



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

Case References : **BIR/00FY/LDC/2021/0020P**

Property : **The Point Building, 14, Plumtre Street
Nottingham NG1 1JP**

Applicants : **The Point Building RTM Limited**

**Applicants
Representative** : **J B Leitch Solicitors**

Respondent 1. : **The Long Leaseholders
Point Apartments**

Respondent 2. : **Proxima GR Properties Limited**

**Respondents'
Representatives** : **None**

Applications : **Application under s20ZA Landlord and
Tenant Act 1985 for dispensation of the
Consultation requirements in respect of
Qualifying works**

Tribunal : **Tribunal Judge Peter Ellis
Regional Surveyor Vernon Ward BSc FRICS**

Date of Hearing : **5 November 2021**

Date of Decision : **10 November 2021**

DECISION

Upon considering the application, the Tribunal is satisfied it is reasonable to dispense with the consultation requirements of s20 Landlord and Tenant Act 1985 in respect of work described in the application.

Introduction

1. This is an unopposed application to dispense with all or any of the consultation requirements in relation to qualifying works associated with remediation of The Point Building 14 Plumtre Street Nottingham (the Property) to remove unsafe cladding identified as a health and safety hazard by reason of the risk of fire. The application relates to works necessary to remove cladding arising from the decision by the UK government to remove all unsafe cladding from buildings above 18 metres following the Grenfell fire tragedy.
2. The Applicant is The Point Building RTM Limited. The Respondents are the long leaseholders and Proxima GR Limited, the freeholders of the Property. The leaseholders are named in the schedule attached to this Decision. They have been served with the application in accordance with Directions given by the Tribunal.
3. The application was issued on 15 September 2021. Directions for service of the application on the long leaseholders and the service of evidence were given on 24 September 2021. As none of the parties requested an oral hearing the Tribunal directed the matter be listed for determination on the papers and without an inspection. This Decision was made after the Tribunal met in a CVP video conference call.
4. The Applicant served its Statement of Case together with supporting documents in accordance with Directions. No objections or submissions were made by any of the Respondents. Factual matters noted in this Decision are based upon the evidence of the Applicant.

The Property and the leases

5. The Tribunal has not carried out an inspection the property however from the information provided, The Point Building is a residential development situated in the Lace Market district of central Nottingham. It consists of ground and five

upper floor levels comprising 39 residential apartments. The external façade consists predominantly of masonry cavity construction. The apartments are subject to long residential leases all granted on similar terms.

6. The Tribunal was supplied with one sample lease. The Tribunal is satisfied that the relevant terms of the lease (Schedule 6 cl 5) impose on the landlord an obligation to *“keep the external parts of the Building comprised in the Maintained Property in good and substantial repair order and condition and renewing and replacing all worn or damaged parts”*. The Building and Maintained Property are defined terms describing the Property and the usual component parts. In return the leaseholders are obliged to pay service charges for the provision of the landlord’s services in discharge of its obligations (clause 3).

The Works

7. The Applicant was made aware that works were required to the Property relating to the construction of the external wall system which comprised of combustible material posing a risk of fire spread. Property services and consultancy company Keegans Group (Keegans) were instructed to carry out an inspection and desk top evaluation to complete RICS EWS 1 form. Their updated and revised report was submitted on 24 February 2021. A copy of the report was exhibited to the Applicant’s Statement of Case. It recommended removal of all combustible foam type insulation from external walls where aluminium cladding is located then replacing it with suitable non-combustible alternative. In addition, horizontal fire barriers were required to be retro-fitted to the brickwork cladding system within the vertical space between large floor to ceiling windows on the North and South elevation. Further work was recommended to the cavity barriers and also to the external wall additions. The report then advised the appointment of a professional design team to develop a works package of remedial actions to address the matters identified.
8. In response to the advice the Applicant appointed Tri-Fire Limited to undertake a fire safety review of the Property. Their report was received on 12 January 2021. The Tribunal notes the report was received before the final report of Keegans but as their report is described as a final revised report the Tribunal presumes the two

companies were working at the same time in response to instructions from the Applicants.

9. No issue arises from the dates of delivery of the reports. Both were presented to the Tribunal. Both are concerned that fire safety remediation work is required. Acting on the advice of the reports the Applicant decided to carry out work the cost of which would ordinarily require consultation with the leaseholders.

