



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

Case Reference : **MAN/00BN/LDC/2021/0074**

Property : **MASSON PLACE and BARTON PLACE, 1 – 3
HORNBEAM WAY, MANCHESTER**

Applicant : **REGISTRATION NOMINEES LIMITED**

Respondent : **THE LONG LEASEHOLDERS**

Type of Application : **Application for an order under section 20ZA,
Landlord and Tenant Act 1985
Application under section 20C, Landlord and
Tenant Act 1985**

Tribunal Members : **A M Davies, LLB
E Scull, MRICS**

Date of Decision : **12 September 2022**

DECISION

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DECISION

1. In relation to the cladding and fire protection works identified in the section 20ZA Application and intended to be carried out at Masson Place and Barton Place, Manchester (the Works) the statutory consultation procedure required by section 20 of the Landlord and Tenant Act 1985 (the Act) is to be dispensed with, on condition that from the date of this order until completion of the Works the Applicant keeps each of the Respondents effectively updated in writing (via its online portal or otherwise) not less often than every 4 weeks as to key milestones, the broad progress of the Works and their costs, the applications for government or other sources of funding, any warranty, insurance, or related claims, and the effect of the Contribution Limitations defined at paragraph 12 below.
2. An order under section 20C of the Act is refused.

REASONS

THE APPLICATIONS

1. On or about 7 July 2021 the Applicant applied to the Tribunal for a dispensation from the consultation requirements of section 20 of the Act with regard to the Works. The Respondents are the long leaseholders of the apartments in the Property, and a list of them has been provided to the Tribunal.
2. One objection to the application was received. Dr Nomuoja wrote on 6 May 2021 that he did not consider that there was any increased fire safety risk, and submitted that there was no urgency which prevented the Applicant from following the full section 20 consultation procedure. He wrote “12. If the rendering issue have been deemed not qualifying for funding that is because it is not deemed a fire safety issue. The government position as per Grenfel is that not all structures need such intervention. 13. The government’s position is that leaseholders cannot, under any circumstances, be made to pay for cladding or any fire risk structures related works. 14. These discussions needs to be had.” (sic)
3. One application under section 20C of the Act was received. Ms Goodwin wrote “I am willing to consent to the application on the basis that the Applicant bears the costs of the application and these are not bourne by the Leaseholders.” (sic)

4. The Tribunal has not inspected the Property, and with the agreement of the parties this decision has been made without a hearing, on the basis of written representations. The written representations comprise the application and supporting documents, Dr Nomuoja's objection, Ms Goodwin's application, and the Applicant's Statement in Reply dated 27 May 2022.

THE PROPERTY

5. The Applicant describes the Property as consisting of two similar blocks of residential apartments, each building comprising 12 storeys including the car park levels. Masson Place contains 163 apartments and Barton Place contains 164. Each building exceeds 30 metres in height. The Tribunal is told that all the long leases of apartments in the Property are in similar terms, and a sample has been provided. The leases require the Respondents to pay an annual service charge reflecting expenditure on the Property incurred by the Applicant or its managing agents Livingcity Asset Management Limited.
6. Following the Grenfell Tower fire tragedy, the Applicant obtained reports on any fire risks present in the Property arising from its construction and/or cladding materials. Those reports were annexed to the application and have been made available to the Respondents. They may be listed as:

White Hindle and Partners Limited for each building: dated 30 October 2019

Design Fire Consultants Ltd for each building: dated 22 October 2020

Thomason Partnership Limited for each building: dated 28 October 2020

THE APPLICATION TO THE BUILDING SAFETY FUND

7. The reports obtained by the Applicant confirmed that there were aspects of the Property which presented a fire risk and which required remediation according to guidance issued to freeholders following the tragedy at Grenfell Tower, namely:
 - (a) the Ministry of Housing, Communities and Local Government guidance "Advice for Building Owners of Multi-storey Multi-occupied Residential Buildings" issued on 20 January 2020, and

(b) “The Building Safety Fund for the remediation of non-ACM Cladding Systems – Fund Application Guidance” first issued in May 2020 and updated from time to time (BSF Guidance).

Copies of these documents have also been provided to the Respondents.

8. In May 2020 the BSF Guidance stipulated that applicants for funding (on a first come first served basis) must lodge a full funding application based on a tender price by the end of December 2020. This deadline was subsequently revised to allow more time for submission of applications, which enabled the Applicant to obtain proposals from three potential contractors. The Applicant wished to submit its claim for funding as expeditiously as possible and so there was no time to pursue a section 20 consultation process, which even in a simple case inevitably continues for some months.
9. On dates which have not been provided to the Tribunal but believed to be early in 2021 the Applicant received three tenders for the Works, based on the reports obtained by the Applicant listed above. Of these tenders, the price provided by ESL was the lowest at £9,035,287.80 (plus VAT if appropriate) and after enquiries the Applicant was satisfied that ESL were in a position to complete the Works to a reasonable standard at that price. ESL’s tender was therefore submitted to BSF for approval, and, if approved, as the basis of a grant application.
10. The application to this Tribunal for dispensation from section 20 consultation requirements was made because:
 - 10.1 the time constraints imposed by the BSF Guidance did not allow for the delay which would be caused by consultation in accordance with the Act;
 - 10.2 given the first come first served availability of funding and the continuing risk to the Respondents in the event of a fire, the Applicant was anxious to lodge its funding request without delay;
 - 10.3 any of the Works which might be deemed by the BSF administrators to be outside the remediation work covered by available government funding would, unless chargeable to a third party, be payable by the leaseholders through the service charge.

