



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

**Case Reference** : **LON/00BK/LDC/2021/0202**

**HMCTS code** : **V: CVPRemote**

**Property** : **Block D, New Palace Place, 22 – 37  
Monck Street, 84 Horseferry Road  
and 65 Great Peters Street, London  
SW1P**

**Applicant** : **Adriatic Land 3 Limited (“the  
Landlord”)**

**Representative** : **Ms Natalie Foster – Counsel  
Ms Leanne Barker – Operations  
Manager for Blenheims Estate and  
Asset Management Limited**

**Respondents** : **All leaseholders of the premises  
 (“the tenants”) and in particular Dr  
Mark Atkinson; Prof Marat  
Shterin; Graham Garguila and  
Philip Shaw (the opposing lessees)**

**Representative** : **Dr Mark Atkinson for the opposing  
lessees**

**Type of Application** : **For dispensation from the  
consultation requirements under  
section 20ZA Landlord & Tenant  
Act 1985**

**Tribunal Member** : **Tribunal Judge Dutton  
Mr R Waterhouse BSc (Hons) LLM  
Property Law MA FRICS**

**Date of Decision** : **14 January 2022**

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## DECISION

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This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was CVPRemote. A face-to-face hearing was not held because it was not practicable and no one requested same.

The documents the Tribunal were referred to were in a bundle of some 299 pages, together with two witness statements the contents of which had been noted.

### Decision

- (1) We determine that dispensation should be granted from the consultation requirements under s20 of the Landlord and Tenant Act 1985 (the Act) and the Service Charges (Consultation Requirements)(England) Regulations 2003 in respect of the property Block D New Palace Place, 22 – 37 Monck Street, 84 Horseferry Road and 65 Great Peters Street, London SW1p (the Property) for the reasons we have stated below.**
- (2) We make no determination as to the reasonableness of the costs of same, these being matters which can be considered, if necessary, under the provisions of s27A and s19 of the Act.**

### The application

1. The applicant landlord sought dispensation from the consultation provisions in respect of the re-cladding of parts and works to balconies and any associated fire prevention works at the Property. The Property is a modern purpose-built construction containing, we were told, 40 flats and commercial premises at ground floor level.
2. The application was dated 4 August 2021 and indicated an urgency. The reasons stated in the application are as follows. *“Following guidance relating to the construction of the external wall system it has been discovered that the construction comprises combustible materials and poses a risk of fire spread. Accordingly works are required to the Premises (sic) in line with Government Guidelines (“the Works”). The Applicants agent began the consultation process in relation to the Works.*

*Due to the nature of the works and the Design & Build method due to be adopted, the Applicant is unable to complete the consultation process.”*

3. The Directions provided for the tenants and sub lessees to be informed of the application and to be provided with copies and we are told by the managing agent that this was done. Indeed, that must be the case as four lessees responded by filing the questionnaire indicating they wished to be heard.
4. The tribunal did not consider that an inspection of the Building was necessary, nor would it have been proportionate to the issues in dispute.
5. The only issue for the tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements of section 20 of the 1985 Act. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

### **Hearing**

6. The matter came before us for hearing on 12 January 2022. The applicant was represented by Ms Foster of counsel accompanied by Ms Baker, the operations manager of Blenheims Estate and Asset Management Limited (BEAM). We had expected there to be representation on behalf of the opposing lessees, but no one attended.
7. It is fair to say that their initial concerns had been expressed in a Statement of Case by Dr Mark Atkinson dated 27 August 2021. They confirmed that they were shared ownership leaseholders, their landlord being London & Quadrant (L&Q) and had not been provided with an initial notice under section 20 Landlord and Tenant Act 1985 (the Act). Further they complained that they had not been granted sufficient time to deal with issues by reference to the terms of the directions order dated 10 August 2021. This had provided for the matter to be dealt with on paper but was subsequently listed for a hearing, this was listed for a date in October, which was postponed until 12 January 2022. The applicants responded to the opposing lessees concerns on 3 September 2022. Nothing more has been heard from them. It is understood that Dr Atkinson may have been taken ill and we hope he has made a full recovery.
8. At the hearing we received written and verbal evidence from Leanne Barker and a written statement, with exhibits from Mr Stephen Britton an executive Property Manager with BEAM. We noted all that was said.

