



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

Case reference : **MAN/00DA/LDC/2022/0033**

Property : **La Salle House, Block C, Chadwick Street, Leeds, LS10 1NG**

Applicant : **Clarence Leeds Limited**

Representative : **J B Leitch Limited**

Respondent : **Various Long Residential Leaseholders**

Representative : **(None)**

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

Tribunal member(s) : **Tribunal Judge L. F. McLean
Tribunal Member S. Wanderer**

Date of determination : **24th August 2022 on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

Date of decision : **31st August 2022**

DECISION

Decisions of the Tribunal

- (1) **The Tribunal grants unconditional dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 (together, “the Consultation Requirements”) in relation to the proposed works at La Salle House, Block C, Chadwick Street, Leeds, LS10 1NG which are described in the Applicant’s application dated 18th May 2021 as being remedial fire safety works to the following areas:-**
- a. York Stone Facade**
 - b. CLG Timber Facade**
 - c. Render Replacement**
 - d. Glazing Curtain Walling**
 - e. Replacement decking to apartments**
 - f. Enabling Works**
 - g. Scaffolding**
 - h. Cavity Barriers**
 - i. Temporarily Filming Windows**

The application

1. The Applicant applies to the Tribunal for unconditional dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 (together, “the Consultation Requirements”) in relation to proposed works.
2. The application is opposed by Anna Marie Goodwin and Gavin Andrew Goodwin, who are respondent lessees.

Background

3. The Applicant is the registered proprietor of a long lease of the premises known as La Salle House, Block C, Chadwick Street, Leeds, LS10 1NG (“the Property”) made on 1 May 2009 between The Clarence Dock Company Limited and the Applicant.
4. The Respondents are the various residential long leaseholders of the Property under sub-leases, of which the Applicant is the immediate landlord.
5. According to the Applicant’s statement of case, the Property comprises 10 storeys, including a ground floor, mezzanine floor and 8 residential floors, and the height of the topmost storey exceeds 30 metres.
6. The application stated that the Applicant intends to carry out remedial fire safety works to the following areas of the Property:
 - a. York Stone Facade

- b. CLG Timber Facade
 - c. Render Replacement
 - d. Glazing Curtain Walling
 - e. Replacement decking to apartments
 - f. Enabling Works
 - g. Scaffolding
 - h. Cavity Barriers
 - i. Temporarily Filming Windows (“the Works”)
7. The likely cost of the Works, as remitted through the Respondents’ leasehold service charge demands, would exceed the statutory limit of £250 per leaseholder imposed by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003, meaning that the Respondent would be required to comply with the Consultation Requirements set out therein unless the Tribunal grants dispensation in relation to the same.
 8. The Applicant submitted an application dated 18th May 2021, within a bundle comprising 299 pages which the Tribunal has read after downloading it from the data room managed by the Applicant’s solicitors.
 9. On 12th May 2022, the Tribunal issued directions to the parties for the filing and serving of any Respondent’s statement of case within 21 days. The Applicant was given permission to file and serve a short reply within 7 days after that. The Tribunal notified the parties that it considered that the application was suitable for determination on the papers provided by the parties and without a hearing.
 10. Anna Marie Goodwin and Gavin Andrew Goodwin (Respondents) submitted a statement of case on 24th June 2022 as follows:-

We strongly oppose the applicant (Clarence Leeds Limited) being allowed to dispense the consultation requirements. We feel that it is in our best interest to know what works are going to be carried out, how much the cost will be and to informed when it is over 250 pounds so we can ensure we have the necessary fund to make payment.
 11. The Applicant filed a Statement of Case in Reply dated 30th June 2022, comprising 4 pages, which the Tribunal has read.
 12. The members of the Tribunal considered the parties’ written submissions and documents filed in support, by way of a virtual meeting held on 24th August 2022 and conducted over Microsoft Teams.

