



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

Case Reference : **MAN/00CG/LDC/2021/0077**

Properties : **City Lofts, St Paul's Arundel Gate, Sheffield,
S1 2LJ**

Applicant : **St Paul's Management (Sheffield) Ltd**

Representative : **JB Leitch Ltd.**

Respondents : **Various – see annex**

Type of Application : **S. 20ZA Landlord and Tenant Act 1985**

Tribunal Members : **Judge P Forster
Mr N Swain**

Date of Decision : **14 June 2022**

DECISION

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Decision

Compliance with the consultation requirements of s.20 of the Landlord and Tenant Act 1985 is dispensed with in relation to urgent works specified in the attached schedule.

Reasons

Background

1. The First-tier Tribunal received an application on 5 November 2021 under s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a decision to dispense with the consultation requirements of s.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 on behalf of St Paul’s Management (Sheffield) Ltd. (“the Applicant”), in respect of City Lofts, St Paul’s Arundel Gate, Sheffield, S1 2LJ (“the Property”). The Respondents to the application are the long leaseholders of the flats within the building. A list of the Respondents is set out in the annex hereto.
3. The only issue for the Tribunal to determine is whether it is reasonable to dispense with the consultation requirements.
4. The application identifies the subject property as a 10 storey and 32 storey connected building with commercial use on the ground floor and 316 residential apartments above and a basement car parking.
5. The works in respect of which a dispensation is sought is specified in the attached schedule.
6. Investigatory works discovered that there are issues relating to the construction of the external wall system which comprises combustible materials and poses a risk of fire spread. This is set out in a report dated 20 January 2020 prepared by FR Consultants which makes recommendation for remedial works to be undertaken.
7. The Applicant has registered the Property with the Government Building Safety Fund (BSF) seeking the full cost of the remedial works, aware that full funding may not be granted. If the Applicant is eligible for funding, it is not known when this will be decided, the contractor will need to be in place to commence works at short notice with the costs of the works agreed. The Applicant has been

advised that there is insufficient time for the project to be fully designed and follow the traditional tender route whilst complying with BSF deadlines. For this reason, the Applicant intends to follow a design and build procurement route which is not compatible with s.20 consultation requirements.

8. The Applicant began the s.20 consultation process by sending the stage 1 notice of intention to all the Respondents on 5 November 2020. No responses or observations were received from the Respondents. In addition, the Respondents have been informed on a number of occasions about the progress of matters.
9. The notice of intention stated that the exact detail of the remediation works was yet to be determined. A schedule of works has now been produced but there is insufficient time for the Applicant to recommence or re-start the s.20 consultation process as doing so may prevent it from complying with the BSF requirement to continue with the remediation works at pace.
10. The Applicant intends to enter into a design and build contract which means that a lead consultant will be instructed and will proceed to select sub-contractors and other specialists to assist with the design and construction process. This contract procurement route does not satisfy the s.20 requirements.
11. The Applicant seeks dispensation because the remedial works are urgent and should not be delayed further. Further, the Applicant intends to enter into a design and build contract which does not satisfy the s.20 consultation requirements. The Applicant does not envisage any financial prejudice to the Respondents due to the fact that the consultation is not carried out.
12. The proposed works are “qualifying works” within the meaning of section 20ZA (2) of the Act.
13. On 22 March 22, the Tribunal issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and the Tribunal therefore convened on the date of this decision to consider the application in the absence of the parties. The directions included at paragraph 5 a provision that required the Applicant to write to each of the Respondents informing them of the application and providing them with information about the application process. The Applicant’s representative confirmed that this has been done.

Grounds for the application

14. The Applicant's case is that it is necessary to undertake these works quickly to adequately protect the occupants of the apartments in the Property and to secure funding from the BSF. By implication, the Applicant's case is that the works relate to common parts of the Property which the landlord is obliged to maintain under the terms of the leases, with the costs associated therewith being recoverable from the tenants via service charge provisions incorporated within the leases. The Tribunal was provided with a specimen copy of the lease relating to plot 6.1.
15. The Applicant asks the Tribunal to grant dispensation in respect of the works, which it considered to be so urgent as to warrant avoiding the additional delay that compliance with the consultation requirements would be entailed.

The Law

16. 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.

17. 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.

18. "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).

19. 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.

