



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

Case Reference : **MAN/00BR/LDC/2020/0044**

Property : **Transport House, 1, The Crescent,
Salford M5 4JN**

Applicant : **Irwell Valley Housing Association Limited**

Respondents : **The leaseholders of the individual properties,
a list being annexed to the application**

Type of Application : **Application under Section 20ZA Landlord and
Tenant Act 1985**

Tribunal Members : **Mr J Faulkner
Mr J R Rimmer (Chairman)**

Date of Determination : **6th April 2021**

Date of Decision : **13th April 2021**

DECISION

Order : The dispensation sought by the Applicant from compliance with section 20 Landlord and Tenant Act 1985 is granted in respect of the balcony fire safety works. No dispensation is required in relation to the watch costs .

Application and background

- 1 This is an application under Section 20ZA Landlord and Tenant Act 1985 (“the Act”) seeking a dispensation from the requirement to fulfil the consultation requirements of Section 20 Landlord and Tenant Act 1985 (“the Act”), (further clarified by the Service Charges (Consultation Requirements) (England) Regulations 2003), in relation to what are termed “qualifying works” within that section.
- 2 The works in question are to remedy a serious fire hazard identified by the Applicant on carrying out a fire risk assessment following the Grenfell Tower tragedy. Wooden access balconies to the flats within the building were identified as posing a serious hazard to escape from the upper storeys of the building (comprising 5 storeys) as they were the principal means of escape from fire. It was also considered necessary by the Applicant to instigate a 24-hour waking watch whilst remedial work was undertaken to replace the balcony timbers.
- 3 The cost of the works to the balconies was, at both the time of the costing of the works and the time of its subsequent completion, in excess of £250.00 per flat (there being 31 such dwellings within the building). The provisions of Section 20 of the Act were therefore engaged by the relevant cost.
- 4 The Applicant took the view that seriousness of the situation was such as to require immediate work to be carried out without resort to the consultation process set out by section 20 of the Act.
- 5 Although no formal consultation, as required by that section, was undertaken, the correspondence placed before the Tribunal is indicative of efforts to engage with the occupants and leaseholders of the building and answer the queries that were raised by them. Additionally, quotations for the required works were sought. Two contractors submitted appropriate responses and the lower of the two chosen by the Applicant.
- 6 The Applicant now seeks a dispensation from the requirements of Section 20 of the Act. A failure to comply with the consultation process, or a failure to seek a dispensation from compliance, might otherwise limit the sum recoverable from each tenant in respect of the total cost to £250.00, towards a total cost originally estimated at just under £59,000.00.

- 7 Following receipt of the application by the Tribunal directions for the further conduct of the matter were given by the Regional Valuer of the Tribunal on 3rd December 2020.
- 8 In compliance with those directions a copy of all documentation relevant to the Application was served by the Applicant upon each leaseholder. Thereafter one substantive response was provided by Mr Ajay Bhadresa on behalf of the Transport House Residents' Association.
- 9 It should be noted that this application has been based upon the Applicants own initial assessment of the fire hazard and a subsequent professional report thereon, rather than upon proactive intervention from the local fire and rescue authority.

The Law

- 10 Section 18 Landlord and Tenant Act 1985 defines both a "service charge" and also "relevant costs" in relation to such charges whilst Section 19 of the Act limits the amount of those costs that are included in such charges to those which are reasonably incurred in respect of work which is of a reasonable standard.
- 11 Section 20 of the Act then proceeds to limit the amount of such charges that may be recoverable for what are known as "qualifying works" unless a consultation process has been complied with. By Section 20ZA of the Act qualifying works are any works to the building or other premises to which the service charge applies and the relevant costs would require a contribution from each tenant of more than £250.00.
- 12 Section 20ZA(1) particularly provides that:
- "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."
- 13 The consultation process envisages a multi-stage approach by requiring:
- (1) A notice of intention to carry out qualifying works
 - (2) The right of the leaseholders to nominate a contractor
 - (3) The need for two, or more, estimates
 - (4) The need to give reasons for the eventual choice of contractor.

It is in respect only of the last of these that the Applicant seeks its exemption.

