



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

Case reference : **MAN/00BY/LDC/2024/0054**

Property : **Bracken House, 44-58 Charles Street,
Manchester M1 7BD**

Applicant : **Grey GR Limited Partnership**

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

Respondents Leaseholders : **Various Long Residential**

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

Tribunal Members : **Mr J Platt FRICS, FTPI
Mr N Swain MRICS**

Date of Paper Determination : **25 March 2025**

DECISION

DECISION

1. Pursuant to section 20ZA of the Landlord and Tenant Act 1985 the tribunal makes a determination to dispense with the requirement to consult with the Respondents on the works to Bracken House, 44-58 Charles Street, Manchester M1 7BD described in Schedule 1.

REASONS

The Application

2. The application ('the Application') was made on 10 June 2024 by Grey GR Limited Partnership ('the Applicant'). It seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the Act') in relation to the statutory consultation requirements prescribed by section 20.
3. Retrospective dispensation is sought for certain fire safety works described in Schedule 1 ('the Works'). The Works were carried out to Bracken House, 44-58 Charles Street, Manchester M1 7BD ('the Property'), comprising 115 self-contained residential apartments in a 10 storey block, with a basement, and with a nursery, staff room and utilities room on the ground floor. The Applicant is the freehold proprietor of the Property and the Respondents are the leaseholders of the 115 residential apartments. A sample lease evidences a lease term of 250 years from and including 1 January 2014.
4. Dispensation in relation to consultation requirements was given previously for certain works related to fire safety in a decision of the First-tier Tribunal dated 11 September 2023, case ref: MAN/00BY/LDC/2023/0030 ("the Sept dispensation"). The current application seeks retrospective dispensation for additional and / or amended works for which dispensation has not already been granted by virtue of the Sept dispensation.
5. The Applicant's statement of case avers that:

Since the Decision, it has been necessary for the Applicant's project consultants to instruct four variations to Firecrest Construction Ltd since the internal compartmentation building contract was signed. The variations have resulted in the adjusted contract values:

 - a. Contract Instruction No.1 - £4,187,914.40
 - b. Contract Instruction No. 2 - £4,639,254.09
 - c. Contract Instruction No. 3 - £4,649,288.09
 - d. Contract Instruction No. 4 - £ 5,105,869.17

As such, the total cost of the works is higher than what is listed at paragraph 12 of the Decision.
6. The Application seeks retrospective dispensation for the additional and / or amended works detailed in Schedule 1.

7. Directions in the present case were issued on 2 January 2025. The Applicant submitted a bundle of papers including a statement of case and supporting documents. None of the Respondents submitted a statement to the tribunal opposing the Application and the Applicant has confirmed that none of the Respondents has submitted any objections to the Application directly to itself.
8. The Applicant indicated that it would be content with a determination on the papers. The tribunal considered this to be appropriate because none of the Respondents opposed the Application, neither party had requested a hearing and because there was sufficient information before the tribunal to reach a decision. It was unnecessary to conduct an inspection of the Property in view of the matters in issue.

The Law

9. Extracts from sections 20 and 20ZA of the Act are reproduced in Schedule 2. Section 20ZA subsection (1) provides that the tribunal may make a determination to dispense with consultation requirements 'if satisfied that it is reasonable to dispense with the requirements'.
10. The Applicant submitted a copy of the Supreme Court case of *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 ('*Daejan*') and referred the tribunal to this. The tribunal considers this to be the leading case on dispensation. In *Daejan* Lord Neuberger stated that in deciding pursuant to section 20ZA whether it is reasonable to dispense with consultation requirements, a tribunal should consider whether any relevant prejudice would be suffered by the leaseholders. Lord Neuberger stated that whilst the legal burden of proof rests throughout on the landlord, the factual burden of identifying some relevant prejudice that they would or might have suffered rested on the tenants. Lord Neuberger went on to hold that a tribunal is permitted to grant dispensation on terms, including compensating leaseholders for any prejudice suffered by requiring a landlord to reduce the amount claimed as service charge, and including an order for costs.

