



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

Case reference : **MAN/00BY/LDC/2021/0086**

Property : **X1 The Terrace, 11 Plaza Boulevard,
Liverpool, L8 5RB**

Applicant : **Grey GR Limited Partnership**

Representative : **J B Leitch Limited**

Respondent : **Various Residential Long Leaseholders**

Representative : **(None)**

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

Tribunal member(s) : **Tribunal Judge L. F. McLean
Tribunal Member I. R. Harris MBE BSc
FRICS**

Date of determination : **12th December 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 : **14 December 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 works consisting of the installation of a Category L5 common fire alarm system at X1 The Terrace, 11 Plaza Boulevard, Liverpool, L8 5RB (“the Interim Works”).**
- (2) The Tribunal also grants unconditional dispensation from the Consultation Requirements in relation to the proposed works at X1 The Terrace, 11 Plaza Boulevard, Liverpool, L8 5RB which are described in the Applicant’s Statement of Case dated 1st December 2021 as being remedial fire safety works to the following areas:-**
 - a. Removal and replacement of the external wall systems**
 - b. Removal and replacement of combustible cladding**
 - c. Removal and repair or replacement of combustible balcony installations**
 - d. Removal and repair or replacement of any external wood elements**
- (3) The Tribunal does not grant dispensation from the Consultation Requirements in relation to the proposed works at X1 The Terrace, 11 Plaza Boulevard, Liverpool, L8 5RB which are described in the Applicant’s Statement of Case dated 1st December 2021 as being “any other works recommended by a Fire Engineer as necessary to ensure safety of the building”.**

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 works which have been undertaken and also in relation to proposed works.
2. The application is opposed by the following respondent lessees:-
 - a. CCH Commercial Properties
 - b. Stephen and Perrine Dobson
 - c. Stephen Reid
 - d. Rosh Joseph
 - e. Bibi Salimah Peerun
 - f. Hang Yee Ho
 - g. Dunstir Properties Ltd
 - h. Dr Leung Anthony Wing Chiu

Background

3. The Applicant is the registered proprietor of a long lease of the premises known as X1 The Terrace, 11 Plaza Boulevard, Liverpool, L8 5RB (“the Property”) made on 23rd June 2015 between X1 The Quarter Limited and X1 The Terrace Limited.
4. With the exception of CCH Commercial Properties, the Respondents are the various residential long leaseholders of the Property under sub-leases, of which the Applicant is the immediate landlord. It appears that CCH Commercial Properties was erroneously listed as a Respondent in the schedule attached to the Applicant’s original application form, as it is the tenant of a commercial space of the Property, such that the Landlord and Tenant Act 1985 does not apply to its lease. Accordingly, the Tribunal has not had regard to the views of CCH Commercial Properties in reaching this decision.
5. According to the Applicant’s statement of case, the Property comprises 7 storeys, including residential floors, and the height of the topmost storey exceeds 24 metres above ground level. The Tribunal has not inspected the Property in relation to this application.
6. The application stated that the Applicant had already instructed the carrying out of remedial fire safety works consisting of the installation of a Category L5 common fire alarm system at X1 The Terrace, 11 Plaza Boulevard, Liverpool, L8 5RB (“the Interim Works”).
7. The application stated that the Applicant also intends to carry out the following further remedial fire safety works to the Property:
 - a. Removal and replacement of the external wall systems
 - b. Removal and replacement of combustible cladding
 - c. Removal and repair or replacement of combustible balcony installations
 - d. Removal and repair or replacement of any external wood elements
 - e. Any other works recommended by a Fire Engineer as necessary to ensure safety of the building(“the Works”)
8. The likely cost of the Interim Works and the Works, as remitted through the Respondents’ leasehold service charge demands, would each 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 Applicant would be required to comply with the Consultation Requirements set out therein unless the Tribunal grants dispensation in relation to the same.
9. The Applicant submitted an application dated 1st December 2021. On 13th March 2022, the Tribunal issued directions to the parties for the Applicant to deliver its Statement of case within 14 days. The Respondents were given 21 days from receipt to indicate whether they objected and also to provide their statements of case in response. The Applicant was then given a further 14 days thereafter to prepare a digital bundle (including any further replies) and

send copies to all those Respondents who had indicated their intention to object. 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. Due to administrative issues with the posting out of the directions, they were not received by the Applicant's solicitors until 19th May 2022. The Tribunal therefore automatically extended the time for the Applicant to comply with the first steps to 14 days thereafter. All other timescales were already contingent on the others rather than being fixed in time.
11. Various Respondents replied and objected to the Application, as discussed in more detail below. The Applicant filed a Statement of Case in Reply dated 6th July 2022.
12. The members of the Tribunal considered the parties' written submissions and documents filed in support, by way of a telephone meeting held on 12th December 2022.

