FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/00HG/LDC/2024/0638
Property	:	Evolution Cove, Durnford Street, Stonehouse, Plymouth, PL1 3EU
Applicant	:	Grey GR Limited Partnership
Representative	:	Rebecca Ackerley of Counsel Instructed by JB Leitch Ltd
Respondents	:	Matt Puttock (Flat 49) Ash Jordan (Flat 55)
Representative	:	
Type of Application	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	:	Regional Surveyor J Coupe FRICS Ms C Barton MRICS
Date and Venue of Hearing	:	18 December 2024 @ Havant Justice Centre, Elmleigh Road, Havant, Portsmouth, P09 2AL
Date of Decision	:	24 December 2024

DECISION

Summary of the Decision

i. **The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in relation to the replacement of all combustible cladding systems and the installation of cavity barriers in accordance with Building Regulations at the Property, as identified in the Applicant's application.**

ii. **The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. The application was received on 26 November 2024.

2. The Tribunal issued Directions on 29 November 2024 listing the steps to be taken by the parties in preparation for the determination of the application.

3. The Applicant describes the proposed works as *"fire safety works which are urgent in their very nature and are required to be carried out as soon as practicable."* [14] In recognition of the perceived urgency of the application and in accordance with Rule 6(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), plus having regard to the Tribunal's overriding objective at Rule 3 of the 2013 Rules to deal with cases fairly and justly, the Tribunal shortened the time for complying with Directions.

4. The Respondents were issued a pro-forma Reply Form to indicate whether they agreed or opposed the application, and whether they agreed, or not, with the matter being determined on the papers. Any Respondent opposing the application was required to provide a statement setting out why they opposed the application, any evidence of what they may do differently if the Applicant had to comply with the full statutory consultation process, and to provide any documentation upon which they sought to rely in this matter.

5. Fourteen replies supporting the application and a determination on the papers, and two replies objecting to the application were received. The two objectors are the listed Respondents.

6. Mr Puttock indicated that whilst he objected to the application he was satisfied that it could be determined on the papers. Mr Jordan objected to the application but made no comment as to whether he required a hearing. Having carefully considered the matter and in recognition of

how swiftly the matter had been listed, the Tribunal decided that the application would benefit from a hearing which was set down for the 18 December 2024.

7. These reasons address in summary form the key issues raised by the parties. The reasons do not recite each point referred to in submissions but concentrate on those issues which, in the Tribunal's view, are critical to this decision. In writing this decision the Chairman has regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

8. References in this determination to page numbers in the bundle are indicated as [ ].

The Hearing

9. The hearing took place on 18 December 2024, with the Tribunal sitting in Havant Justice Centre and the parties attending remotely via the Tribunal's online platform CVP. The hearing was recorded and such stands as a record of the proceedings.

10. The Applicant was represented by Rebecca Ackerley of Counsel, with her instructing solicitor Ms L Walker of JB Leitch Ltd in attendance. Also present were Mr Colin Scherer in his capacity as property manager of Evolution Cove, plus Mr Robert Hutton, a Chartered Surveyor representing Railpen. Neither Respondents were in attendance.

Applicant's case

11. The property is described by the Applicant as a *"six-storey mixed use block of flats including commercial units and parking at lower ground floor level. The Premises comprises 63 residential flats in total across all storeys. The Premises is constructed of reinforced concrete and is a steel frame structure with a combination of blockwork and steel frame system infill walls. The apartments located within the Premises are subject to long residential leases"* [5].

12. Dispensation from the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is sought for the following works:

    i. To replace all combustible cladding systems at the Premises with Euroclass A2-s.1, d-0 certified non-combustible or better-rated materials.

    ii. To install cavity barriers in accordance with Building Regulations in order to address the risks within the curtain walling and insulated render [24].

13. The Applicant explained that during investigatory inspections of the structure combustible materials were identified within the external walls, which are deemed a fire safety risk. The findings were contained in two specialist reports, the first, a Combined Fire/Health & Safety Risk Assessment prepared by Cardinus Risk Management and dated 11 April 2024 (the "FRA"), and the second, a Fire Risk Appraisal of the External Walls, dated 6 June 2024 (the "FRAEW"). Copies of both reports were appended to the hearing bundle.