Grounds of the application

13. The Applicant’s grounds of its application were set out in its statement of case. In summary, these were:-

- a. The Works are required to be undertaken as soon as possible to ensure the health and safety of residents at the Property;
- b. The Works are eligible for government capital grant funding (through the Building Safety Fund) and the Applicant cannot comply with the Consultation Requirements within the timescales set by the government in order for funding to apply;
- c. The Applicant is in any event unable to comply with the full extent of the Consultation Requirements because it intends to procure the contract for the Works through a Design & Build procurement procedure, meaning that the exact nature of the intended works cannot be known until a late stage of the procurement process and it is unlikely that different contractors' quotations would be truly comparable;
- d. The Applicant has served a Notice of Intention pursuant to the Consultation Regulations, and provided other communications and publicity, in an effort to provide information to the Respondents about the Works;
- e. The Applicant does not believe that the Respondents will be prejudiced if it does not undertake the full stipulations of the Consultation Requirements.

Issues

14. The only issue the Tribunal needed to consider was whether or not it is reasonable to dispense with the Consultation Requirements in relation to the Works. The application does not concern the issue of whether any service charge costs resulting from any such works are reasonable or indeed payable and it will be open to lessees to challenge any such costs charged by the Applicant in due course (under Section 27A of the Landlord and Tenant Act 1985).

Relevant Law

15. The relevant sections of the Landlord and Tenant Act 1985 read as follows:-

20 Limitation of service charges: consultation requirements

(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) the appropriate 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 or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

20ZA Consultation requirements: supplementary

(1) 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

“qualifying works” means works on a building or any other premises, and

“qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

16. The decision in the binding legal authority of *Daejan Investments Ltd v Benson* [2013] UKSC 14 confirms that the Tribunal, in considering dispensation requests, should focus on whether leaseholders are prejudiced by the failure to comply with consultation requirements.

Evidence and Submissions

17. The Applicant relied on evidence which was included in the bundle of documents and which accompanied its statement of case.

18. The Applicant's Statement of Case indicates that that remedial works are required to the structure of the Property due to the presence of combustible materials which pose a risk of fire spread. An external wall assessment provided by Design Fire Consultants Ltd ("DFC") dated 7th August 2020, and supplied with the Statement of Case, identified various issues regarding compliance of the external wall materials with the Regulatory Reform (Fire Safety) Order 2005 and the 2000 edition of Approved Document B ("ADB"), including (but not limited to): lack of fire barriers at junctions with compartment floors or party walls between flats; inadequate protection of the cavity head and bottom; combustible insulation; lack of fire stopping; presence of timber decking; inadequate/incomplete fire barriers at junctions with compartment floors; and inadequate fire barriers / lack of fire stopping at junctions with party walls between the flats and the balconies.
19. A further report by DFC dated 15th March 2021, also supplied with the Statement of Case, recommended the Works by way of the following long-term remediation to deal with the aforementioned issues:
- a. Construction Type 1 - CGL Wallplank Cladding
 - i. Provide fire barriers at junctions with compartment floors and walls.
 - ii. Either show BR 135 compliance or remove combustible insulation.
 - b. Construction Type 2 - Sto Therm Classic
 - i. Provide fire barriers at junctions with compartment floors and
 - ii. walls.
 - iii. Remove combustible insulation and/or Sto rendering.
 - c. Construction Type 3 - East Faipade Projections
 - i. Provide fire barriers at junctions with compartment floors and walls.
 - ii. Either show BR 135 compliance or remove combustible insulation.
 - d. Construction Type 4 - Penthouse Level
 - i. Remove aluminium combustible panels.
 - e. Construction Type 5 - Ground Floor Retail
 - i. Remove aluminium combustible panels and combustible insulation.
20. The aforesaid reports recommended complete replacement of the whole system, further interim measures including a "waking watch", and installation of heat detectors in all rooms that are associated with the defective external wall construction.
21. The Applicant also referred to having applied for central government funding for the Works through the "Building Safety Fund" which, if granted, could considerably reduce or even eliminate the cost of the Works to the Respondents. The Applicant's Statement of Case goes on to describe how this

process, consisting of multiple stages with tight deadlines for responses, is not compatible with the Consultation Requirements. The Applicant's Statement of Case also sets out that it will use a "Design and Build" procurement process, which may generate different design solutions which would not be readily comparable to each other in terms of cost – which again undermines the process envisaged by the Consultation Requirements.

