



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

**Case reference** : **MAN/00BN/LDC/2021/0042**

**Property** : **Jutland House and Whittles Croft,  
Paradise Wharf, Ducie Street,  
Manchester M1 2DE**

**Applicant** : **Paradise Wharf Management Company  
Ltd**

**Representative** : **J B Leitch Ltd**

**Respondent** : **Various residential long-leaseholders of  
Jutland House, Whittles Croft and  
Junction Works (collectively known as  
Paradise Wharf)**

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

**Tribunal Members** : **Mr J A Platt FRICS (Chairman)  
Mr W Reynolds MRICS**

**Date of decision** : **27 June 2022**

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**DECISION**

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## **DECISION**

Pursuant to section 20ZA of the Landlord and Tenant Act 1985 the Tribunal makes a determination to dispense with the requirement for the Applicant to consult with the Respondents on the proposed works.

## **REASONS**

### **The Application**

1. The application ('the Application') was made on 16 July 2021 by the Applicant's Representative. It seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the Act') from the statutory consultation requirements prescribed by Section 20 of the Act, in relation to: external wall remediation, balcony replacement, window replacement and / or balcony door replacement at Jutland House.
2. A further application was made on 2 December 2021 for an extension of time to comply with Directions and to add works required at Whittles Croft (also within Paradise Wharf) into the application. By email dated 3 December 2021 the Tribunal agreed to the extension of time. It is not entirely clear that the Tribunal has previously granted permission for Whittles Croft to be included within the Application. The lessees at Whittles Croft (and Junction Works) were included as Respondents to the original application and have been informed throughout of the inclusion of works at Whittles Croft, Statements of Case were subsequently exchanged which included Whittles Croft, no party has made any submissions that it should not be included. The Tribunal, having regard to the overriding objective, therefore considers it just and reasonable for both buildings to be considered simultaneously within the one Application.

### **Directions**

3. Directions were issued on 18 November 2021. The Applicant was directed to provide details of the Application and a detailed statement of case to all Respondents. The Respondents were, thereafter, invited to notify the Tribunal if they opposed the Application and, if so, provide a statement in response to the Application.
4. The Applicant has complied with those directions. A number of Respondents (listed in Annex A) oppose the Application and have provided statements in response.

### **Brief Introduction**

5. This Application concerns (in part) remediation works which are required in respect of the External Wall Systems ("EWS"), commonly referred to as 'cladding', at Jutland House and Whittles Croft ("the Buildings"). Having regard to some of the statements of the parties (dealt with later in this decision), the Tribunal considers it useful to outline briefly, from its own knowledge and experience,

some of the Governments' responses following the tragic fire at Grenfell Tower in 2017, that have led to these works being necessary and / or considered.

6. Through a series of advice notes, amendments to Building Regulations and the passing of The Fire Safety Act 2021, Government has clarified and / or imposed a statutory duty on building owners and landlords to ensure their buildings do not present life critical fire safety risks.
7. In response to mortgage lender requirements and to ensure some consistency within the risk assessment process, The Royal Institution of Chartered Surveyors ("RICS") introduced a standardised format for External Wall Survey risk assessment ("EWS1").
8. The Government also introduced the Building Safety Fund ("BSF"), to provide grant funding, in an attempt to ensure that remediation of combustible cladding within buildings above 18m in height progressed 'at pace'. Qualification for grant funding via the BSF was based on meeting very tight deadlines at each stage of the process i.e. submission of initial application, submission of detailed project design and costings and start on site of remediation works.
9. Since the Application was made (and since the statements of case were submitted) a number of larger developers have signed a pledge to take responsibility for life critical fire safety remediation works within buildings they have developed, and the Building Safety Act 2022 has received Royal Assent. Those provisions (when fully enacted) may impact the costs to be incurred by the Applicant and recoverable as a service charge. Those issues are currently not before this Tribunal.
10. The only issue for the Tribunal to consider in respect of this Application is whether or not it is reasonable to dispense with the consultation requirements of Section 20. The Application does not concern the issue of whether any service charge costs resulting from any such works are payable or reasonable nor whether those costs should be met by another party. It will be open to lessees to challenge any such costs which the Applicant seeks to recover from the Respondents.

