



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

**Case Reference** : **MAN/00BN/LDC/2021/0030**

**Property** : **The Bauhaus  
2 Little John Street  
Manchester  
M3 4GZ**

**Applicant** : **Registration Nominees Limited**

**Representative** : **Property Management Legal  
Services Limited**

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

**Representative** : **N/A**

**Type of Application** : **For dispensation of the statutory  
consultation requirements:  
Landlord and Tenant Act 1985  
- section 20ZA**

**Tribunal Member** : **Judge J Holbrook**

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

**Date of Decision** : **25 November 2021**

**Date of Determination** : **30 November 2021**

**DECISION**

## DECISION

**Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to the fire safety works described in paragraph 4 of the following reasons.**

## REASONS

### Background

1. On 23 April 2021, 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 by Registration Nominees Limited and relates to premises known as The Bauhaus, 2 Little John Street, Manchester M3 4GZ (“the Property”). The Applicant owns the head-leasehold interest in the Property and is the landlord under the long leases of the residential apartments within it. 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 only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern the following fire safety works to the Property:
  - a) Fire stopping and compartmentation works to be implemented in two phases: phase 1 will address identified fire stopping issues with the lift riser cupboards; phase 2 will address similar issues with the other risers.
  - b) Installation of a fire detection and alarm system.
5. Each of the Respondents has been given notice of the application and has been sent a copy of the Applicant’s supporting evidence. Two Respondents have submitted responses to the application, and I consider the content of those responses below.
6. I have determined this matter following a consideration of the Applicant’s case and of the responses received, but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits a case to be dealt with in this manner provided that the parties give their consent (or do not object

when a paper determination is proposed). In this case, the Applicant has given its consent and the Respondents have not objected. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing: although the Respondents are not legally represented, the issues to be decided are readily apparent, as are the parties' respective positions. Determining this matter does not require me to decide disputed questions of fact.

7. I should mention the delay in progressing this matter. As mentioned, the application was lodged in April this year. The Applicant's solicitor stated at the outset that the need for dispensation was urgent (so that the works in question could begin promptly) and asked the Tribunal to deal with the case on an emergency basis. It is very clear that this did not happen: directions for the conduct of the proceedings were not issued until 8 July and, although the parties complied with them by the end of August, administrative delays within the tribunal system have caused this determination to be further delayed by several months. This is a matter of considerable regret and, if the Applicant has felt compelled to carry out the works in the interim, and to now seek dispensation retrospectively, that would be understandable.

### **Grounds for the application**

8. The Tribunal did not inspect the Property, but I understand it to be a detached 12 storey multi-purpose residential apartment and commercial complex in Manchester city centre. The commercial element comprises office space, which is not interlinked to the residential building save at basement level. There are two basement parking levels, with 64 residential apartments above on the ground to 11<sup>th</sup> floors.
9. A fire safety report was commissioned by the superior landlord in July 2020, and this concluded that parts of the Property's external wall system do not meet appropriate fire safety standards. Remedial works are to be carried out by the superior landlord (which, broadly speaking, retains responsibility for the external fabric of the building, including the façade and balconies). Those works are not the subject of the present dispensation application.
10. However, the Applicant is responsible for the repair and upkeep of the internal common areas within the residential element of the building, and separate fire safety concerns relating to these parts were identified by fire risk assessments carried out in May and November 2020. The second of these risk assessments set out an action plan which includes the installation of a fire alarm system and various fire stopping and/or compartmentation works. The Applicant's managing agents have been liaising with GMFRS regarding these works and the Applicant proposes to undertake two projects of qualifying works: the first dealing with the compartmentation and fire stopping issues, and the second in relation to the installation of a fire detection and alarm system. The first priority is to address the identified fire stopping issues, particularly within the lift riser and other riser cupboards within the Property.

11. A further proposed project of works concerns the installation of new fire doors. However, the installation of fire doors does not form part of the works in respect of which the Applicant now seeks dispensation from the consultation requirements.
12. In respect of the works for which dispensation is sought, however, the Applicant's case is that this should be granted in order to enable it to commence the fire stopping and compartmentation works as a matter of urgency. Similarly, the Applicant argues that dispensation should be granted in respect of the fire alarm installation works in order to support a change in the evacuation strategy for the Property from 'stay put' to simultaneous evacuation.

## **Law**

13. 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.*

14. 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.*

15. "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).

16. 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.*

17. 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.

## **Discussion and conclusions**

18. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. They also ensure that leaseholders are protected from paying for inappropriate work, or from paying more than would be appropriate for necessary work.
19. In deciding whether to dispense with the consultation requirements, the Tribunal must focus on whether the leaseholders have been, or would be, prejudiced by the lack of compliance with the consultation requirements. If there is no such prejudice, dispensation should be granted.
20. In the present case, the works concerned are clearly of an urgent nature, and there is no evidence that the Respondents have been, or would be, prejudiced by the lack of compliance with the consultation requirements. I therefore conclude that dispensation should be granted.
21. In reaching this conclusion, I have taken account of the objections to the application which have been raised by two of the Respondents: Mr James Tomlin and Mr Keith Lawrence. I note that Mr Lawrence is the secretary of the residents' association as well as being the leaseholder of

one of the apartments. I make the following observations about the points made in their responses:

