



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

Case Reference : **MAN/OOBN/LDC/2021/0046**

Property : **37 Potato Wharf, Saville Building,
Castlefield, Manchester, M3 4BB**

Applicant : **Adriatic Land 8 (GR2) Limited**

Representative : **JB Leitch Ltd.**

Respondents : **Various residential long leaseholders**

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

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

Date of Decision : **28 July 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 works specified in Schedule 1 hereto in respect of 37 Potato Wharf, Saville Building, Castlefield, Manchester, M3 4BB.

Reasons

Background

1. The First-tier Tribunal received an application dated 28 July 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. These 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 Adriatic Land 8 (GR2) Limited (“the Applicant”), in respect of 37 Potato Wharf, Saville Building, Castlefield, Manchester, M3 4BB (“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 Schedule 2 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 Property as a nine-storey building constructed in 2007 which includes a basement and ground levels and contains residential units together with underground parking. The height of the topmost storey is greater than 18 metres. The external elevations are constructed of a mixture of masonry, aluminium, timber and high-pressure laminate panels.
5. The works in respect of which a dispensation is sought as identified in the Applicant’s Reply dated 6 May 2022 are:
 - (a) Aluminium – ensure adequate fire barriers at junctions with compartment floors and replace combustible insulation and replace with a product that achieves Class A2-s1,d0 or Class A1
 - (b) High pressure laminate – ensure adequate fire barriers at junctions with compartment floors and replace combustible insulation and replace with a product that achieves Class A2-s1,d0 or Class A1.
 - (c) Timber – ensure adequate ensure adequate fire barriers at junctions with compartment walls and treat timber to achieve Class 0 or replace timber.

- (d) Timber walkways – subject to the remediation of (c), no remediation works are required.
 - (e) Inset balconies – no remediation works are required.
6. Works are required to the Property because of issues relating to the construction of the external wall systems. The construction comprises combustible materials which pose a risk of fire spread.

Applicant's statement of case

7. The Applicant's statement of case is dated 28 July 2021. It provides a history of events leading to the application for dispensation. It states that in accordance with guidance issued by the Ministry of Housing, Communities and Local Government (MHCLG), a report dated August 2017 was obtained to establish the type of external cladding used on the Property. It was found that the cladding was not made of aluminium composite material, the type used on Grenfell Tower. The cladding appeared to be in good repair and installed in accordance with the manufacturer's instructions.
8. A second report dated 29 September 2020 was commissioned to identify the external wall construction details and to provide an opinion as to whether an adequate standard was achieved to comply with fire safety regulations. It was found that the external wall construction did not comply with Approved Document B (ADB) which was relevant at the time of construction and defines the benchmark expectation for compliance with fire safety regulations and MHCLG guidance. The report identified the remediation measures required to ensure compliance.
9. A third report dated 8 October 2020 was obtained which together with the report of 29 September 2020 sets out the works necessary to comply with ADB.
10. The Applicant wishes to proceed with the works on a design and build basis where a main/supervising contractor is appointed to design and construct the works.
11. 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.

Responses to the Applicant's statement of case

12. The Applicant's representatives have confirmed that all the Respondents were served with a copy of the application in accordance with the amended directions dated 8 April 2022.
13. Two of the Respondents, Ms Wilkinson of Apartment 106 and Mr Hanson of Apartment 614, responded to the Applicant's statement of case. Their responses are similar in content. Although they express some reservations about the need to make the application for dispensation, they do not object to it in principle.
14. The Applicant obtained a further report, dated 5 August 2021, after the application for dispensation was made. This report includes a revised list of remediation measures required to comply with ADB. Ms Wilkinson and Mr Hanson asks the tribunal to grant dispensation only in respect of the recommended remediation works set out in the revised report.

The Applicant's response

15. In its response to Ms Wilkinson and Mr Hanson, the Applicant acknowledges that a further report was obtained dated 5 August 2021. It confirms that the recommended works differ slightly from the early reports and those set out in the Applicant's statement of case. Ms Wilkinson and Mr Hanson wanted the statement of case to be amended. The Tribunal agrees with the Applicant's submission that this is not necessary. The Tribunal's decision will reflect the current position. A revised list of the works in respect of which dispensation is requested is provided by the Applicant. The Tribunal is aware that the MHCLG has abolished the funding deadline and takes this into account in the decision it makes.

