

12746



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

**Case Reference** : MAN/00BN/LDC/2018/0005

**Property** : The Cube, 2 Advent Way,  
Manchester M4 7LH

**Applicant** : GRIF039 Ltd  
**Applicant's representative** : Braemar Estates

**Respondents** : The long leaseholders of the Property  
(see Annex)

**Type of Application** : Landlord and Tenant Act 1985  
- section 20ZA

**Tribunal Members** : Deputy Regional Valuer N Walsh  
Regional Judge S Duffy

**Date and venue of Hearing** : Determined without a hearing

**Date of Decision** : 10 April 2018

---

**DECISION**

---

© CROWN COPYRIGHT 2018

## DECISION

**Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the 'waking watch', the installation of an upgraded fire alarm system and associated safety consultant fees.**

## REASONS

### Background

1. On 9 February 2018 an application was made to the First-tier Tribunal (Property Chamber) ("the Tribunal") under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") for a determination to dispense with the consultation requirements of section 20 of the Act. Those 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 GRIF039 Ltd, the freehold owner of The Cube, 2 Advent Way, Manchester M4 7LH ("the Property"). The Applicant is the current landlord under the leases granted to the long leaseholders of the residential apartments. The Respondents to the application are the long leaseholders of those apartments. A list of the Respondents is set out in the Annex hereto.
3. The Property is a seven-storey residential building, which accommodates 35 residential apartments. The lower ground floor comprises an under-croft car park, refuse stores and plant rooms. The upper ground floor contains 5 apartments, with 6 apartments on each of the remaining 5 floors and all accessed via a single central stairway.
4. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
5. The works in respect of which a dispensation is sought concern the installation of an improved fire safety alarm system to integrate with and to bolster existing fire protection measures, the provision of a 'waking watch' and the related costs of fire safety consultants.
6. The Greater Manchester Fire and Rescue Service (GMFRS) served an enforcement notice, dated 25 November 2016, on the Applicant as the Responsible Person under the Regulatory Reform (Fire Safety) Order 2005. The enforcement notice detailed the reasons for the compliance failures as being that:
  - a) The Fire Safety Risk Assessment was not suitable and sufficient for the property, and;
  - b) The escape routes and exits could not be used as quickly and as safely as possible.

7. The enforcement notice advised that unless the steps specified in the notice were completed by 1<sup>st</sup> March 2017, GMFRS may consider bringing a prosecution against the Applicant. The Applicant subsequently applied for extensions to the time specified in the original and subsequent enforcement notices, which were granted by the GMFRS in letters dated 7 February 2017 and 21 December 2017 with the final date for compliance being set at 22 February 2018. We are informed by the Applicant that a 'waking watch' "had to be put on immediately". The Tribunal has not been informed exactly when this was but evidently this must pre-date the date of the application and we presume shortly after the date of the initial enforcement notice. A report dated 21 February 2018, titled 'External Wall Construction, Fire Engineering Assessment' has now also been completed by the Design Fire Consultants (DFC). The conclusions of this report will be discussed later in this decision.
8. On 22 February 2018, the Tribunal issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received and the Tribunal therefore convened on the date of this decision to consider the application in the absence of the parties. In response to directions, the Applicant's submitted copies of its correspondence to the leaseholders and other documentary evidence in support of the application. Copies of these were provided to each Respondent. No representations or submissions were received from any of the Respondents.
9. The Tribunal did not inspect the Property.

### **Grounds for the application**

10. The Applicant has not provided a statement of case as such, or particularised its case in detail. Instead, as outlined above, it has submitted copies of its correspondence with the leaseholders on this matter, together with other pertinent documents and largely relied upon the information contained within its application.
11. The Applicant's case is that following an alleged arson attack on a car within the under-croft car park, GMFRS served an enforcement notice on 25 November 2016 because of concerns about the combustibility of the external cladding and the consequential risk of the fire spreading quickly across and within the building. As a result, the Applicant asserts that it was required to undertake the interim mitigating action of implementing a 'waking watch' patrol. The Tribunal has not been informed of the date when the 'waking watch' commenced, what this comprised of or its cost.
12. The Applicant advises that as a result of GMFRS's concerns in relation to the cladding, it was also required to undertake a "Fire Engineering Risk Assessment". This appears to be the report undertaken by DFC, which was completed on 21 February 2018, some 15 months after the original enforcement notice.