Determination

- 14 The Tribunal determined this matter without a hearing on 22nd March 2021. The Tribunal is able under Section 20ZA Landlord and Tenant Act 1985 to determine that on an application to dispense with some or all of the consultation requirements under Section 20 it is satisfied that it is reasonable to dispense with those requirements.
- 15 It is important to note that the application with which the Tribunal is dealing relates solely to the issue of whether or not the Tribunal should grant a dispensation, and if so, subject to what terms, in respect of what are referred to in Section 20 of the Act.
- 16 It makes this point because of a number of factors that suggest that both the Applicant and the Residents' Association make fundamentally flawed assumptions as to what these proceedings relate to.
- 17 The Applicant makes its application, not only in relation to the works that it considers necessary to the building, but also in relation to the waking watch fire warden provision. The Tribunal is of the view that the latter is not a provision of works, qualifying, or otherwise, but the provision of a service. As such it does not invoke the need for consideration of the consultation provisions of Section 20, nor the need to consider a dispensation under Section 20ZA.
- 18 The Applicant also seeks a determination that the costs incurred in respect of the waking watch and the balcony works are reasonable. The Applicant is reminded that the application is one relating to a dispensation and nothing else, a point that is made in the direction made by the Regional Valuer at paragraph 2 of the preliminary part of the Order of 3rd December 2020.
- 19 In its submissions to the Tribunal the Residents' Association makes a number of points in opposition to the granting of a dispensation.
 - (1) Responsibility for the difficulties that have arisen in respect of the balconies lie with the Applicant and the defects in respect of construction of the building that have compromised fire safety are its responsibility.
 - (2) The reasonableness, or otherwise, of the cost of both the waking watch and the works required to the balconies are challenged on the basis of being unreasonableness, by reference to both the cost of the works and the time taken to complete them.
 - (3) The failure to obtain a third estimate, given the disparity between the two that were obtained.
 - (4) The failure to consider properly the possibility of alternative and more cost-effective works to the building that might have obviated the need for a waking watch and replacement of the wooden balconies.

- 20 The Tribunal must emphasise that an application for a dispensation under Section 20ZA does not remove, nor in any way pre-judge, the right of any party to seek a remedy elsewhere within the legal process against any party that is considered to be responsible for the situation that has arisen.
- 21 Similarly, the granting of a dispensation does not remove the entitlement of a leaseholder to bring proceedings under Section 27A of the Act for a determination that any service charges (whether they relate to a service, such as the waking watch, or works, such as the balcony alterations) have, or have not, been reasonably incurred and at reasonable cost.
- 22 So far as the limited question asked of it is concerned, as to the granting or otherwise of a dispensation, the Tribunal notes:
- (1) The Applicant makes a realistic assessment that in the light of the body of knowledge accumulating after the Grenfell Tower tragedy there is a serious risk to the safety of occupants of Transport House in the event of fire.
 - (2) Work is required to remedy that defect.
 - (3) This work should be completed as speedily as possible. Fire safety within the building is a critical matter.
 - (4) It is quite appropriate for the Applicant to consider that the circumstances are such that there is a need to act with some haste to deal with the hazard that has been identified and in respect of which the scheme for consultation is not necessarily well suited.
 - (5) The actions of the applicant are to be judged at the time it decided to consider whether or not to comply with the consultation processes.
 - (6) If, and the Tribunal emphasises that it makes no determination upon the point, alternative remedies may be available elsewhere and/or the reasonableness or otherwise of the costs incurred may be challenged subsequently, notwithstanding any determination as to the granting of a dispensation.
 - (7) In the circumstances the Tribunal is satisfied that it is reasonable to dispense with the requirements to comply with section 20 Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
- 23 The Residents' Association also raise the issue as to the costs of the application process under Section 20ZA. These, too, may be the subject of investigation as to their reasonableness, or otherwise, in later proceedings.

J R Rimmer
Tribunal Judge
13th April 2021

Annex A
Leaseholders

Mr Darren Matthews
Mrs Frances Sayer
Mr Philip Storer
Mrs Laura Kelly
Mr Paul Real
Mr Dominic Ollerenshaw
Ms Rachel Leary
Mr Joe Hitchen
Mr Christopher Joseph Carney
Mr Nathan Bradbury
Mrs Nia Faulder
Mr Michael Lowe
Mr John McLoughlin
Mr Seamus Cahill
Mr Darren Donnolly
Mr Keith Pemberton
Ms Manjeet Sandhu
Mr Mathew Harris
Mr Mohammed Issa
Mr Robert Frazer
Mr Scott Cannon
Mr Adam Walker
Mr Stuart Callaghan
Mr Ajay Bhadresa
Mr Wai Wah (tony) Lo
Mr Andrew Dunne
Mr Paul Willis
Mr Ajay Bhadresa
ADL Investments
Mr Richard Cook