10. The work required involved significant intervention to the Property. The list of works was included in a Notice of Intention issued by Encore the Applicant's management agent on 9 November 2020. A specification was prepared but the Applicant asserts that due to the scale of the required work the specification may change prior to commencement of the project. The Applicant intends to proceed with a design and build contract in which a main supervision consultant (Keegans) is appointed to facilitate the design and construction of the works.

The Building Safety Fund

11. The Applicant made an application to the Building Safety Fund (BSF) for payment of the full cost of applicable remedial works. It asserts the application for payment by the BSF is in the interests of the Respondents.

12. The BSF required a full costs application by 30 June 2021. The full works and costs were submitted to the BSF based upon the cheapest tender (of three obtained) following an invitation to tender process which is fully described in the Applicant's Statement of Case. On 26 August 2021 the Applicant received confirmation that the full cost of works in the sum of £595,611.32 (including VAT) had been approved. Works to timber decking and the provision of Neatdek aluminium decking to external balcony and replacement of floor level cavity barriers were not deemed to be eligible but remain part of the work to be carried out at the Property. The cost of these works, which will fall to the Respondent leaseholders was stated as being approximately £24,879 plus contingency.

Consultation

13. The Applicant asserts that the design and build consultation method of delivering the works is in the interests of the Respondents. The offer letter from the BSF requires that the Applicant “proceeds at pace” to undertake the work. It also requires that the leaseholders are kept fully informed of the works and progress in their delivery. The requirements of s20 Landlord and Tenant Act 1985 (the Act) will inhibit delivery.
14. The Applicant started the consultation process by issue Stage 1 notifications but having secured the BSF grant, the Applicant wishes to undertake the work in accordance with the guidance and requirements of the BSF. Also, the JCT Design and Build method of procurement does not comply with s20 requirements as a lead consultant has been appointed by the Applicant to coordinate the work.
15. In addition, the Applicant asserts the Respondents will suffer no prejudice in proceeding in the way proposed. The application process required the Applicant to obtain quotes for specified work and the Applicant proposes to use the cheapest tender secured in that process. The majority of the cost of the works will be covered by the BSF grant.

The Statutory Framework

16. S20(1) of the Act limits the relevant contributions of tenants 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 an appeal from) the appropriate TribunalAnd subsection 3 provides that s20 applies to qualifying works if the relevant costs in carrying out the works exceed an appropriate amount.
17. S27ZA of the Act provides in so far as relevant:

“(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,

18. By regulation 6 of Service Charge (Consultation Requirements)(England) Regulations the appropriate amount (as referred to in s20 of the Act) is an amount which results in the relevant annual contribution of any tenant being more than £250.00.

Decision

19. In *Aster Communities v Chapman & Others [2021] EWCA Civ 660*, Lord Justice Newey referred to the Supreme Court Decision in *Daejan Properties Limited v Benson [2013] UKSC 14* and the decision of Lord Neuberger when directing how to decide applications for dispensation in these terms: “The “main, indeed normally, the sole question” when considering whether to dispense with consultation requirements was whether there was “real prejudice to the tenants flowing from the landlord’s breach of the requirements” (paragraph 50). Lord Neuberger said in paragraphs 44 and 45: “Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT [i.e. the leasehold valuation Tribunal] should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.
45 Thus, in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the landlord’s failure to comply with the requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be—ie as if the requirements had been complied with.”

20. The Tribunal respectfully considers that the decision of Lord Justice Newey applying the decision of Lord Neuberger in *Daejan Properties v Benson* is that there is a presumption that dispensation will be given (on terms if considered appropriate) unless the leaseholders are likely to suffer prejudice.

21. In this case the leaseholders have not objected to the work required. However, the lack of a response by the leaseholders is not of itself determinative of the issue of prejudice or whether or not it is reasonable to dispense with the consultation requirements.
22. The Applicant has supplied a full and detailed description of the work required to remedy the problem with the safety of cladding presently in use at the Property. The Tribunal has seen the reports obtained by the Applicant, the letter from the BSF offering a grant and all other relevant correspondence justifying its decision to make this application. The Tribunal is satisfied it is reasonable to dispense with the consultation requirements in this case. The lack of any suggestion from the Respondents that they are prejudiced by this application is noted when making this Decision.
23. Accordingly, the Tribunal grants the dispensation requested under Section 20ZA and determines accordingly.
24. The parties will realise that this application is restricted to the issue of whether or not it is reasonable to dispense with consultation requirements. The issue of the reasonableness and payability of the cost of works is a matter which may be the subject of other applications.

Appeal

25. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Tribunal Judge P J Ellis