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 Interim Works were, and the Works are, required to be undertaken as soon as possible to ensure the health and safety of residents at the Property;
 - b. The Applicant obtained competitive quotes for the carrying out of the Interim Works;
 - c. The carrying out of the Interim Works would alleviate the need for and costs of a waking watch service to be provided;
 - d. The Works are eligible for government capital grant funding (through the Building Safety Fund or "BSF");
 - e. The Applicant is in any event unable to comply with the full extent of the Consultation Requirements because (1) it intends to procure the contract for the Works through a Design & Build procurement procedure, which the Applicant says is not well suited to the Consultation Requirements, and (2) only 1 contractor from the shortlist of 4 returned an estimate for the Works in any event;
 - f. 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;
 - g. The Applicant does not believe that non-compliance with the Consultation Requirements caused, or will cause, any prejudice to the Respondents.

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 Interim Works and/or 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 – Applicant

17. The Applicant relied on evidence which was included in the bundle of documents.
18. The Applicant’s Statement of Case indicates that that remedial works are required to the structure of the Property due to various defects and the presence of combustible materials which pose a risk of fire spread. An external wall assessment provided by Alan Brookes Consultants Ltd (“ABC”) dated 18th November 2020 identified various issues, including (but not limited to): installation of combustible insulation; omission of cavity barriers around openings (e.g. windows and doors); omission of cavity barriers at compartment boundaries and floor slabs; poor workmanship in the installation of cavity barriers; combustible timber decking and bearers on balconies; plastic duct passing through rainscreen cavity; incorrect fixing of vertical rails; and issues relating to the installation of Magnesium Oxide boards.
19. A further report by Jeremy Gardner Associates dated 12th February 2021 identified the following remediation issues:
- a. Combustible materials forming part of the external wall construction (including large quantities of Xtratherm R-Safe insulation achieving B-s1, do rating);

- b. Cavity barriers either missing from required locations or installed to an inadequate standard of workmanship.
20. The Applicant also referred to having applied for central government funding for the Works through the BSF which, if granted, could considerably reduce the cost of the Works to the Respondents.
21. 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 25th August 2020, to which the Applicant says it received no observations in response. The Applicant also says that its agent has provided updates in respect of the Works etc.

Evidence and Submissions – Respondents

22. The Respondents listed earlier in this Decision responded by email and in some instances provided a degree of evidential content in their written replies. One Respondent attached a copy of a service charge demand seeking £82,065.61 by way of service charges for the year 1st January to 31st December 2022. Another Respondent attached a copy of a letter dated 27th June 2022 from the Department for Levelling Up, Housing and Communities. The various grounds for objection are summarised below, as several of the Respondents shared similar concerns or raised similar objections.

Overall Comments on the Background to the Application

23. The members of the Tribunal who reviewed this application appreciate that they are not privy to the full background of the construction of the Property, the management of the Property since then, or of any potential actions taken or to be taken by the Applicant against any other persons or entities involved in the issues which led to this application being made. However, the Tribunal members are dismayed at the need for such extensive cladding and structural remediation works to be undertaken less than a decade after the Property was built. The Tribunal members feel sympathy with those Respondents who have expressed alarm at remediation costs being estimated (in 2021 prices) at over £8million and the Tribunal particularly notes that the remediation issues appear to stem largely from defective workmanship, defective design, or a combination of both.
24. The Tribunal reminds itself that the only issue for determination was whether (and to what extent) it is reasonable to dispense with the Consultation Requirements on these particular facts. Any decision to do so inherently does not amount to any kind of finding as to the amount that the Respondents should pay by way of service charge, if anything, and also does not amount to absolving the Applicant or any other person of any responsibility for the situation at hand.

