified as a result of the works we have already commenced. From a practical and cost perspective it is cheaper and easier to incorporate these Works into the works currently being undertaken on site and will minimise the disruption to the leaseholders. Both from a safety perspective, and also a practical perspective to minimise any disruption

(c) given that a full section 20 consultation process was undertaken only back in June 2024 and the RTM wishes to appoint the same contractors, there is no prejudice to be had to the leaseholders as a result of the applicant not complying with the Regulations

(d) the costs of the works are reasonable and proportionate to the Works being undertaken.

Appendix B

REF: MAN/00DA/LDC/2024/0071

IN THE FIRST-TIER TRIBUNAL

(PROPERTY CHAMBER (RESIDENTIAL PROPERTY))

In respect of:

THE BUILDING KNOWN AS CARR MILLS, MILL BLOCK, LEEDS

APPLICANT'S STATEMENT OF CASE FOR THE DETERMINATION OF AN
APPLICATION FOR DISPENSATION OF CONSULTATION REQUIREMENTS UNDER
SECTION 20ZA LANDLORD AND TENANT ACT 1985

1 Background

- 1.1 This matter relates to an application for dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 (the **Act**), in relation to premises known as Carr Mills, Mill Block, Leeds (the **Building**).
- 1.2 The Applicant is the Right to Manage Company incorporated under section 73 of the Commonhold and Leasehold Reform Act 2002 with a view to exercising the right to manage the Building. The management functions of the Building were transferred to the Applicant by NJoy Accommodation Management 3 Limited (the **Landlord**). In accordance with the Act, the Applicant falls within the definition of Landlord.
- 1.3 To the extent legally required, the immediate Landlord, consents to the Applicant undertaking the works at the Applicant's discretion.
- 1.4 The Building is approximately 12 meters high with 5 storeys and contains approximately 45 residential apartments. There are no commercial or mixed-use units. It was constructed in or around 1900's and was converted into residential flats in approximately 2003.
- 1.5 The Building is of solid stone construction. Four concrete block-constructed stair/lift shafts were subsequently added to the exterior of the Building on two sides. The external walls of the Building are solid masonry, save for the four stair/lift shafts, which are timber cladded.
- 1.6 In June 2024 a Section 20 consultation process was carried out in relation to major works relating to the partial removal of cladding (the **Previous Consultation**). Following the Previous Consultation and having secured all necessary planning and listed building consents, works commenced on site in August 2024 to remove unsafe cladding from the Building.
- 1.7 Subsequently, it became apparent that further works were required to ensure that the Building was fully compliant with fire safety regulations. As such, the Applicant is required to undertake additional related works to the Building as a result of further potential fire safety issues being identified in respect of the cavity walls around one or more of the lift/staircase shafts (the **Works**). The scope of the Works are as set out at page 8 of the Applicant's application dated 14 September 2024 (the **Application**).
- 1.8 The Applicant has at all times, acted with transparency to the tenants listed within the Application (the **Tenants**), including writing to them and serving Section 20 Notices notwithstanding this application being made to the Tribunal. On multiple occasions throughout the correspondence, the Applicant has welcomed comments and objections to the Works.

- 1.9 As at the date of this statement, the Applicant is not aware that any Tenant has taken issue with the prospect of the Works being carried out by the proposed contractor.

2 Summary of the Applicant's position

- 2.1 The Applicant has made this application because they are required to carry out the essential Works to minimise the potential for fire and smoke spread through the lift shaft in the, albeit unlikely, event of a fire within the lift shaft. The Works have been identified following recommendations of the Applicant's structural engineer and project manager and consist of interim works in respect of fire stopping measures to minimize the potential for fire and smoke to spread through the lift shaft, which is one of the fire exits for the Building.

- 2.2 The Works constitute qualifying works as per the Act.

- 2.3 For the reasons specified below, the Applicant respectfully requests that the Tribunal dispenses with the Section 20 Consultation requirements and associated regulations in respect of the Works.

- 2.3.1 As the Applicant has previously consulted with the Tenants in June 2024, the Tenants were aware of the necessity of works being required to the Building and the likely costs. Whilst the Applicant remains willing to consult with the Tenants, as demonstrated by the fact that a Section 20 notice has been served in any event in respect of the Works, the Applicant considers the Tenants best interests to be served by proceeding with the Works as soon as practicable.

- 2.3.2 The Works were identified as a result of the works the Applicant has already commenced. From a practical and cost perspective it is more cost effective and easier to incorporate the Works into the works currently being undertaken to the Building. This will also minimise disruption to the Tenants and increase the safety standard of the Building for the Tenants at the earliest opportunity.

- 2.3.3 The Applicant proposes to use the same contractor which was appointed under the Previous Consultation.

- 2.3.4 The Applicant has communicated with the contractors who tendered for the works as part of the Previous Consultation. The contractors have estimated that the cost of the Works are likely to be £21,667.00, which includes a contingency of £3,000.00. On this basis, there is unlikely to be any financial prejudice on the Tenants by virtue of dispensation from the consultation process required under the Act.

- 2.3.5 Should the consultation process be concluded in full, the Applicant considers there to be no reasonable prospect of the Tenants altering the way in which the Works should be conducted and/or the cost of the Works.

3 Reasons for Urgency of the Works

- 3.1 The Works relate to building safety defects as defined within the Building Safety Act 2022 (the BSA 2022). The Building is occupied and as such, it is prudent that these are remediated as soon as practicable.

- 3.2 The Applicant understands from discussions with the contractors that should the full consultation process be required to be carried out, the availability of suitable persons to carry out the necessary Works may result in a significant delay to the Works being undertaken. Due to the nature of the Works relating to fire safety, the Applicant considers the best interests of the Tenants is to commence the Works as soon as practicable.

- 3.3 Thus, as contractors are already on site effecting the works specified under the Previous consultation, any delay is likely to cause further disruption to Tenants and will potentially increase the costs of the Works.
- 3.4 Owing to the reasons outlined in this statement and the Application to ensure that the Works can be carried out in line with the timetable and to protect and safeguard the Tenants, the Applicant has pressed on in incurring the expense pending the outcome of the Application.
- 4 In the interests of expediency, the Applicant therefore makes this application to dispense with the Section 20 consultation requirements and associated regulations.

TLT LLP

22 October 2024

Appendix C

List of Residential Long Leaseholders

Murtaza Can Yildirim

Nichola Jane Green

Brian McNamara

Brian Gilsenan

Kenneth Ramsay Hall And Shirley Barbara Hall

Maurice Laurent Limited

HMA Property Limited

Joseph Wedlock Independent Trustee Company Limited

Victor Reilly

Shirley Foster

Amanda Elizabeth Jayne Kleanthous And Vassos Stellos Kleanthous

Pawel Domanski

Ifzaal Ahmed Dalawar

Matthew David Lishman

Katharine Haggard