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 is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.
24. The Applicant sent a stage 1 notice of intention to the Respondents dated 15 October 2020 in respect of the works. Responses were received from the Potato Wharf Cladding Action Group about the level of detail included and the Applicant answered this by providing a statement of frequently asked questions. The Applicant states that it has provided the Respondents with regular updates and has held residents' meetings. Therefore, it appears that the Respondents have been informed and are aware of the need for the works to be done and what is intended to be done.
25. Relevant guidance in respect of the BSF was significantly updated in April 2022. The Government recognises that deadlines previously set may not be achievable in all cases. The updated guidance removes both the paragraph in which deadlines were set and the reference to case by case discretion. Eligibility assessments have been considerably delayed but they have never been a necessary precursor to carrying out the required works. Applicants have been required to carry out the required works regardless.

26. It is unclear whether there is a residual discretion that remains in operation in respect of completion of the works, beyond the date of the updated Guidance, though given the delay in processing it is to be hoped that it will be extended. It remains the case that it seems that there will be a number of registrations in which the full application will require exercise of discretion, the building owner having delayed procurement and/or commencement of works beyond the published deadline date of 30 September 2021 pending a decision on eligibility.
27. 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 Tribunals Amended Directions of 8 April 2022.
28. The design and build procurement route does not fit with the s.20 consultation process and if followed the process would considerably extend the time before the works are completed.
29. If dispensation were not granted the Property might lose funding from MHCLG under the BSF which would result in significant prejudice to the Respondents notwithstanding the recent enactment of parts of the Building Safety Act 2022.
30. 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.
31. The Tribunal would emphasise the fact that it has solely determined the question of whether or not it is reasonable to grant 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.

26 July 2022
Judge P Forster

SCHEDULE 1

Aluminium – ensure adequate fire barriers at junctions with compartment floors and replace combustible insulation and replace with a product that achieves Class A2-s1,d0 or Class A1

High pressure laminate – ensure adequate fire barriers at junctions with compartment floors and replace combustible insulation and replace with a product that achieves Class A2-s1,d0 or Class A1.

Timber – ensure adequate ensure adequate fire barriers at junctions with compartment walls and treat timber to achieve Class 0 or replace timber.

Aluminium – remove spandrel panels containing combustible insulation and replace with a product that achieves Class A2-s1,d0 or Class A1

SCHEDULE 2

<u>Leaseholder</u>	<u>Apartment No.</u>
Richard Tyrrell	Apt 3.07 Saville
Simon Neil Lewis Evans	Apt 7.06 Saville
Robert Anthony Steele	Apt 2.06 Saville
Annalisa Tirella	Apt 3.09 Saville
Anthony Alfred Froggatt & Janet Froggatt	Apt 1.07 Saville
Oi Lan Chan	Apt 2.14 Saville
Ivory Antoinette Sinclair	Apt 4.11 Saville
Robert Andrew Smith & Teresita Agaid Smith	Apt 4.12 Saville
Simon Bentley & Johnathan Mansfield	Apt 3.02 Saville
William John Patrick Savin & Isabella Andrea Savin	Apt 7.03 Saville
Phillip William Scott & Susan Jane Scott	Apt 0.10 Saville

Thomas Keith Rolt	Apt 5.12 Saville
Lorna Catherine Jane Sissons	Apt 7.10 Saville
Anjali Gupta	Apt 1.03 Saville
Abhay & Asmita Vaidya	Apt 1.13 Saville
Paul Bayliss	Apt 3.11 Saville
Tamsin Camilla Jane Silvester	Apt 4.02 Saville
Adam John Clarke	Apt 5.02 Saville
Ying Zhu	Apt 5.01 Saville
Emma Buckley	Apt 0.08 Saville
David Livingstone	Apt 2.08 Saville
David Livingstone	Apt 0.11 Saville
Kim Elizabeth Greene	Apt 0.03 Saville
Paul Joseph Tomkow	Apt 7.05 Saville
Peter Robertson	Apt 2.09 Saville
Jonathan Paul Hardy	Apt 3.01 Saville
Simon Lewis	Apt 0.01 Saville
Miss Yi Yang	Apt 5.13 Saville
Alexander James Wates	Apt 2.02 Saville
Nicholas Adam Bates	Apt 6.12 Saville
Eamonn Sheffron	Apt 1.11 Saville
Matthew James Fear	Apt 0.04 Saville
Peter Williams & Heidi Spencer	Apt 6.06 Saville
Ying Wang	Apt 7.02 Saville
Emily Sarah Cowan & George Terry Pindar	Apt 5.07 Saville