Determination

Applicant's Compliance with Directions

25. Several of the Respondents complained that the Applicant had failed to comply with the direction of Judge Holbrook to send copies of the application and supporting documents within 14 days. Many of them expressed such a low opinion of the Applicant's managing agent that they assumed such delay to be deliberate and intended to prevent the Respondents from sending replies.
26. The Applicant and their agents are actually, at least in this respect, entirely blameless. The Applicant's solicitors arranged for payment of the application fee on 3rd February 2022 and, having heard nothing after that, emailed the Tribunal office on 6th April. As at 7th April, the Tribunal office had not yet been able to release the directions. The Applicant's solicitors chased again on 9th May and 19th May, and it emerged that there had been a problem with the post. The directions were re-issued by email on 19th May 2022 and the Tribunal extended the time for the Applicant to comply until 2nd June 2022. The email itself was sent to Respondents on 1st June, within the revised permitted timescale.
27. Many of the Respondents seemed to think that the time for them to provide their responses had already passed by this point. However, the directions provided for their responses within 21 days of receiving copies of the application, not within 21 days of the Applicant's timescale for sending it.
28. As such, the Tribunal finds that the criticisms of the Applicant in relation to compliance with directions were undeserved and irrelevant.

Other Grounds for Objections

29. The Respondents put forward various other grounds for objecting, including:-
 - a. There is no longer a deadline for applications to the BSF and so there is no reason not to comply with the Consultation Requirements;
 - b. The Applicant's agent were trying to disenfranchise the Respondents, and that many of the Respondents were unhappy with the quotes which had been obtained;
 - c. There was a conflict of interest involving the Applicant and its agent (although this was not explained or substantiated any further);
 - d. The costs are alarming, seem to be overpriced and require justification;
 - e. Many of the Respondents would struggle to afford the service charges;
 - f. Part of the Works appeared to be unnecessary (although this was not explained or substantiated any further);
 - g. Carrying out the Works would cause disruption to the Respondents;
 - h. Carrying out the Works should be paused until legislation has been passed which clarifies the liability of leaseholders to contribute towards cladding and other fire remediation works;
 - i. Other parties (developers, contractors etc.) should be held responsible for instead;

- j. Leaseholders have not been kept informed as to progress regarding the application to the BSF and if the BSF application is unsuccessful then the Respondents would have to pay the costs of the Works;
- k. It would be illegal for the Applicant to “limit” the Respondents or seek to impose charges associated with defective unsafe buildings;
- l. The Applicant’s agent had known about the problems for 2 years before seeking an “urgent” application.

Conclusions

30. The Tribunal is satisfied that the Applicant appears to have good reason to undertake both the Interim Works and the Works and to do so urgently.
31. The Applicant rightly concedes that the Interim Works and 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.
32. The Applicant has not satisfactorily explained why it could not in fact consult with the Respondents regarding the Interim Works. The Applicant says that the installation of an upgraded fire alarm system is urgent. The Tribunal has no doubt of that. However, quotes were first sought on 19th February 2021 and the analysis of these quotes was returned by Tuffin Ferraby Taylor LLP on 12th March 2021. By the time the dispensation application was made on 1st December 2021, over 8 months later, the Applicant stated that the Interim Works “have been instructed” but had not explained when those works actually commenced or how long they were likely to take to complete. It was therefore unclear to the Tribunal as to how complying with the Consultation Requirements in relation to the Interim Works could not be completed within that time period. However, for the reasons set out below, this is not the only factor to bear in mind. The Tribunal also noted that competitive quotes had nonetheless been sought and that the three proposals were broadly similar in amount.
33. The Tribunal also considered the related issue of the overall urgency of the Works, aside from the Interim Works. It did appear that there were some periods of time when the Applicant or its agent might have accelerated this application to the Tribunal in view of the urgency of the situation. In particular, Tuffin Farraby Taylor provided its tender report on the Works on 5th March 2021 and it is not clear why this application for dispensation was not then made until 1st December. The urgency of the Works is not therefore a pressing reason for granting dispensation from the Consultation Requirements.
34. In relation to the Works, the Tribunal is satisfied by the Applicant’s evidence and submissions that it would find compliance with the Consultation Requirements difficult and impractical.
35. In relation to the Applicant having sought funding from the BSF for the Works, 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. Accordingly, the Tribunal has paid little regard to arguments advanced by the Applicant or the Respondents on that issue.

