



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

Case Reference : **MAN/00DA/LDC/2020/0040**

Property : **Blue Granary Wharf, 3 Little Neville Street,
Leeds LS1 4ED**

Applicant : **Blue Granary Wharf (Leeds)
Management Company Ltd**

Applicant's Representative : **Watson**

Respondent : **Various Leaseholders (see Annex A)**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Members : **Mr John Murray LLB
Ms Aisling Ramshaw FRICS**

Date of Determination : **22 January 2021**

Date of Decision : **9 February 2021**

REASONS FOR DECISION

DETERMINATION

The Tribunal determines that dispensation from consultation for the works as detailed in the application be granted pursuant to s20ZA Landlord and Tenant Act 1985.

INTRODUCTION

1. An application was made by Watson, managing agents on behalf of Blue Granary Wharf (Leeds) Management Company Ltd for dispensation of the consultation requirements of s20 of the Landlord and Tenant Act 1985 in relation to the installation of an early detection fire alarm system to the communal areas and the apartments, and to link the current smoke vent system to the new fire alarm system.
2. Directions were made by a Procedural Judge on the 25 November 2020 for the matter to be determined by way of submission of written evidence leading to an early determination or by a hearing if requested by the parties.
3. The Applicant was directed to prepare and file and serve an electronic bundle of documents within 21 days of the directions, and any participating Respondent was directed to send a statement of case in response within 21 days of the Applicant's bundle being received. The Applicant was given a right of reply within 7 days of receipt of any Respondent's statement. The Tribunal was to determine the matter on or shortly after 18 January 2021.

THE APPLICATION

4. The Application dated 10 September 2020 sought dispensation from the statutory consultation process. An intrusive survey conducted on the building detected that the cladding had failed, the stay put policy in place for the building was no longer relevant, and an early warning fire detection system was required to ensure the safety of all residents. Blue Granary Wharf was described in the application as a purpose built high rise block, with 61 apartments spread over 14 floors. The case was considered urgent due to the nature of the works; the works had started on the 1st September 2020.
5. The application stated that all leaseholders were aware that an intrusive survey for EWS1 forms (required by lenders on residential apartments) had been completed on 19th July 2020, and leaseholders had been advised as to the outcome of the survey, works identified and the costs, and that dispensation for consultation would be sought by the managing agent. The survey had identified various works to be carried out, and until those works were completed, an early warning system would be required or a waking watch would need to be in place; the former should obviate the need for the latter.

THE LEGISLATION

6. The relevant legislation is contained in s20ZA Landlord and Tenant Act 1985 which reads as follows:

s20 ZA Consultation requirements: supplementary

- (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, 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.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the recognised tenants’ association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants’ association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants’ association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

- (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament

THE APPLICANT'S BUNDLE

7. The Applicant submitted a bundle with a statement of case and supporting evidence by their managing agents Watson.
8. In the statement of case Watson referred to remediation works identified by an intrusive survey carried out in July 2020. The survey was undertaken for the purposes of an EWS1 form which Freeholders have a duty to prepare to enable prospective leaseholders to more readily purchase flats with the assistance of a mortgage. Watson had identified that the process of obtaining quotes to complete the major work is complex, and lack of capacity in the industry would lead to delays.
9. Watson asserted that the "stay put" fire policy at Blue Granary was no longer viable, and to safeguard residents it was necessary to put in place an early fire detection system with sounders in all apartments and communal areas to enable an "evacuation policy" to be implemented. Without an early warning system, a waking watch would have to be implemented, which would result in a larger cost to the leaseholders.
10. Three quotes had been obtained, and the most competitive contractor had been awarded the works. Retrospective dispensation was sought because to undertake statutory consultation would have delayed the works, risking lives, and increasing costs due to the need to put a waking watch in place until the remedial work was completed.
11. The Applicant submitted copies of the following communications
 - (a) **An email to "Owner" from Watson dated 15 July 2020** that an engineer from WHP Limited would be at the development on Sunday 19th July and would need to access some apartments and balconies.
 - (b) **A letter from Watson dated 27 August 2020** with an update and further information about the Fire Safety Review and the Service Charge Budget for 2020/21. The survey had been carried out on the 19th July. The Survey had identified the following:
 - i. Insulation boards installed in the cavity behind the exterior walls do not meet current building standards.

- ii. Fire cavity barriers were not evident in the inspected areas and further intrusive inspections are required to clarify the situation.
- iii. There is a section of ACM cladding to the right-hand side of the stairwell which extends to the top floor which does not meet current building standards.
- iv. Balcony decking is timber and deemed combustible and contrary to MHCLG advice and changing to a metal decking system is recommended.

The letter stated that to mitigate the issues they had commissioned the installation of a new communal fire alarm system. The work was scheduled to commence on 1st September and take approximately three to four weeks to complete. Blue Granary had been registered with the Government Building Safety Fund, and would look to recover the costs of the remedial works, and the specialist survey (estimated cost £40,000 for the survey alone), but not the cost of the fire alarm installation, balcony decking, or any waking watch required.