14. Ms Ackerley explained that the Applicant intends undertaking the works as soon as practicable due to the high risk to life and, furthermore, that an application for funding has been made to Homes England, the body overseeing the government's Cladding Safety Scheme (CSS). Since submitting the dispensation application to the Tribunal Ms Ackerley explained that confirmation of the premises' eligibility had been received from Homes England. The Applicant thereafter entered into a Grant Funding Agreement in such regard.

15. Ms Ackerley further disclosed that the Applicant had recently received a provisional estimate of the costs of the works in the sum of £3.8 million plus VAT. Such figure being subject to change.

16. Ms Ackerley stated that the works are to be instructed via a design and build contract. Such contract, as set down by Homes England, includes strict requirements which are incompatible with the statutory consultation process.

17. Turning to the Respondent's objections, Ms Ackerley said that neither Respondent had identified any relevant prejudice caused by a lack of consultation and nor had the Respondents alleged that the works were inappropriate, unnecessary or not considered urgent.

18. Ms Ackerley argued that both Respondents, in their written submissions, supported the works in principle but that they had queried whether dispensation would preclude them from challenging the costs of the works at a later date, an option Ms Ackerley reminded the Tribunal would remain open to the all lessees, including the Respondents, under section 27A of the Landlord and Tenant Act 1985.

19. Ms Ackerley stated that neither Respondent had identified any observations, other than cost, that they would have made during consultation and nor had either Respondent suggested that they would have nominated an alternative contractor.

20. Turning to the point on consultation with mortgage providers, Ms Ackerley opined that statute did not require such.

21. Ms Ackerley referred the Tribunal to the consultation previously undertaken by the Applicant in regard to the installation of a fire alarm system, thereby demonstrating a willingness on the part of the Applicant to comply with consultation where feasible.

22. With the Tribunal's permission Ms Ackerley called upon Mr Scherer, who stated that he attends monthly meetings with residents in order to provide updates on both ongoing and proposed works. All lessees, Ms Ackerly contended, were therefore consulted either equally or in excess of the requirements set down by statute.

23. With the Tribunal's permission, Ms Ackerley also called Mr Hutton who explained that funding applications to Homes England comprise a two-stage process and that stage 1 was now complete. Six contractors had been invited to tender for the works with three choosing to do so. Of those three, the preferred contractor, Lancer Scott, had entered a Pre-Construction Service Agreement which provides a ten week period for opening-up of the building and subsequent preparation of a full tender.

Respondent's case

24. The first Respondent, Mr Puttock provided written submissions appended to the Respondents Reply Form within which he agreed that the aforementioned reports identified that urgent works are required and within which he stated that he supports the works proceeding. Mr Puttock's concern lies with the cost of the works which, at the time of his completing the reply, had not been indicated by the Applicant. Furthermore, whether the Applicant would seek to recover all or any of such costs from the lessees.

25. Mr Puttock accepted that this particular application considers neither the reasonableness of any costs incurred, nor the payability of such and, Mr Puttock acknowledged, that the Applicant is seeking funding through the government's cladding safety scheme. However, Mr Puttock points out that such funding is not guaranteed and that without knowledge of the potential costs and any liability for such through the service charge, he has insufficient information and knowledge on which to support the application. Mr Puttock queried whether any mortgage providers with financial interests in the property had been consulted.

26. The second Respondent, Mr Jordan, indicated his agreement to the works proceeding but is concerned that, in the absence of consultation, lessees would have no control over the costs incurred which, ultimately, could leave lessees financially exposed.

Determination

27. In the first instance the Tribunal considered whether it was appropriate to continue in the absence of the Respondents. Neither Respondent had indicated to the Tribunal whether they were attending the hearing and neither did the Tribunal receive communication from either Respondent on the morning of, or during, the hearing. The Tribunal concluded that it was satisfied that the Respondents had been notified of the hearing and had chosen not to attend. The written representations of each Respondent were taken into account.

