



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

Case Reference	:	LON/00AG/LDC/2021/0201 P: PAPERREMOTE
Property	:	The Henson Building, 30 Oval Road, London NW1 7BE
Applicant	:	Abacus Land 4 Limited
Representative	:	J B Leitch Limited
Respondents	:	The leaseholders listed in the schedule to the application
Representative	:	Unrepresented
Type of Application	:	Section 20ZA Landlord and Tenant Act 1985 Dispensation with consultation requirements
Tribunal member(s)	:	Judge Donegan Mr M Taylor MRICS (Valuer Member)
Date of Paper Determination	:	22 September 2021
Date of Decision	:	22 September 2021

DECISION

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 279 pages, the contents of which I have noted.

Decision of the Tribunal

- (a) The Tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') for proposed fire remediation works to the external wall system at the Henson Building, 30 Oval Road, London NW1 7BE ('the Property').**
- (b) No terms are imposed on the grant of dispensation.**
- (c) The applicant shall send a copy of this decision to each of the respondents, either by email, hand delivery or first-class post and shall send an email to the Tribunal by 30 September 2021, confirming the date(s) when this was done.**

The application

1. The applicant seeks dispensation from the consultation requirements imposed by section 20 of the 1985 Act.
2. The application was submitted on 04 August 2021 and directions were issued on 10 August. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 22 September 2021.
3. The relevant legal provisions are set out in the appendix to this decision.

The background

4. The Property comprises two joined blocks of purpose-built flats and commercial/retail units over six floors. It is constructed around a concrete frame, with areas of both retained brick and new brick and timber façade/construction, and insulated render (balconies and enclosed areas) and curtain walling. There are 76 residential units; 30 of which are held on a head-lease by One Housing Group Limited ('OHGL'). The applicant holds a head-lease of the remaining 46. The respondents are the underlessees of these units plus OHGL.
5. The applicant seeks dispensation from the statutory consultation requirements for proposed works to the external wall system, which contains combustible materials and poses a risk of fire spread. The applicant relies on a report from Michael A Fox Limited ('MAF') dated 04 May 2020, which recommends various options to mitigate this risk including:

- (i) Replacement and removal of vertical connections in the façade system;
 - (ii) Removal of combustible façade cladding/insulation near the base of the Property;
 - (iii) Removal of combustible façade cladding/insulation in the vicinity of ignition sources; and
 - (iv) Replacement of the combustible cladding and/or insulation system in its entirety.
6. Specifications for the works have been obtained from Harris Associates. A design-and-build procurement route is intended for the following works ('the Works'):
- (i) Render courtyard remediation works – the insulated render to the courtyard facades and balcony enclosing envelopes is to be removed along with the combustible EPS insulation behind the render. Non-combustible insulation will be installed in its place along with a new rendered finish.
 - (ii) Ground level vertical timber cladding remediation works – all vertical timber cladding and support framing is to be removed and replaced with a new non-combustible cladding alternative.
 - (iii) Balcony remediation works – all timber decking and support framing is to be removed and replaced with a new non-combustible decking. The timber decking within the courtyard is also to be replaced. Similarly, all balcony timber soffit cladding panels and framing are to be removed and replaced with a non-combustible alternative.
 - (iv) Entrance canopy soffit remediation works – all timber soffit cladding panels and support framing is to be removed and replaced with a non-combustible alternative product; and
 - (v) Other related works to improve the fire safety of the Property.
7. The estimated cost of the Works is £2,055,929.00 (including tender adjustments) but excluding professional fees and VAT which will be charged in addition. This is the lower of two tenders received (from the invited six), from JWP Osprey. The applicant attributes the difficulty in obtaining tenders to the pressures industry-wide on professionals endeavouring to meet the Ministry of Housing Communities and Local Government ('MHCLG') timescales for the Building Safety Fund ('BSF'). The Property has been registered with the BSF, and an initial decision is awaited. The applicant accepts that there are elements of the work that will be ineligible, but until the application is approved it will not know the proportion. No indication has been given by the BSF when that might occur. The BSF requires the works to commence by 30 September 2021, and therefore this application is urgent. Although there is scope

on a case-by-case basis for the MHCLG to extend that date, it is not known at this stage whether that discretion might be exercised if the works start later. Urgency also arises from the risk to the health and safety to residents.