Findings of fact and Reasons for decision

11. None of the Respondents have submitted a statement of case opposing the Application. There is no evidence before the tribunal that any of the Respondents consider themselves to be prejudiced in any way by the absence of a section 20 consultation exercise.
12. The Applicant has acted in accordance with the recommendations of its professional advisors in undertaking amended and / or additional works to those detailed within the Sept dispensation.
13. The Applicant engaged with the Respondents on its proposals to undertake the Works.
14. The tribunal finds that there is no relevant prejudice identified by any Respondent, suffered as a consequence of the Applicant proceeding with the Works without first carrying out the section 20 consultation.

15. The Respondents have made no representation as to any condition the tribunal might impose in granting dispensation, and there is no evidence of any cost being incurred by the Respondents that should appropriately be met by the Applicant.
16. In these circumstances, the tribunal considers it reasonable to dispense with consultation requirements unconditionally. Accordingly, the tribunal makes a determination under section 20ZA of the Act to dispense with the requirement to consult with the Respondents under section 20 in relation to the Works.
17. The tribunal expresses no view as to whether any costs associated with the Works are reasonable in amount, whether the Works are of a reasonable standard or whether the element intended to be recovered by way of service charge is payable, within the meaning of sections 19 and 27A of the Act. The tribunal's decision does not include or imply any determination of such matters.

Schedule 1

‘the Works’

1. A site visit conducted by Hilti on 24 August 2023 identified three main issues at the Premises in relation to non-standard firestop applications. The issues identified are as follows:
 - a. Gap between flexible wall and adjacent solid wall - A 140mm gap between the drywall partition and the solid wall requires sealing. This would involve the partition wall being built up (leaving a 20mm maximum gap), packing with mineral wool and sealing with CFS-S ACR. The pipe transiting the current gap will require removal or relocation.
 - b. Pipe penetrations (one sided access) - Some PVC pipe penetrations through plasterboard walls can only be accessed on one side. PVC pipes up to 50mm diameter should be sealed with CFS-IS intumescent sealant and the apartment side of the plasterboard wall sealed with CFS-IS. Flexible walls must be double sided and double lined in order to achieve the required seal depth of 25mm.
 - c. Top floor (Risers) - The entire upper floors have been built on a raised deck which has not been suitably constructed for compartmentation works. It is strongly recommended that building works are co-ordinated to allow risers to be adequately fire stopped.
2. The works in respect of which dispensation of the consultation requirements is sought (hereinafter referred to as “the Works”) by the Applicant are listed below:
 - a. The additional riser fire protection works in the sum of £451,339.69 detailed in the contract variation form dated 8 November 2023, including:
 - (i) Works to the superstructure (roof) - provisional sums for roof access, protection and bunging rainwater pipe whilst strip out and replacement works undertaken.
 - (ii) Works to the superstructure (internal walls and partitions) - bathroom

single-sided seal service penetrations, cutting back plasterboard corridor side, sealing pipework, making good, cutting to walls as coupling for showers and kitchen waste sits in internal face of the corridor wall, reinstallation of firestopping to walls in riser cupboards on floors 1-3.

(iii) Internal finishes - wall, floor and ceiling finishes including making good of walls, replacement flooring and additional fire curtain to 9th floor.

(iv) Mechanical services - stripping out existing pipework, testing risers for building control, installation labour, materials, RWP materials, install and temporary alterations, preliminaries and FCL builders work in connection with Mech Service Works.

(v) Works to existing buildings - minor demolition and alterations works, repairs to existing services, damp-proof courses / fungus and beetle eradication, facade retention, cleaning existing surfaces, renovation works.

(vi) Main contractor's preliminaries.

b. Works to the smoke shaft in the sum of £11,592.00 detailed in the contract variation form dated 6 February 2024, including:

(i) Demolition works - stripping out smoke riser and installing new blockwork to smoke shaft.

(ii) Main contractor's preliminaries.

c. Additional structural works were required to flat 115 (level 10) as a result of a report by Dunster Consulting dated 21 December 2023, confirming that level 10 requires remedial / strengthening works. The works to flat 115, totalling £184,311.74, include, per the contract variation form dated 18 January 2024:

(i) Facilitating works - demolition works, removal and storage of furniture, isolation of M&E equipment, removal of kitchen appliances, strip back floor wall and ceiling finishes, temporary propping.