13. DFC's report details two potential options which would mitigate the risks identified. Namely, the replacement of the cladding or providing the means to be able to effect a simultaneous evacuation of the building. DFC's recommendation was to install an automatic fire detection and alarm system, the specification of which it details in its report, as well as making additional recommendations in relation to the improving the fire resistance of the podium and informing the occupants of the new evacuation procedure. It is not clear to the Tribunal to what extent the proposed works meet the DFC's recommendations and the specifications detailed for the new alarm system.
14. The Applicant's case is principally that it is more cost effective to provide an upgraded fire alarm system rather than continuing to incur the, presumably, higher ongoing cost of providing a 'waking watch' patrol. The Applicant contends, through the DFC report, that it is necessary to undertake these works to adequately protect the occupants of the Property and the Property itself in the most cost-effective manner possible. The Applicant therefore wishes to proceed with these fire safety works as soon as possible. It asks the Tribunal to grant a dispensation for these works in order to avoid the additional delay and expense that compliance with the consultation requirements would entail. Additionally, the Applicant is also seeking a dispensation from the Tribunal in respect of the cost of providing a 'waking watch' patrol and for the consultant fees incurred.

## Law

15. 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.*

16. 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.*

17. "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 on 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).

18. 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.*

19. 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**

20. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the Section 20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about 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.

21. 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.

22. It follows that, for the Tribunal to decide to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed. In considering whether or not it is reasonable to do so, the Tribunal must consider the prejudice that would be caused to tenants by not undertaking the 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.
23. In the present case, it is clear that after being served with an enforcement notice by GMFRS the Applicant needed to put in place some form of additional fire safety measures to ensure the safety of the Property and its occupants. The Applicant decided to implement a 'waking watch' to ensure that escape routes and exits from the building could be used as quickly and safely as possible. Once implemented this, the Tribunal presumes, has satisfied this particular aspect of non-compliance detailed in the various enforcement notices.
24. While the Tribunal has not been supplied with details as to the costings of the 'waking watch' patrol, the Applicant asserts that providing this service on an ongoing basis would cost significantly more than installing the proposed automated fire detection and alarm system. This would seem likely from the experience of this Tribunal. The Applicant has obtained 3 quotations for these works and has instructed the supplier who provided the lowest quotation to complete the works. The cost is estimated to be £19,760.81 excluding VAT.
25. Given the Applicant's assertion that these works will produce significant savings has not been challenged by the Respondents and the fact that there is no dispute that additional fire safety protection measures are necessary, the Tribunal finds that it is reasonable for these works to proceed without the Applicant first complying with the Section 20 consultation requirements. The balance of prejudice favours permitting such works to proceed without delay.
26. The Applicant is also seeking a dispensation in respect of the 'waking watch' patrol and the consultant services incurred to date. The Tribunal first needs to consider if these services are 'qualifying works' to which the provisions of S20 of the 1985 Act and the 2003 Regulations apply. The Tribunal finds that the fire patrols and consultant services procured were an essential element of the fire safety works. They are not a separate service but an integral component of the safety works scheme.
27. There is no dispute that additional fire safety protection measures are necessary to meet acceptable health and safety standards for the occupiers of the property. We therefore have no hesitation in granting a dispensation in respect of the 'waking watch' patrol and the fire consultant services incurred which culminated in DFC's report.

28. In deciding to grant dispensation, we have had regard to the fact that no objections were raised by the Respondent leaseholders.
29. **We would however emphasise the fact that the Tribunal has solely determined the matter of whether or not it is reasonable to grant dispensation from the consultation requirements. This decision should not be taken as an indication that we consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard.**