Elizabeth Arkell	Apt 7.09 Saville
Amin Amiri	Apt 4.14 Saville
Amin Amiri	Apt 4.13 Saville
Neha Sihra	Apt 5.14 Saville
Lucy Clare Foster	Apt 3.14 Saville
Matthew James Ritchie	Apt 3.13 Saville
Uzair Osman	Apt 1.10 Saville
Piers Laurence John Hunter	Apt 5.10 Saville
Sarah Capes	Apt 7.14 Saville
Kim Elizabeth Greene	Apt 4.06 Saville
Kim Elizabeth Greene	Apt 4.05 Saville
Alan Anguisola Kretschmar & Lynne Anguisola Kretschmar	Apt 5.11 Saville
Luke Oliver Almond	Apt 2.10 Saville
Peter Horton & Wendy Horton	Apt 0.13 Saville
Nicola Joanna Thompson	Apt 1.14 Saville
Ka Man Cheng	Apt 6.11 Saville
Sukhbinder Atwal	Apt 6.02 Saville
Shan Fang	Apt 7.12 Saville
Matthew James Smethurst	Apt 1.05 Saville
Nan Zhang	Apt 7.01 Saville
Matthew John Plummer	Apt 7.13 Saville
John Alan Duffy & Isabelle Marie Francoise Duffy	Apt 3.03 Saville
Sarah Capes	Apt 7.11 Saville

Robert Anthony Steele	Apt 7.07 Saville
Oliver Charles Dickin	Apt 7.04 Saville
Janet Wilkinson	Apt 6.14 Saville
Heng Yuan Bai	Apt 6.13 Saville
Gillian Coralie Marples	Apt 6.10 Saville
Katie Elizabeth Bunting	Apt 6.09 Saville
Pui Yan Wong	Apt 6.08 Saville
Jessica Britten	Apt 6.05 Saville
Stephen James Rourke	Apt 6.07 Saville
Patrick Veitch	Apt 6.04 Saville
Martin Solomon & Dawn Parker	Apt 6.01 Saville
Ho Yin Yip	Apt 5.08 Saville
Patrick Veitch	Apt 5.06 Saville
Andrew James Bowler	Apartment 504 Saville
Point Properties Ltd	Apt 5.05 Saville
Carol Ann Davies	Apt 4.01 Saville
Neil Warren Davies	Apt 4.03 Saville
Steven M Hill	Apt 3.10 Saville
Tze Kwong Ho & Yee Mei Susanna Mok	Apt 4.07 Saville
James Dunne	Apt 3.08 Saville
Lena Bipin Mistry	Apt 4.08 Saville
Dean Paul Langan	Apt 4.09 Saville
Marie Frazer	Apt 4.10 Saville
James David Wyatt & Katrina Jane David	Apt 3.06 Saville

Michael Anthony Gavaghan	Apt 3.05 Saville
Colin Paul Adams & Haiwa Li	Apt 3.04 Saville
Robert Kyran Ellerby	Apt 2.13 Saville
Wai Ching Ip	Apt 2.11 Saville
Cara Heaney	Apt 1.02 Saville
Kirti & Jayantilal Ganatra	Apt 1.12 Saville
Derek Bernard Boon & Margaret Elizabeth Boon	Apt 2.03 Saville
Rafferty Lettings Ltd	Apt 1.01 Saville
Leon Pickersgill	Apt 0.06 Saville
Carl Daniel Smith & Stephanie Nicole Smith	Apt 0.05 Saville
Giles Storey	Apt 0.02 Saville
Mitchell John Jones & Samantha Frances Grainger	Apt 2.04 Saville
Charles Ekram Gadallah	Apt 2.05 Saville
Helen Elizabeth Kinloch	Apt 2.07 Saville
Kevin Khoi Hung Dieu	Apt 4.04 Saville
George Lee Walkden	Apt 6.03 Saville
Keith Elmitt & Eileen Annice Elizabeth Elmitt	Apt 2.12 Saville
Chun Kit Philip Chong	Apt 2.01 Saville
Ian David Smith & Johanna Elizabeth Smith	Apt 3.12 Saville
Lauren Nicholls	Apt 1.08 Saville
Clare Judith Pollard	Apt 0.07 Saville
Christopher John Hanson	Apt 1.06 Saville
Mitchell John Jones & Samantha Francis Grainger	Apt 7.08 Saville

Caroline Hague-Lenihan & Paul Edward Lenihan	Apt 0.09 Saville
Paul Dickinson & Carly Jane Dickinson	Apt 1.04 Saville
Stuart Glyn Williams	Apt 0.12 Saville
Patrick Veitch	Apt 5.03 Saville
Andrew Quinn	Apt 5.09 Saville
Sameera Naz	Apt 1.09 Saville