20. 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

21. 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 tenants 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 tenants with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.
22. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord or management company 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.
23. 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 and could not be delayed. In considering this, the Tribunal must consider the prejudice that is caused to tenants by not undertaking the full consultation while balancing this against the risks posed to tenants by not taking swift remedial action. The balance is likely to be tipped in favour of dispensation in a case in which there was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

24. In the present case there is no doubt that the works are necessary and pressing for the occupiers of the apartments. The Tribunal finds that it is reasonable for these 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 have proceeded without delay.
25. In deciding to grant a dispensation, the Tribunal has had regard to the fact that no objections were raised by the Respondent leaseholders in compliance with the Tribunal's Directions of 22 March 2022.
26. The Tribunal would emphasise the fact that it has solely determined the question of whether or not it is reasonable to grant a retrospective 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 will 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.

14 June 2022
Judge P Forster

SCHEDULE

- 1) **Area 1 - Stone Panel**
 - i. Remove existing stone cladding and associated structure and fire barrier and carefully lower to ground and dispose of off-site
 - ii. Install new Stonescreen Aerolite A1 rated Natural Stone-faced panel with new carrying system
 - iii. Install new 100m Rockwool Duo slab insulation with associated brackets
- 2) **Area 2 - Anodised A2 Panel**

- i. Remove existing PPC decorative fascia and vent grille and set aside for reuse. Remove aluminium insulated backed panel and gaskets etc. and carefully lower to ground and dispose of off-site
 - ii. Install new Anodised A2 Panel of Metalline finish to be Anolok 'Champagne' to include new gaskets
- 3) **Area 4 - Metalline Ultima A2 Panel**
- i. Remove existing PPC decorative fascia and vent grille and set aside for reuse. Remove aluminium insulated backed panel and gaskets etc. and carefully lower to ground and dispose of off site
 - ii. Install new Metalline Ultima A2 Panel. To include all gaskets and reinstatement of previous vent grilles etc. Colour match to existing
- 4) **Area 5 - Spandrel Panel**
- i. Remove existing PPC decorative fascia and vent grille and set aside for reuse. Remove aluminium insulated backed panel and gaskets etc. and carefully lower to ground and dispose of off site
 - ii. Install new Spandrel A2 Panel. To include all gaskets and reinstatement of previous vent grilles etc. Colour to match existing.
- 5) **Area 6 - Standing Seam System**
- i. Remove existing 100mm thick insulation, timber battens plywood sheathing and steel bracket and dispose of off site. Allow to carefully remove the standing seam system and carefully store for reuse
 - ii. Install new 100mm + 50mm Rockwool Duo Slab insulation
 - iii. Supply and install new non-combustible "Rockwool Duo" insulation as specified by Architect in drawings. Include for all mechanical fixings
 - iv. Supply and install new non-combustible Cement Particle (22mm) sheathing board. Include all associated fixings, tape etc
 - v. Supply and install new vertical rail and helping hand bracket
 - vi. Allow to reinstate the existing standing seam system fixed back to the CP Board
- 6) **Area 7 - Insulated Render**
- i. Allow to remove existing render, insulation and any combustible sheathing boards back to a non-combustible substrate. Carefully lower to ground floor and dispose of off site
 - ii. Allow to supply and install new Wetherby A1 insulated render system. Assume insulation thickness to be a minimum of 100mm. Allow for all necessary fixings, headings and trims.
- 7) **Rainscreen to back of Parapets**
- i. Remove existing plywood and all associated timber battens. Safely lower to ground and dispose of off site
 - ii. Supply and install new rainscreen panels A2,sl,d0 minimum, colour to match existing. Allow for all necessary fixings
- 8) **Decking System to Terraces**
- i. Allow to remove existing timber decking and all associated fixings and timber battens. Safely lower to ground and dispose of off site

- ii. Allow to supply and install new 20mm fibre cement planks on A rated pedestals and fixed as per manufacturers installation guides

9) Cavity Barrier and Closers to Rainscreen Systems

- i. Supply and install Cavity Barrier (to provide necessary fire resistance to match, or better, the structure it is fixed to) to include all associated mechanical fixings and brackets to all party wall Junctions (vertical Barrier)
- ii. Supply and install Cavity Closer (to provide necessary fire resistance to match, or better, the structure it is fixed to) to include all associated mechanical fixings and brackets around all windows and openings. Ensuring windows are set aside for reuse. Any identified damage to be notified to CA before removal. Any further damage will be the responsibility of the contractor

10) Miscellaneous Works

- i. Privacy screens to windows whilst work commence
- ii. Allow under this section for any item not included in the above section but which are described or inferred in the Scope of Works and/or the Drawings and are necessary for the completion of this section of the Works

ANNEX