10 April 2018  
Deputy Regional Valuer N Walsh

## Annex

### List of Respondents

Ravello Investments Ltd	Mr AJ Redgrave
Dr Kamal & Mrs Sabine	Mr KCB Cheung
Mr RA Pollard	Mr MJ Baldwin & Ms KA Richards
Solid Growth Ltd	Mr DJV Carter
Mr IC Woodward	Mr J & Mrs M Navaratnam
Ms Malak	Mr CA Lewis & Mr AH Lewis
Ms CA Moran	Miss PT Teng
Esprit Management Co Ltd	Mr & Mrs Moran
Mr J Sanni	Ms BR Thomas
Mr T Gong	Mr JT Neville
Mr D Atkinson	Mr JA Schacter
Ms L Liu	Nr NJ Atkinson
Mr & Mrs Stewart	Mr M Han
Mr & Mrs Gaskell	Miss AH Russell
Mr A Soe	Ms S Horsley
Mr NM Webster	



## First-tier Tribunal, Property Chamber Residential Property

### GUIDANCE ON APPEAL

- 1) An appeal to the Upper Tribunal against a decision of a First-tier Tribunal (Property Chamber) can be pursued only if **permission to appeal** has been given. Permission must initially be sought from the First-tier Tribunal. If you are refused permission to appeal by the First-tier Tribunal then you may go on to ask for permission from the Upper Tribunal (Lands Chamber).
- 2) An application to the First-Tier Tribunal for permission to appeal must be made **so that it is received by the Tribunal within 28 days after the date on which the Tribunal sends its reasons for the decision.**
- 3) If made after the 28 days, the application for permission may include a request for an extension of time with the reason why it was not made within time. Unless the application is made in time or within granted extended time, the tribunal must reject the application and refuse permission.
- 4) You must apply for the permission **in writing**, and you must:
  - identify the case by giving the address of the property concerned and the Tribunal's reference number;
  - give the name and address of the applicant and any representative;
  - give the name and address of every respondent and any representative
  - identify the decision or the part of the decision that you want to appeal;
  - state the grounds of appeal and state the result that you are seeking;
  - sign and date the application
  - send a copy of the application to the other party/parties and in the application record that this has been done

The tribunal may give permission on limited grounds.

- 5) When the tribunal receives the application for permission, the tribunal will first consider whether to review the decision. In doing so, it will take into account the overriding objective of dealing with cases fairly and justly; but it cannot review the decision unless it is satisfied that a ground of appeal is likely to be successful.
- 6) On a review the tribunal can
  - correct accidental errors in the decision or in a record of the decision;
  - amend the reasons given for the decision;
  - set aside and re-decide the decision or refer the matter to the Upper Tribunal;
  - decide to take no action in relation to the decision.

If it decides not to review the decision or, upon review, to take no action, the tribunal will then decide whether to give permission to appeal.

- 7) The Tribunal will give the parties written notification of its decision. **If permission to appeal to the Upper Tribunal (Lands Chamber) is granted**, the applicant's notice of intention to appeal must be sent to the registrar of the Upper Tribunal (Lands Chamber) so that it is received by the registrar within **28 days** of the date on which notice of the grant of permission was sent to the parties.
- 8) **If the application to the Property Chamber for permission to appeal is refused**, an application for permission to appeal may be made to the Upper Tribunal. An application to the Upper Tribunal (Lands Chamber) for permission must be made within **14 days** of the date on which you were sent the refusal of permission by the First-tier Tribunal.
- 9) The tribunal can **suspend the effect of its own decision**. If you want to apply for a stay of the implementation of the whole or part of a decision pending the outcome of an appeal, you must make the application for the stay at the same time as applying for permission to appeal and must include reasons for the stay. You must give notice of the application to stay to the other parties.

**These notes are for guidance only. Full details of the relevant procedural provisions are mainly in:**

- the Tribunals, Courts and Enforcement Act 2007;
- the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
- The Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010.

You can get these from the Property Chamber or Lands Chamber web pages or from the Government's official website for legislation or you can buy them from HMSO.

*The Upper Tribunal (Lands Chamber) may be contacted at:*

*5<sup>th</sup> Floor, Rolls Building, 7 Rolls Buildings  
Fetter Lane, London EC4A 1NL*

*Tel: 0207 612 9710*

*Goldfax: 0870 761 7751*

*Email: [lands@hmcts.gsi.gov.uk](mailto:lands@hmcts.gsi.gov.uk)*

The Upper Tribunal (Lands Chamber) form (T601 or T602), Explanatory leaflet and information regarding fees can be found on [www.justice.gov.uk/tribunals/lands](http://www.justice.gov.uk/tribunals/lands).