28. The 1985 Act provides leaseholders with safeguards in respect of the recovery of the landlord's costs in connection with qualifying works. Section 19 ensures that the landlord can only recover those costs that are reasonably incurred on works that are carried out to a reasonable standard. Section 20 requires the landlord to consult with leaseholders in a prescribed manner about the qualifying works. If the landlord fails to do this, a leaseholder's contribution is limited to £250, unless the Tribunal dispenses with the requirement to consult.

29. In this case the Tribunal's decision is confined to the dispensation from the consultation requirements in respect of the works under section 20ZA of the 1985 Act. **The Tribunal is not making a determination on whether the costs of those works are reasonable or payable.** If a leaseholder wishes to challenge the reasonableness of those costs, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

30. Section 20ZA does not elaborate on the circumstances in which it might be reasonable to dispense with the consultation requirements. On the face of the wording, the Tribunal is given a broad discretion on whether to grant or refuse dispensation. The discretion, however, must be exercised in the context of the legal safeguards given to the Applicant under sections 19 and 20 of the 1985 Act. This was the conclusion of the Supreme Court in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14 & 54 which decided that the Tribunal should focus on the issue of prejudice to the tenant in respect of the statutory safeguards.

31. Lord Neuberger in *Daejan* said at paragraph 44

> "Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under s 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements".

32. Thus, the correct approach to an application for dispensation is for the Tribunal to decide whether and if so to what extent the leaseholders would suffer relevant prejudice if unconditional dispensation was granted. The factual burden is on the leaseholders to identify any relevant prejudice which they claim they might have suffered. If the leaseholders show a creditable case for prejudice, the Tribunal should look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the leaseholders fully for that prejudice.

33. The Tribunal now turns to the facts.

34. The Tribunal is satisfied that the works for which dispensation is sought, that being the replacement of all combustible cladding systems at the property and the installation of cavity barriers in accordance with Building Regulations, are necessary.

35. The Tribunal takes account of the fact that the Applicant undertook statutory consultation in regard to the fire alarm installation and that an application for grant funding in relation to the proposed works has been made to Homes England. The Tribunal accepts that such an application imposes on a landlord strict requirements in regard to the tender process and the suitability of contractors, and that such criteria whilst not compatible with statutory consultation affords lessees with a degree of alternative consultation.

36. The objections raised by both Respondents concentrate on the costs of the proposed works and ambiguity surrounding the liability for such costs. Whilst funding applications have been submitted, Mr Puttock correctly identifies that such funding or the extent of is not guaranteed.

37. Whilst acknowledging the concern such uncertainty creates, the Tribunal must, in this application, focus on the issue of prejudice and whether any has been caused to the lessees by a lack of consultation.

38. Neither Respondent has indicated what alternative action they would have taken had they been afforded the opportunity to comment on the proposed works, nor has either Respondent provided the name of any alternative contractor that they would have proposed. Both Respondents agree in principle to the works proceeding, with neither Respondent arguing that the works are not necessary.

39. The Tribunal finds that there is no substantive dispute on the facts. The Tribunal finds that the Respondent's objections relate to the costs of the works and the liability for such costs.

40. The Tribunal finds the Respondents have not identified, demonstrated or asserted any relevant prejudice as a result of a failure to consult.

41. On the evidence before it the Tribunal is therefore satisfied that the leaseholders would suffer no relevant prejudice if dispensation from consultation was granted.

42. Whilst neither Respondent sought a s.20C order preventing the Applicant from recovering the costs of these proceedings through the service charge, Ms Ackerley, in oral submissions, advised the Tribunal that the Applicant did not intend to recover costs in such manner. For the avoidance of doubt, the Applicant's concession is limited to costs incurred in the s.20ZA dispensation application.

Decision

43. **The Tribunal grants an order dispensing with the consultation requirements under S.20 of the Landlord and Tenant Act 1985 in respect of replacement of combustible cladding and installation of cavity barriers as identified in the application.**

44. **The Applicant is to provide a copy of this decision to all leaseholders and to the Residents Association.**

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.