## **Applicant's Statement of Case**

### Background

11. The Applicant instructed MAF Associates ("MAF") to undertake EWS1 assessments of both buildings. Those assessments, dated 17 August 2020, confirm the presence of combustible materials in the EWS and indicate the level of risk at each building to be B2. B2 states an opinion that "an adequate standard of safety is not achieved" and identifies "the remedial and interim measures required".

### Jutland House

12. MAF produced a second report in respect of Jutland House on 6 October 2020 and "identified issues with the external façade of the Premises which include, but are not limited to":
  - a. Degradation of the window frames

- b. A non-compliant combination of rigid foam insulation and high pressure laminate (“HPL”) boards
  - c. No protection from vertical fire spread via balconies
  - d. Fire could interact with cladding where there are vents directly under glazed areas in the car park
13. MAF recommended the following remediation works:
- a. External walls – replace HPL panels and PIR rigid foam insulation with non-combustible alternatives
  - b. Balconies – review the construction and replace the timber with a non-combustible alternative
  - c. Window and / or balcony door replacement

#### Whittles Croft

14. MAF “identified issues with the external façade of the Premises which include, but are not limited to”:
- a. EWS is non-compliant due to the use of Trespa Standard Grade HPL Panel
  - b. The insulation installed within the EWS is not compliant with the requirements of thermal insulation
  - c. Timber decking is non-compliant with the Consolidated advice published by the Ministry of Housing Communities and Local Government (“MHCLG”) in January 2020. [The Tribunal notes from its own knowledge and expertise that the consolidated advice has now been withdrawn and replaced by revised risk assessment standards].
15. MAF recommended the following remediation works:
- a. External wall remediation
  - b. Replacement of windows and balcony doors

#### BSF and Tender process

16. The Applicant registered both buildings with the BSF and ‘stage 1 eligibility’ was confirmed for Jutland House in November 2020 and more recently for Whittles Croft.
17. The Applicant obtained one tender in respect of the package of works (“the Works”) briefly described above. That tender was from Quality Fast Facades (“QFF”) in the sum of £1,041,218.60\* for Jutland House and £909,413.03 for Whittles Croft.

### Jutland House

18. The BSF has confirmed that their total fund contribution is £1,658,241.00. The proposed works to replace balcony timber with aluminum and to upgrade windows from wood to aluminum are not eligible for BSF funding. The estimated costs to be recovered as service charges is £326,019.
19. [\*The Tribunal notes there appears to be an error in the sum quoted as QFF's estimate which is lower than the sum quoted as BSF contribution and which is elsewhere quoted (within communication with leaseholders) as £1,837,652 excluding professional fees. The Tribunal has assumed that the stated figure for QFF's estimate should be £2,041,218.60 but the actual figure is not an important consideration within this decision, which is solely concerned with dispensation].

### Whittles Croft

20. BSF initially rejected Whittles Croft as being eligible for funding but the Applicant obtained revised information which has resulted in 'stage 1 eligibility' being confirmed by BSF.
21. The Applicant awaits the BSF stage 2 funding decision. The Applicant proposes similar ineligible works at Whittles Croft as at Jutland House. The estimated costs to be recovered as service charges is £221,285.47.

### Consultation Process

22. The Applicant provided leaseholders with a written update on the BSF funding applications w/c 3 May 2021 and thereafter gave Notices of Intention to the Respondents on 21 May 2021. The Applicant seeks 'protective' dispensation from this stage of the consultation process in case these notices are deemed to be defective in any way.
23. The Applicant had regard to and responded to observations on the Notices of Intention by:
  - a. Virtual leaseholder meeting 10 June 2021 with minutes being subsequently provided
  - b. A further virtual meeting on 2 September 2021
  - c. A leaseholder meeting on 7 December 2021 to update on BSF application and the dispensation application.

### Reasons for Dispensation

24. The Applicant seeks dispensation on the general ground that it was not possible to comply with the BSF application criteria (especially the very tight deadlines) and to simultaneously fully comply with the Section 20 Consultation Regulations. In particular, that meeting the original BSF 31 December 2020 deadline for submission of a fully costed design and project plan (with works to commence by 31<sup>st</sup> March 2021) necessitated a design and build contract with only one tender price being obtained.