11. In the event, the application for funding for that part of the Works relating to rendering the walls of the buildings was rejected by BSF. The Applicant lodged an appeal. The Tribunal has no current information as to the outcome of that appeal, nor whether or to what extent BSF has deemed the remainder of the Works eligible for funding, given more recent updates to the BSF Guidance.
12. It is therefore possible that all or part of the cost of the render work, if it is carried out, will be chargeable to the leaseholders under the service charge provisions of their leases, as will (a) any replacement to the decking of the balconies (which is not eligible for BSF funding) and (b) any of the other Works which are not accepted for funding by the BSF. The leaseholders should note that, provided they qualify, any contribution to these costs which might otherwise have been due from them under the terms of their leases will be subject to the provisions set out at Schedule 8 to the Building Safety Act 2022 and The Building Safety (Leaseholder Protections) (England) Regulations 2022 (the Contribution Limitations).

THE LAW

13. Section 20 of the Act and regulations made under that section set out the requirements for consultation in the event that work carried out at a property is expected to cost any leaseholder, through the service charge, more than £250. If those detailed requirements are not complied with, any leaseholder at the property can apply to the Tribunal for an order that his or her contribution to the cost of the work is limited to £250.
14. As indicated above, the consultation procedure is relatively lengthy, in that at both stages the landlord must allow at least 30 days for leaseholders to respond to his proposals.
15. Section 20ZA(1) states:

“ Where an application is made to the appropriate Tribunal for a determination to dispense with all or any of the consultation requirements in relation not any qualifying works the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

16. The leading case on section 20ZA applications is *Daejan Investments Ltd v Benson and others* (2013) UK SC14. The Supreme Court in that case provided guidance as to the correct approach to the grant or refusal of dispensation, and this can be summarised, for the purposes of this decision, as follows –
- (a) The requirements are not an end in themselves: they are intended to protect tenants from paying for inappropriate work or from paying more than would be appropriate;
 - (b) The Tribunal should therefore focus on whether the tenants will be prejudiced in either of these ways if the consultation is not carried out;
 - (c) The decision should not be affected by the financial consequences it might have on the landlord;
 - (d) If the tenants claim that they have suffered, or would suffer, some relevant prejudice, they must identify it. The landlord must then attempt to convince the Tribunal that dispensation is nevertheless appropriate;
 - (e) The Tribunal can grant dispensation on such reasonable terms as it thinks fit.
17. Section 20(C) states
- “(1) a tenant may make an application for an order that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings before [the Tribunal] are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant
- (3) the [Tribunal] may make such order on the application as it considers just and equitable in the circumstances.”
18. It follows from these statutory provisions that the only issues before the Tribunal currently are
- (a) whether it is reasonable to dispense with the section 20 consultation requirements. This does not involve deciding whether the landlord has acted reasonably, but only

whether the tenants will be prejudiced by the lack of consultation and cannot be adequately compensated; and

- (b) whether it is reasonable to prevent the landlord recovering the costs of this application from the leaseholders via the service charge.
19. Specifically, this Tribunal is not deciding whether the Works, or any of them, are or will be properly undertaken by the landlord, or whether the cost of them is reasonable, or whether the Works are or will be carried out to a reasonable standard. Those issues can be raised by any leaseholder at a later date, when and if the cost of any of the Works – or any of the fees and costs paid by the landlord in relation to the Works or to this application – is included in the service charge account. At that point an application to the Tribunal for a determination as to the amount and payability of the service charge can be made under section 27A of the Act.

DECISION

20. The Tribunal accepts that following the Grenfell disaster a new awareness of flammable materials and fire risks has arisen and needs to be addressed to ensure so far as possible the safety of those living in high rise buildings. The Tribunal also accepts that the perceived urgency in addressing these issues, together with the BSF procedures for applying for funding, rendered it impossible for the Applicant to consult in accordance with section 20 of the Act before proceeding on the basis of ESL's tender. The government has capped the total sum which may be demanded of some leaseholders as a contribution to remediation costs, but has not protected them entirely from large potential increases to their service charge accounts as a result of such works. It is therefore for the benefit of the Respondents that the Applicant has applied for BSF funding. In the event that work is carried out unnecessarily, the cost of it can be challenged by leaseholders under section 27A of the Act as indicated at paragraph 19 above. For these reasons, Dr Nomuoja's submissions are not accepted.
21. The Tribunal finds that there is no evidence that the leaseholders will be prejudiced by an order dispensing with compliance with the consultation procedure set out at section 20 of the Act and the regulations made under it. To the contrary, the actions of the Applicant which have rendered it impossible for them to follow that procedure are designed to make the building safer as soon as possible, and to save the

leaseholders from at least part of the contribution to the cost that they would otherwise be required to make under the service charge provisions in their leases.

22. The Applicant has taken steps to keep the Respondents informed of progress towards carrying out any necessary safety measures. It has set up an online

portal, and has engaged in email correspondence with the Barton & Masson GQ Cladding Action Group which represents a number of the Respondents. Meetings have been held at which information has been provided and questions have been answered. The permission given in this decision is subject to the Applicant continuing to provide the Respondents with all appropriate information in a timely and accessible way.

Judge A M Davies

12 September 2022