(ii) Works as per SK001 Dunster Consulting Ltd - HD straps to every 2nd roof joist, thick lateral restraint straps, timber roof joists.

(iii) Works as per SK002 Dunster Consulting Ltd - 6nr lateral restraint straps, 4nr wind posts to external blockwork walls, 4nr additional

timber joists, extend shaft in SFS and fireline board, additional Cl 6 timber joists to head of lift shaft.

(iv) Works as per SK003 Dunster Consulting Ltd - additional remedial wall ties to blockwork cavity.

(v) Follow on works - fire protection and fire stopping, new plywood flooring to top of joists, drylining to walls, skim/plaster, paint and decor, installation of new fixtures and fittings.

(vi) Main contractor's preliminaries.

- d. Works per the contract variation form dated 23 April 2024
- e. All further additional works or amended works detailed within the Construction Instructions 1 – 4 for which dispensation was not granted in the Sept dispensation.

Schedule 2

Extracts from legislation

Landlord and Tenant Act 1985

Section 20

(Subsections (1) and (2):)

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either -

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) a tribunal.

(2) In this section 'relevant contribution', in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works under the agreement.

Section 20ZA

(Subsection (1))

(1) Where an application is made to a 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.

Annex A

Leaseholders

Kin Lo Kwan
A J H, N J M & Organon Pension Trustees Ltd
Wai-Kin Mullar Wan & Jenny Wing-Kum Ng
Chan Ching Chi
Chan Fook Cheung Elvis
Chan Sau Chan
Cheng Tai Ming
Cheuk Chung Kwan
Ching Ping Chau
Chor Kee Tsang
Chun Yan Edith Chong
Chung Lan Kwan
Chung Pak Hin
Chung Wai Wilson Wong
Chunping You
David Stanbrook and Karen Anne Fielke
De Bao Hk Limi
Edalat Ghasghaei Abdi
Fan Kim Kwan
Muin Uddin Farid Ahmed & Jawairia Shariff
Fock Wing Fai
Fong Hang Keung & Chan Suk Lan
Glory Victory Limited
Hing Ha Lau & Wai Ho Dong
Hing Lun Alan Tsang
Hsiao Hui Hsu
Hugo Tin Hang Chang
Humphrey Chan
Hung Bun Yung
Hung Yuk Ivy Chang
Hung Yuk Wong
John Storey
Ka Man Angel Chan
Ka Ming Leung & Sin Yee Chan
Ka Sing Choi
Ka Yi Chow
Ka Yin Micko Wu
Kingsmaid Limited
Kuen Chu So
Kwok Ming Jacob So & MEI Lan Ho
Kwok Yung Diu
Lai Ming Man
Lai Wai Man
Zhitao Mai

Leung Kwok Hung & Yuen Ching Tang
Leung Kwok Wai Toby
Ling Hiu Yan Ann
Liuqing Zheng
MA JIN FENG
Man Suen Juliana Lee
Man Yee Chan
Man Yuk Poon & Kwok Kei Tsang
Michael Hanson Lawson
Michelle Buschl
Ali Shakery
Nao Kanamaru
Pang Yee Lin
Po Wai Chiang
Power Living Limited
Richard Rotti
Sau King Chan
See Hong Wong
Shuk Wa Li
Lam Po Yu
Shum Wang Fai
Shum Yin Yi
Sio Kuan Cheng & Siu Ying Ho
Siu Shan Cheung
Tak Chao Lam
Tong Siu Kuen
Tsui Ping Peggy Tang
Wai Hong Stephen Chung
Zi Xuan Zhang
Wang Ronnie Wong
Wen Hui Huang & Peihua Huang
William Thomas Rogers
Wills Estates Limited
Wing Fung Mak
Wing Yin Kwok & Hin Kat Anne Yeung
Xiao Zhang
Xiaojie Wang
Yee Man Eveline Chan & Tou Lok Ip
Yeung Shing Joseph & Luk Wei Kwang
Yuen Man Patricia Chan
Yuen Yi Cheung
Yufan Lin
Yuk Fung Angel Zao