25. The Applicant asserts that none of the Respondents have been prejudiced by the failure to fully consult in accordance with the Regulations. The Applicant has acted in the best interests of the Respondents by seeking to maximise BSF funding. The Applicant has also acted in the best interests of the Respondents by negotiating a combined contract for both buildings to include additional works to those funded by the BSF. The Applicant estimates the commercial savings to be achieved, for the benefit of the Respondents, at £221,000.

### **Respondents' Statement of Case**

26. A number of submissions were received from Respondents. These included:
- a. Submissions that the Applicant should be Abacus Landholdings Ltd as freeholder not Paradise Wharf Management Company Ltd ("PMC Ltd").
  - b. PMC Ltd has not sought the agreement of shareholders to submit the Application.
    - i. The Application should, therefore, be struck out or
    - ii. the Tribunal should order that PMC Ltd cannot recover the costs incurred in making the Application as service charges and
    - iii. the costs should be met by the Directors of PMC Ltd.
  - c. The works are not due to start on site until June 2022, therefore, the Section 20 consultation Regulations could be complied with and dispensation would not, therefore be necessary.
  - d. General concern that PMC Ltd is not carrying out necessary due diligence (not necessarily related to this application) and submissions, therefore, that the Applicant should not be allowed to circumvent "what are already very weak regulatory standards and we implore the tribunal to take our very real concerns into consideration".
27. Unsurprisingly, the Respondents' also expressed concerns about the cost of the proposed works being recovered as service charges at a time when the Government was suggesting that other parties should be responsible for (the costs of) remedying fire safety defects.

### **The Law**

28. Extracts from Sections 20 and 20ZA of the Act are appended.
29. The Tribunal considers the Supreme Court case of *Daejan Investments Limited v Benson and Others* [2013] UKSC 14 ('*Daejan*') 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.

## Determination

30. Firstly, it is necessary to consider the locus standi of the Applicant which is an issue raised by the Respondents. The Applicant is a party to the lease with obligations to keep the buildings ‘*in good and substantial repair decoration and condition*’. The Applicant is a landlord within the definition at Section 30 of the Act and has a right for its application to be determined by this Tribunal.
31. The role of this Tribunal is to decide whether it is reasonable, in the circumstances, to dispense with the consultation requirements in respect of the proposed works and thereafter to decide if it is reasonable to grant such dispensation ‘on terms’. In accordance with *Daejan*, the Tribunal should consider whether any prejudice has been suffered by the Respondents and have due regard to the financial impact of that prejudice.
32. Firstly, the Tribunal notes that Notices of Intention were given to the Respondents, detailing the proposed works in general terms, providing an opportunity to nominate a contractor and to make observations. All as required by the Regulations. The Tribunal also notes that the Applicant (via its managing agent) provided detailed information in response to the observations received and held meetings with the Respondents to directly address their issues and concerns and to keep them updated throughout the procurement / BSF application process.
33. The shortfalls in the consultation process were specifically that the Applicant only obtained a cost estimate from one contractor and did not serve Notices of Estimates detailing at least two cost estimates. The Applicant did inform the Respondents on the details of the one cost estimate obtained.
34. Although a number of submissions were received from Respondents, none of those submissions identified any relevant prejudice suffered by those Respondents due to the shortfalls in consultation. Again, referring to *Daejan*, the Respondents have not identified ‘what they would have said, had they not been deprived of the opportunity to say it’ in response to Notices of Estimates.
35. The Applicant asserts that it acted in the best interests of the Respondents by seeking (and succeeding) to maximise the chances of grant funding being received by submitting fully costed project design proposals to the BSF within their strict time deadlines. The Applicant asserts that not only did this not cause any relevant prejudice to the Respondents but was beneficial to them. The specific benefits being maximised grant funding and an opportunity to undertake additional works, at significant cost saving, by ‘piggy backing’ on the BSF funded remediation contract.
36. The Tribunal is aware from its own knowledge and expertise that landlords across the country have experienced significant difficulties (if not impossibilities) in fulfilling the Section 20 consultation requirements whilst simultaneously meeting BSF criteria and timelines. The Tribunal is also aware that the BSF has accepted negotiated tenders on a design and build basis, which have been subjected to value for money assessments by their own consultants. The Tribunal is also aware, irrespective of the tight deadlines, that landlords have experienced

extreme difficulty in obtaining tender prices from more than one contractor via a competitive tender route.

