



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

Case Reference : **MAN/00CX/LDC/2020/0049 P**

Property : **The Empress
27 Sunbridge Road
Bradford
BD1 2AY**

Applicant : **Empress Flat Management
Company Limited**

Representative : **Levi Solicitors LLP**

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

Representative : **N/A**

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

Tribunal Members : **Judge J Holbrook
Regional Surveyor N Walsh**

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

Date of Decision : **20 January 2021**

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works comprising the removal and replacement of external cladding to the Property for fire safety reasons. A more detailed description of these works is given in paragraph 4 below.

REASONS

Background

1. On 11 November 2020, 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 Empress Flat Management Company Limited and relates to premises known as The Empress, 27 Sunbridge Road, Bradford BD1 2AY (“the Property”). The Applicant is the management company under the long leases of the residential apartments within the Property. 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 fire safety works to the exterior of the Property which the Applicant says are urgently required to safeguard the occupiers of the Property. We note from a schedule of the proposed works which was attached to the application that they comprise the following:
 - All elements of the existing cladding including timber bearers and insulation are to be removed from the building and disposed of safely;
 - A new cladding system comprising cladding panels fixed to aluminium bearers together with a layer of insulation and associated fire barriers to be fixed to the building; and
 - The new cladding system to be fully in accordance with the recommendations of Jeremy Gardner Fire Engineering Associates and in compliance with the current Building Regulations.

5. Each of the Respondents has been given notice of the application and afforded the opportunity to view the Applicant's supporting evidence online. They have also been provided with a copy of the case management directions issued by the Tribunal on 16 December 2020. The directions required any Respondent who opposed the application to notify the Tribunal of their objection by 8 January 2021. No such notification has been received and we have determined this matter following a consideration of the Applicant's, 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, we are satisfied that this matter is indeed suitable to be determined without a hearing: although the Respondents are not legally represented, the application is unopposed and the issues to be decided are readily apparent.
6. The Tribunal did not inspect the Property but we understand it to comprise a purpose-built eight storey building in mixed residential and commercial use. The external walls are generally natural stonework with areas of cladding.

Grounds for the application

7. The Applicant's case is that an intrusive survey has been carried out at the Property and has identified combustible materials forming part of the external wall construction. These materials include timber framing and Kingspan Thermawall TW55 insulation which has a polyisocyanurate (PIR) core. In addition, in the area surveyed there were no cavity barriers provided in the wall cavities around window openings or at slab level. The presence of combustible materials in the external wall, in conjunction with a lack of barrier in the cavity wall, significantly increases the risk of fire spread across the Property and remedial works are required to be carried out as soon as possible. The Applicant says that the proposed works are urgent and are necessary in order to resolve the current position regarding fire safety at the Property.
8. In addition, the Applicant is submitting detailed proposals to the Government's Building Safety Fund to seek grant funding for the remediation works and considers it to be impractical to comply with the statutory consultation requirements given the permitted timescales for obtaining such funding.

Law

9. 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.

10. 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.*

11. “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).

12. 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.

13. 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

14. 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 (or management company) 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. 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.
15. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for swift remedial action to ensure that occupiers of the Property are not placed at undue risk and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before major works begin. It must consider whether this balance favours allowing the works to be undertaken immediately (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in carrying out the works which that will require). 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.
16. In the present case, it is obvious that essential works to ensure the safety of the Property and its occupiers should be undertaken as soon as possible: this is appropriate not only to minimise risk to the health and safety of the occupiers of the Property, but also to maximise the chances of obtaining grant funding for the works in question. We have no hesitation in finding that the balance of prejudice favours permitting such works to proceed without delay.
17. Nevertheless, the fact that the Tribunal has granted dispensation from the consultation requirements 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.

ANNEX
(List of Respondents)

Mr N. C. Masterson
Mr A. L.T. Jenkins
Ms R. Segal
Mr A. Cunningham
Mr M. Nelthorpe & Mrs S. M. Nelthorpe
Mrs J. A. Mottershead
Mr H. C. Ezirim & Mrs A. I. Ezirim
Mr J. C. Jarmin
Mr M. L. Pincott & Mrs D. Pincott
Mr R. D. Fowers & Mrs J. A. Fowers
Ms S. Patel
Mr & Mrs R. & K. Aggarwai
Mr & Mrs P. & A. Gibson
Mr & Mrs J R Cross
Mr S. R. Bathula
Mr M. S. Hall & Mrs C. Hall
Mr A. L. Wyatt
Mr R. J. Selby & Mrs T. B. Selby
Part Plastik Limited
Mr A. J. Whitaker & Mrs G. E. Whitaker
Mr O Waheed & A Ali
Mrs R. J. Chalkley
Mr D. G. Olde
Mr R. Mackender & Mrs S. Mackender
Ms E. Graham
Mr W. Abdul-Rahman
Miss L. Ahbedin
Mr D. Birbeck
Prof R. Parkin
Miss S. Bhat
Miss N. Anayat
Mr P. Cardell
Mr V. Rios
Mr A. O. Mitchell & Mr J. Crane
Mr B. D. King
Mr R. Stephenson Jackson
Mrs D. G. Twiggs
Mr D. Somaiya & Mrs H. Somaiya