



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

Case Reference : **MAN/00BY/LDC/2021/0033**

Property : **Cinnamon Building
50 Henry Street
Liverpool
L1 5BS**

Applicant : **RG Securities (No.2) Ltd**

Representative : **JB Leitch Limited**

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

Representative : **N/A**

Type of Application : **For dispensation of the statutory
consultation requirements:
Landlord and Tenant Act 1985
- section 20ZA**

Tribunal Member : **Judge J Holbrook**

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

Date of Decision : **3 February 2022**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the necessary fire safety works to the façade of the building following testing of the cladding system and as required by Merseyside Fire and Rescue Service in an enforcement notice served upon the Applicant.

REASONS

Background

1. On 9 June 2021, an application was 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 RG Securities (No.2) Limited and relates to the premises known as Cinnamon Building, 50 Henry Street, Liverpool L1 5BS (“the Property”). The Applicant is the landlord under the long leases of the residential apartments within the Property. The Respondents to the application are the long leaseholders of those apartments. 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 dispensation is sought are fire safety works required to remedy issues relating to the external façade of the Property. The tender estimate for the works was £633,956.13 excluding statutory and professional fees, administration costs and VAT. FRC’s fee for managing the works is £109,246.49 plus VAT. I understand that the works had not been completed when this application was made last June, but I expect that they may have been commenced (and possibly even completed) during the intervening period.
5. Each of the Respondents has been given notice of the application and has been sent a copy of the Applicant’s supporting evidence. None of the Respondents has submitted a response to the application and I 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, I am 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 I understand it to comprise an 8 storey block of residential apartments. There is internal parking on the ground floor and residential apartments on all other floors.

Grounds for the application

7. The Applicant discovered that the works relating to the external façade of the Property were required following testing of the cladding system. FRC Consultants Limited were instructed by the Applicant to carry out an intrusive inspection of the external wall system and fixtures. FRC's report is dated 15 June 2020. The Ridgeway and Partners LLP Tender report dated 18 December 2020 confirms that invitations to tender for the works were issued to Colmore Tang Construction Limited and FK Group Limited on 17 November 2020. The report recommended that FK Group Limited be appointed to the second stage of negotiations in January 2021. The Applicant began the consultation process by sending a stage 1 Notice of Intention to all Respondents on 1 December 2020. The Applicant was served with an enforcement notice dated 24 February 2021 by Merseyside Fire and Rescue Service. The notice confirmed that remedial works were required to be undertaken to the external wall of the Property. The Applicant registered the Property in respect of the Government Building Safety Fund (BSF). The Property passed both the technical and legal eligibility assessments by March 2021. Copy correspondence was sent to the leaseholders notifying them of this update. The Applicant requests the Tribunal to grant unconditional dispensation in respect of the works due to the fact that funding has already been obtained via the BSF pursuant to the FK Group tender; the works are imperative to the health and safety of the residents; by serving the Notice of Intention the Applicant has complied with the spirit of Section 20 to the best of its ability and it has sought to be as transparent as possible by providing regular updates to the leaseholders; it would take several weeks to complete the section 20 process; the Applicant does not believe that the Respondents are prejudiced by lack of a complete consultation process.

Law

8. 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.

9. 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.

10. “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).

11. 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.

12. 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.

Conclusions

13. The Tribunal must decide whether it was 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.
14. In deciding whether to dispense with the consultation requirements in a case where qualifying works have been commenced or completed before the Tribunal makes its determination, the Tribunal must focus on whether the leaseholders were prejudiced by the failure to comply with the consultation requirements. If there is no such prejudice, dispensation should be granted.
15. In the present case, the works concerned were clearly of an urgent nature, and there is no evidence that the Respondents have been prejudiced by the lack of compliance with the consultation requirements: none of the Respondents have argued that they were prejudiced and none have objected to the application for dispensation.
16. I therefore conclude that dispensation should be granted. The fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that I 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. I make no findings in that regard.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 3 February 2022

ANNEX
(List of Respondents)

James Alexander Turner
Braidwater Limited
Charlotte Helen Lloyd
Mr R Murray-Bruce
Mrs H F Chong
Mr & Mrs Samy
Dr. M B Day
Auracle Management Group
Mr D J Abrams
Southernplus Limited
Homeneed Limited
Pauline Joyce Brown
The Bullen Healthcare Group
Michael Gerard Harris & Catherine Harris
Stephen Alexander Stewart
Zygmunt (Ziggy) Sieczko
Geloo Properties Limited
Charlene Prunella Harris & Shashyata Islam
Dr. D J Wilson
James Hugh Owen O'Donnell
Mr M J Northover
Mr & Mrs Marriott
Mr & Mrs Toner
Nusiba Taufik
Edward James Pearce
Mr R Boyle
Mr J P Eustace
Xiao Yu
Salaiman F Alsuwaidan & Mai A A Al-Muhana
Kaya Ulrikke Herstad
Mr I C Gee
Jacob David Astle
David James Butterworth
Elizabeth Helen Johnson
Mr Kerim Taylor
Richard Aaron Edmore
Frances Rita Gallagher
Jonathan Lawrence Boner
Callum Wood
Kay Hawkins
Michael Robert Fell & Lise Ann Mortier
Mr J Kiely, Mr A Orsi & Mrs J Drane