37. The Tribunal considers it reasonable for the Applicant to have negotiated a design and build contract, subjected to professional value for money assessment, to meet the BSF criteria and deadlines. The Tribunal also considers it reasonable for the Applicant to have obtained value for money assessed cost estimates for additional works, which are not grant funded, within the same design and build contract. The Applicant asserts this has substantial cost benefits whilst the Respondents have not identified any relevant prejudice suffered by them as a result.
38. In the absence of any relevant prejudice having been identified by any of the Respondents, the Tribunal decides that it is reasonable to dispense with the consultation requirements in respect of the proposed works. For the avoidance of doubt, the Tribunal dispenses with all consultation requirements including at the Notices of Intention stage.
39. The Respondents make specific submissions that the costs of this Application should not be recoverable as service charges. The Tribunal has two ways in which it can approach such a request: by considering dispensation on terms and / or by considering an Order under Section 20C of the Act.
40. As the Respondents have not identified any relevant prejudice, the Tribunal does not consider it reasonable to restrict the Applicant's contractual ability to recover costs by way of dispensation on terms
41. The Respondents' primary submission is that they were not consulted as shareholders of PWC Ltd on the making of this Application. Company law entitles directors to make decisions on behalf of the company and there is no necessity for directors to consult with shareholders on those decisions. The Tribunal, in any event, concurs with the submissions of the Applicant that the Application was made in the best interests of the shareholders of PWC Ltd and, by implication, the leaseholders. The Applicant has acted reasonably in making the Application for dispensation and the Tribunal, therefore, declines to make any order under Section 20C of the Act.
42. A decision on the issue of dispensation does not concern the issue of whether any service charge costs resulting from any such works are payable or reasonable nor whether those costs should be met by another party. It will be open to lessees to challenge any such costs which the Applicant seeks to recover from the Respondents.

**J A Platt**  
Tribunal Judge  
27 June 2022



## **Annex A: List of ‘active’ Respondents**

Sanjay Pitalia  
Planet Property Ltd  
Simon Lipson  
Maged Selim and Meena Shah  
Aeron Haworth  
Dr Zubair Iqbal

## **Annex B: List of leaseholders**

Mr DI Fletcher  
Ms A Saksena  
Mr & Mrs Adewole  
Mr & Mrs Blamires  
Mr CM Blamires  
Dr Robey & Mr Wilkinson  
Mr Flynn & Ms Gledhill  
Ms HK Sharpe  
Mr JB Galley  
Ms J Bottomley  
Ms K Culleton  
Ms LSpencer  
Mr & Mrs Sesto  
Mr Bowker & Mr Ogden  
Mr MD Goddard  
Mr A & Mrs Baines  
Mr A Haworth  
Mr Gaglani & Dr Chudasama  
Mr IP Chatburn  
Mr Smith & Ms Skiffington  
Mr P Marchant  
Mr P N Charles  
Mr Lipson & Ms Lloyd-Jones  
Mr & Mrs Ackerley  
Mr & Mrs Swift  
Mr & Mrs Harris  
Mr ND Buchanan

Mr D Lee  
Ms F Pelham  
Mr E Isikdogan  
Mr DA Godden  
Mr E Van Leeuwen  
Dr D P Maudgal  
Mr GWY Tsoi  
Mr MA Caveney  
Mr MS Steele  
Mr MHC Tsoi  
Mr M Taylor  
Mr M Thompson  
Mr McDermott  
Mr L Watton  
Mr C J Cooper  
Mr G Wiggans  
Mr H Baura  
Mr M Tsoi  
Mr & Mrs Olley  
Mr P Coe  
Ms A Ewruje  
Ms A G Pelaez  
Mr P Dhami  
Mr T Torlay  
Ms Y Cowan  
Mr Z Iqbal  
Mr PA Dawson

## **Appendix**

### **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.