- 21.1 Both Mr Tomlin and Mr Lawrence question the urgency of the application, and thus the need to dispense with the consultation requirements. They point out that the need for fire safety works to be carried out was known about for many months prior to the making of the tribunal application. Mr Tomlin also questioned the urgency of those works given the presence of a 'waking watch' at the Property and expressed concern that a grant of dispensation could set a precedent which would enable the Applicant to avoid dealing with the building's fundamental problems. I do not think these concerns and objections are well-founded: for one thing, they ignore the fact that the Applicant does not have sole responsibility for maintaining the Property (the superior landlord appears to have significant responsibility too). But it is also incorrect to view a grant of dispensation as an indication that a landlord might seek to avoid its repairing obligations. Dispensation should be granted if it is reasonable to do so and if there is no prejudice to the leaseholders. The delay in making this application has not prejudiced the leaseholders and the Applicant says that it was necessary because of ongoing discussions about the specification for the works. The urgency of the works is not negated by the presence of a waking watch – which is provided at significant ongoing cost.
- 21.2 It is argued that, insofar as the application concerns the installation of a fire alarm system, it is unnecessary in view of the fact that a successful funding application has been made to the Waking Watch Relief Fund. However, I understand that the funding agreement has not yet been concluded and that it will not cover all the costs of the waking watch in any event. The relevant question for me to determine is whether it is reasonable to dispense with the consultation requirements. I think it is reasonable to do so and the welcome fact that grant funding is likely to be forthcoming does not alter my view about that.
- 21.3 Mr Lawrence made a number of points concerning the costs and specification of the proposals to replace the fire doors within the Property. Those points are not relevant to the present application, as dispensation is not being sought in respect of those particular works.
- 21.4 Mr Lawrence also complained that the tribunal application has not been served on the residents' association for the Property. The residents' association is not a respondent to these proceedings. Nor would it be appropriate for it to be a respondent (it is not a service charge payer in its own right). The Tribunal did not direct the Applicant to serve papers on the residents' association. Nevertheless, I note that the association has been fully aware of

the proceedings throughout and I presume that its views are reflected in the response which Mr Lawrence has submitted.

22. The fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that I 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. I make no findings in that regard and is therefore unnecessary for me to address in the present context points raised by Mr Lawrence concerning the anticipated costs of the works.
23. Finally, I note that Mr Lawrence has raised an issue about costs. He queries whether the Applicant intends to seek to recover from leaseholders its legal costs associated with this application, and argues that it should not be permitted to do so given that leaseholders are being denied the opportunity of a full statutory consultation. Effectively, therefore, Mr Lawrence seeks an order under section 20C of the Act (being an order that the costs incurred by the Applicant in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge). I do not consider that it would be just and equitable to make such an order, however: the Applicant had valid grounds for making the tribunal application and it has been successful in obtaining a grant of dispensation. The question of whether it is entitled to include the proper costs of doing so in the service charge is one which should be determined according to the contractual provisions of the Respondents' leases.

Signed: J W Holbrook  
Judge of the First-tier Tribunal  
Date: 25 November 2021

**ANNEX**  
**(List of Respondents)**

Stephen Blewitt & Patrina McDonnell  
Jordan Yaffe  
Mr P Macari  
Mrs Mei-Hong Yu  
Tina Wolstencroft-Smith & Kelly Higgins  
Mr A Dunn  
Leigh Thompson  
Ms Zovia Atif  
Oystercatcher Properties Ltd  
Neil Patel  
GKH Investments Ltd  
Mr & Mrs Melly  
Mr & Mrs McNabb  
Mr S Murphy  
Eamon Al-Hadithi  
Harvey Monk & Rachael Waterworth  
Mr & Mrs Duffy  
T O'Shea, J Murphy, B Lalor, J O'Shea & A  
Fariborz Mohebati & Bitra Farid-Mohebati  
Michelle Aldren  
Phillip Garbett  
Mr Christopher Mayer  
Ms N Khan  
Duncan Greatbatch  
Neil Mouatt & Linda Fitzgerald  
Mr Michael Sokol  
Ratan Thadani & Govind Vaswani  
Mr A Christofides  
Mr E Sheffron  
David Manohitharajah & Varsha Manohitharajah  
Andrew Streeter & Jane Streeter  
Stephen Clayton & Lori McPherson  
Isaac Asamoah  
Mr Brian Dunne  
Fu Man Chan  
James Tomlin & Gerardina Guarino  
Mr & Mrs Coffey  
John Murphy & Colin Murphy  
Mei-Hong Yu  
Louise Butler  
Ms C Collins  
Sau Fong Ada Kan  
Mr & Mrs Quinlan  
Berna Aygun  
Celindia Agostinho, Rafael Wong & Chai Wai Wong  
Ms L Kleanthous  
Mr & Mrs Condou



Keith Lawrence  
Laura Rigby  
Ms M Considine  
Alexander Joy  
Michelle Tonge & Adam Thomas Kelly  
Matthew Litherland  
Vincent Ting Kong Wong  
Wayne Eastman  
Yu-Hsin Liao  
Mr Graham Martin & Mrs Carol Martin  
Robyn Clinton  
Charlie Ingall  
Gerald Tan Chuang Win  
Emily Kivell  
Sumithra Giritharan  
Raymond Hynds & Elaine Hynds  
Mr C Tipping  
Nir Yedid & Sarah-Jane Camissar