22. The Applicant's Statement of Case states that, notwithstanding the challenges in complying with the Consultation Requirements, its agent sent a Notice of Intention to all Respondents in respect of the proposed works on 19th October 2020, to which the Applicant says it received no observations in response. The Applicant also says that its agent has provided monthly updates to the residents of the Property in respect of the Works etc.
23. The only formal response received to the Applicant's application was the statement of Anna Marie Goodwin and Gavin Andrew Goodwin referred to earlier. This raised the entirely legitimate issue that they wanted to know what works would be carried out and the likely costs so that they could budget accordingly. In reply thereto, the Applicant submitted a Statement of Case in Reply, dated 30th June 2022, in which the Applicant observed that, above and beyond the obvious disadvantage of receiving less information about the Works, the said Respondents had not identified any material factual prejudice if the Tribunal were to grant dispensation.
24. No parties raised any material factual issues of dispute in relation to any matters which were relevant to the Tribunal's deliberations.

Determination

25. The Tribunal is satisfied that the Applicant appears to have good reason to undertake the Works and to do so urgently.
26. The Applicant rightly concedes that the Works are likely to result in each Respondent being required to contribute more than £250 by way of service charge. That would appear still to be likely even if substantial grant funding is received.
27. The Tribunal is satisfied by the Applicant's evidence and submissions that it would find compliance with the Consultation Requirements difficult and impractical to the point that it would hamper effective procurement of the Works and/or applications for grant funding.
28. Although this application was presented to the Tribunal office urgently by email in May 2021, it appears that processing of the application was unfortunately delayed until 2022. It is unclear from the subsequent dealings of the parties whether the Applicant in fact proceeded to undertake the Works pending the Tribunal's determination (in order to obtain grant funding) or whether the procurement of the Works was put in hold in the meantime. As such, the Tribunal takes into account that the application is motivated in part by a desire to reduce the service charge cost to the Respondents by obtaining grant funding, but the Tribunal's decision cannot be based primarily on that

issue because there is no certainty as to whether funding has been or will be obtained. Indeed, there can never be any such certainty until the funding is actually transferred into the landlord's account.

29. The Tribunal places more emphasis on the fact that a "Design and Build" procurement process is inherently unsuited to the Consultation Requirements. Design and Build is a well-established procurement procedure when there may be multiple different means of achieving the same outcome, especially when complex structural works are involved. No Respondent has challenged the Applicant's decision to adopt that approach.
30. The concerns of Anna Marie Goodwin and Gavin Andrew Goodwin are perfectly legitimate and understandable. It is true that the benefits of compliance with the Consultation Requirements include that the leaseholders are better informed as to the nature of the works proposed, and will have a better understanding of the likely costs. It must nonetheless be noted that a landlord is not strictly bound by the costs indicated in a Notice of Estimates, as actual costs incurred can be higher or lower than that amount when works are finally completed. Moreover, the Applicant is right to say that the main purpose of the Consultation Requirements is to reduce the risk of works being carried out needlessly or at greater cost than is reasonable, rather than to assist the leaseholders in budgeting (*Daejan Investments Ltd v Benson* [2013] UKSC 14). As such, the Respondents are required to set out what they would have done differently if the Consultation Requirements had been complied with (*Aster Communities v Chapman* [2021] 4 WLR 74; *Wynne v Yates* [2021] UKUT 278 (LC)), which they have not done.
31. Additionally, the Tribunal members do not themselves discern any particular or obvious prejudice beyond what the Respondents have said already.
32. Accordingly, the Tribunal determines that it is reasonable to grant dispensation from the Consultation Requirements in respect of the Works.
33. The Tribunal considered whether there would be merit in attaching conditions to the grant of dispensation. However, it decided not to do this, as it was unclear what stage the procurement process and/or the Works had reached, and the Tribunal did not want to set conditions for dispensation which the Applicant might be incapable of complying with after the fact.
34. In reaching this decision, the Tribunal reiterates that it remains open to the Respondents to apply to the Tribunal (once costs have been incurred) for a determination as to whether the costs of the Works are reasonably incurred and/or that the Works are of a reasonable standard.

Name:

**Tribunal Judge L. F. McLean
Tribunal Member S. Wanderer**

Date: 31st August 2022

Rights of appeal

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
4. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.
5. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).