9. As Mr Britton could not attend the hearing Ms Barker spoke both for herself and for him. It appears she has been with BEAM for a number of years and involved with the Property since 2015. She explained that the intention was proceed with the Works through a Design and Build contract with a lead consultant, initially thought to be Façade Remedial Consultants (FRC) but now it seems Hallas & Company. The reasons for this route were that following the s20 consultation process would not allow for the necessary steps to be taken as appropriate to ensure that the correct contractors for the works could be retained, as there were pressures on the industry at this time, following the Grenfell Tower fire, and there were a limited number of contractors available and further that the time scales of the application to the Building Safety Fund (BSF) could be pursued using this Design and Build route.
10. She told us budgeted figures had been utilised for the purposes of estimated service charge demands for the period July 2021 to June 2022 in the sum of £348,600. These demands were made of L & Q who have paid the first tranche, the second being due at the end of this month and two lessees who had completed the staircase acquisition of their flats.
11. On the BSF route we were told that a neighbouring block, Block F, had been processed but had proven unsuccessful, as unlike the Property the block was below 18 metres in height. It had, however, highlighted issues with lessees that would be addressed in the procedure under the Design and Build contract for this block.
12. The steps to be taken by the lead consultant were set out in a letter dated 19 August 2021 exhibited to Mr Britton's statement, which set out under the heading 'Pre-Contract Works what would be done for the initial fee, said to be slightly less for Hallas & Co than FRC. This would then lead to the 'Contract Works'. It seems that further surveys are to be done in respect of matters highlighted in reports from Guildmore at page 167 and from Tetra at page 106 para 5.4, the urgency for which is, to an extent explained in the TRI Fire report of December 2020 at page 216.
13. Ms Foster submitted that it was reasonable to dispense. There were four reasons. The first was that there was no prejudice to the leaseholders. Neither the opposing lessees, nor L & Q, had produced alternative estimates. This was, Ms Foster said, not a straight forward process as was highlighted both in the applicant's statement of case and Ms Barker's and Mr Britton's evidence. Further, and linked to her second submission, the consultation process did not sit with the need for the Design and Build approach and did not facilitate the application to BSF for funding. So far, we were told, the time limits under the BSF had been adhered to.

14. Ms Foster said there was urgency in that there were a number of hurdles to jump, and each took time. There was pressure on the industry, and it was difficult to instruct individual contractors. Fourthly, the Design and Build contract was the correct way forward as it would accommodate changes, which under the consultation route would require further referral to lessees and further delays, which could impact on the BSF application.
15. Ms Barker told us that Hallas & Co would be instructed within the next 7 days and the matter would then progress

### **Findings**

6. In making our decision we have borne in mind the various reports to which we were referred, which in our finding clearly indicate that works are required inter alia to the cladding and the balconies at the Property. We are satisfied that the Design and Build concept is reasonable and that this does not sit with the consultation process under s20 of the Act. Further there needs to be flexibility to accommodate the requirements, when they engage, of the BSF, which is clearly in the lessees' interests.
7. The Law applicable to this application is to be found at s20ZA of the Act. The decision of the Supreme Court in Daejan Investments Limited and Benson and others [2013] UKSC 14 has been taken into account by us in reaching our decision. There has not been any allegation of prejudice to the leaseholders as set out in the Daejan case. We therefore find that it is reasonable to grant dispensation from the consultation requirements required under s20 of the Act.
8. Our decision is in respect of the dispensation from the provisions of s20 of the Act only. Any concern that a Respondent has as to the standard of works, the need for them and costs will need to be considered separately.

*Andrew Dutton*

**Name: Tribunal Judge  
Dutton**

**Date: 14 January 2022**

### **ANNEX – RIGHTS OF APPEAL**

1. **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 at the Regional Office which has been dealing with the case.**

- 2. 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.**
- 3. If the application is not made within the 28-day time limit, such application must include a request to 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.**
- 4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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**