8. The applicant sent a stage 1 notice of intention letter to all respondents on 11 February 2021. One leaseholder response was received, querying whether a special levy would be needed for the costs. The applicant is unable able to answer that question at present, due to the ongoing BSF application. A stage 2 statement of estimates was sent to all respondents on 18 March 2021, notifying them of the applicant's intention to proceed with the JWP Osprey quotation.
9. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

The grounds of the application

10. The grounds are set out in a detailed statement of case dated 04 August 2021 and can be summarised as follows:
 - (a) The Works are urgent. They must start by 30 September 2021 to satisfy the BSF deadline. Further, there are health and safety risks due to the combustible material in the wall system.
 - (b) The applicant has complied with the spirit of the section 20 consultation requirements. However, the design-and-build procurement route does not satisfy the strict requirements.
 - (c) If the scope of the Works changes, there will be insufficient time to complete a new consultation before 30 September 2021.
 - (d) There is no prejudice to the respondents. The applicant is complying with the BSF requirements and is seeking government funding for a proportion of the cost of the Works. Further, it has engaged with the leaseholders and has complied with section 20, as far as practicable.
 - (e) If dispensation is refused, the applicant may be unable to secure funding from the BSF, in which case the full cost of the Works will be payable by the leaseholders (via their service charges).
11. Paragraph 2 of the directions gave the respondents an opportunity to object to the dispensation application by completing and returning reply forms and serving statements, setting out their grounds of opposition. Only two forms were returned: one for Flat 3 and one for

Flat 46. The underlessee of Flat 3, Vai Lou, did not give any grounds for opposing the application or serve a statement.

12. The underlessee of Flat 46, Boris Ivesha, provided grounds of opposition in a letter dated 24 August 2021. In brief these are:
 - (a) The quotations are disproportionate, given the scope of the proposed work.
 - (b) He requires an opportunity to study and comment on the quotes.
 - (c) He requires additional time to consider the MAF report and seek a second opinion.
 - (d) He is not resident in the UK and did not receive the section 20 notices in time to submit alternative quotes or make observations.
13. The applicant responded to these grounds in a reply dated 03 September 2021. In brief they contend:
 - (a) Mr Ivesha has not produced any evidence the quotations are disproportionate or demonstrated any financial prejudice.
 - (b) Mr Ivesha has not requested an extension to study and comment on the quotes.
 - (c) There is no evidence of Mr Ivesha's attempts to obtain a second opinion.
 - (d) Mr Ivesha has not said when he received the section 20 notices, which were served at the address given to the managing agents.

The Tribunal's decision

14. The Tribunal grants prospective dispensation for the Works. No terms are imposed on the grant of dispensation.

Reasons for the tribunal's decision

15. The Tribunal accepts that the Works are necessary and urgent, given the contents of the MAF report, the BSF deadline (30 September 2021) and the health and safety risk to residents. The design-and-build procurement route does not satisfy the strict section 20 consultation requirements. However, the applicant has complied with the spirit of these requirements and engaged with the leaseholders.

16. Only two leaseholders have opposed the dispensation application and the only grounds of opposition are those given by Mr Iveshas. He has not identified any prejudice that might arise from the grant of dispensation or proposed any terms as a condition of granting dispensation. Further, he has already had ample time to consider the MAF report and seek a second opinion on the scope of the Works.
17. Having regard to the particular facts of this case and the guidance in *Daejan Investments Limited v Benson [2013] UKSC 14*, it is reasonable to dispense with the strict consultation requirements.
18. This decision does not address the cost of the Works, or whether the respondents are liable to contribute to the cost via their service charges. Nothing in this decision prevents the respondents from seeking a determination of 'payability', pursuant to section 27A of the 1985 Act. It would be sensible to defer any section 27A application until the outcome of the BSF application is known.

Name: Tribunal Judge Donegan **Date:** 22 September 2021

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (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.]

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of 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.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which –
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or

- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.