36. In relation to the Works, the Tribunal places more emphasis on the fact that the Applicant's Statement of Case sets out that it will use a "Design and Build" procurement process, which is inherently unsuited to the Consultation Requirements. 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 undermines the process envisaged by 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.
37. Additionally, the adoption of a Design and Build process also meant that the Applicant adopted a "closed list" approach to potential contractors, asking only four companies to submit proposals. Again, no Respondent has challenged that approach. Only one company responded, meaning that it would have been impossible to comply with the second stage of the Consultation Requirements, where at least two proposals must be put forward. No Respondent has suggested that the Applicant could have taken a different approach to obtain at least two proposals.
38. The Tribunal was unable to consider whether there was a conflict of interest between the Applicant and its agent in relation to the Works, as this was not explained by the Respondent who alleged it.
39. The Tribunal was also unable to consider whether some elements of the Works were unnecessary, as this also was not explained by the Respondent who alleged it.
40. The fact that the Works may cause disruption to the Respondents or other occupants is not relevant to the Consultation Requirements. It appears to be necessary to carry out the Interim Works and the Works and so some disruption is likely to be inevitable, regardless of whether the Consultation Requirements have or have not been complied with. The Respondent in question did not suggest that complying with the Consultation Requirements would enable them to put forward an alternative scheme of works which would be less disruptive.
41. The Tribunal also paid no regard to concerns around whether the cost of the Works should (or even could) be recovered from the Respondent or alternatively from other sources such as the original builders of the Property, even in light of the correspondence from DfLUHC. Again, this is not relevant to the Consultation Requirements as the Interim Works and the Works are necessary in any event. It would also have been impractical and unwise for the Applicant to have awaited the outcome of the legislative process for the

Building Safety Act 2022, as the legislation could have been amended or even put on hold indefinitely at any point.

42. Most of the Respondents raised concerns relating ultimately to their ability to afford the ensuing service charges. These concerns are perfectly 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).
43. 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. The Tribunal appreciates that the Respondents would face significant challenges in devising an alternative strategy to that of the Applicant, given that the Applicant is likely to have significantly greater expertise and/or resources to call upon, let alone legal responsibilities, when formulating its response to the fire safety issues; but such is often the nature of complex structural works.
44. The same consideration applies to the Interim Works, so the Tribunal considers that the Respondents have not been able to establish what specific prejudice they have suffered due to the Applicant's non-compliance with the Consultation Requirements for the Interim Works.
45. Additionally, the Tribunal members do not themselves discern any particular or obvious prejudice beyond what the Respondents have said already. The only observation that the Tribunal considered necessary to make, aside from those raised by the Respondents, was that the Tribunal were deeply uncomfortable with the request for dispensation from "*any other works recommended by a Fire Engineer as necessary to ensure safety of the building*". Whilst the Tribunal are confident that this was meant to be a well-intentioned sweeping-up provision, it is unfortunately too widely drawn and imprecise. It could easily be abused so as to trammel through a host of additional proposed works for an indefinite period of time, which might be only very loosely connected to the original issues, and on the mere approval of a person holding themselves out as a "fire engineer". The Tribunal considers that elements (a) to (d) inclusive are already sufficiently wide to encompass anything which is inherently comprised within the Works themselves. Whilst the Applicant has mentioned that the scope of works might need to be adjusted, the Tribunal would observe in response that if the scope of works is changed significantly then the Applicant might need either to comply with the Consultation Requirements in relation to the revised works or else seek a

further dispensation. It would not be fair to the Respondents for the Tribunal to give total carte blanche to the Applicant to do whatever it wanted.

46. Accordingly, the Tribunal determines that it is reasonable to grant dispensation from the Consultation Requirements in respect of the Interim Works, and also in respect of the Works except for element (e) “any other works recommended by a Fire Engineer as necessary to ensure safety of the building”.
47. 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 Interim Works and/or the Works are reasonably incurred and/or that the Interim Works and/or the Works are of a reasonable standard.

Name:
Tribunal Judge L. F. McLean
Tribunal Member I. R. Harris MBE
BSc FRICS

Date: 14 December 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).