The estimated costs were as follows:

- £55k Fire Alarm installation
- £10k Additional intrusive investigations to clarify fire cavity breaks.
- £10k Provision for an increase in buildings insurance premium
- £87k 'Waking watch' for rest of financial year to 31st May 2021 (and until all remedial work has been completed)
- £40k Consultation fee for specifying the Insulation and Fire Safety work and submission of application to the government Building Safety Fund scheme (estimated)
- £132k Replacement of timber balcony decking (estimated)
- £334k Total Fire Safety costs

The annual budget had been revised from £99,300 to £71,000 by reducing the general budget for general maintenance and removing contributions to the general reserve fund; factoring in the costs of the fire safety works not covered by the Building Safety Fund resulted in a budget for the current financial year of £405,000, being an average contribution of £6639.34 for each of the 61 apartments. It was anticipated that the cost of the

consultation- for specifying the insulation and Fire Safety work (£40,000) would be reimbursed if the Building Safety Fund application was successful.

- (c) **An email to "Owner" from Watson dated 2 September 2020** to confirm that the installation of the fire alarm system had begun.
 - (d) **An email to "Owner" from Watson dated 11 September 2020** to confirm that an application had been made to the First Tier Property Tribunal to dispense with the section 20 consultation. The email said that three quotations had been obtained for the installation of the fire alarm system as a contingency measure before the survey had taken place, as their experience led them to believe it would be a requirement of the West Yorkshire Fire and Rescue Service. The survey received on the 17th August had identified a number of issues and that if a fire alarm system was installed without undue delay then the implementation of a waking watch could be avoided, thereby saving additional costs estimated at £38428. They had placed the works order for the fire alarm system on 18th August.
 - (e) **An email to "Owner" from Watson dated 15 September 2020** to with an update as to Government action, and response to leaseholder enquires about possible remedies from third parties. They warned that if mitigating actions were not taken in a timely manner and to the required standards then the West Yorkshire Fire and Rescue Service had the authroityh to give the development 24 hours to completely shut down the building.
 - (f) **An email and letter to "Owner" from Watson dated 30 September 2020** to confirm that the installation of the fire alarm system was in progress and that access would be required to apartments and many leaseholders/tenants had not provided access.
 - (g) **A letter to an Owner from Watson dated 25 November 2020** with details of the s20ZA application to the Tribunal.
12. The Applicant submitted with their evidence a number of copy reports:
 13. **WHP Building and Project Consultants: Mr. Rob Hindle FRICS** 17th August 2020 following his inspection on Sunday 19th July 2020.
 14. The report recommended that timber decking to external steel framed balconies be replaced with metal.
 15. The report recommended that ACM cladding/Spandrel panels be removed and replaced with a non-combustible system, and fire barriers be checked and installed if required.
 16. The report recommended review of fire doors, compartmentation and life systems/means of escape by a fire risk assessor. This was with reference to the "new consolidated advice note 2020" (the MHCLG Advice Note of January 2020).

17. **Fire Prevent Ltd Fire Safety Report: Mr. Richard Coggon BSc (Hons) MIFireE** 7th December 2020. This report was to evaluate risks [posed by the external façade and balconies and whether they complied with regulations and MHCLG guidance.
18. The Fire Prevent report stated that the building had a "stay put" policy due to the high level of compartmentation that should be present throughout the building. The report reviewed and noted the construction elements recorded in the WHP Report, referring to the non-compliant ACM cladding, and lack of cavity barriers in some areas and concluding that parts of the external wall system did not meet appropriate safety standards. It set out remedial actions which once carried out would leave the building compliant with the Building Regulations 2000, the Regulatory Reform (fire safety) Order 2005 and MHCLG *Advice for Building Owners of Multi-storey, Multi-occupied Residential Buildings*. Overall, the external fire spread risk for the Building was classed as Medium.
19. The Fire Prevent report concluded that it was essential that interim measures were put in place to address the fire hazard and ensure the safety of residents. The interim measures recommended were said to be based on the National Fire Chiefs Council guidance to support a temporary change to simultaneous evacuation strategy in purpose built blocks of flats.
20. The measures to be implemented at 4.2.2 of the report included a recommendation that the building fire alarm system that is currently in place should be monitored by an external company so that the fire service along with a responsible person from the management company or designated residents are contacted upon the fire alarm system actuating. Upon the fire alarm actuating, the designated responsible person will take on the evacuation management role and will liaise with the fire service on their arrival. The designated responsible person will either be an employee of the management company that lives/works nearby or residents that live on site. The report went on to recommend the remedial works that should be carried out urgently to the cladding system and the timber decked balconies.
21. The Applicant submitted with their evidence three quotes for fire alarm systems:
22. **Wheatley Facilities Management:** 22nd July 2020 : £44750 plus VAT
23. **Aarhus Fire Ltd :** 2nd April 2020 : £46261.84 plus VAT
24. **Cormeton Electrics Ltd :** 23rd July 2020 : £141,021 plus VAT

OBSERVATIONS FROM THE RESPONDENTS

25. The Respondents submitted a bundle through one leaseholder:
26. The urgency and need to apply for dispensation was questioned. Although the survey was carried out in July 2020, the Respondent had commenced the process of obtaining quotations for a new fire alarm system in April 2020.

The leaseholders were not made aware of the need for a new fire alarm system until 27th August 2020, with works due to start on 1st September 2020.

27. The WHP report did not mention any requirement to change the existing fire alarm system.
29. An email had been sent by Watson to a leaseholder dated 8 October 2020 saying that no specification for the fire alarm system had been issued to potential contractors for the works.
30. No evidence was provided by Watson that a report had been completed by a competent person reviewing the existing fire safety measures and suggesting any changes required.
31. Leaseholders had been unaware of the need for a new fire alarm system as it had not been raised at the AGM or in the Batty France Compliance with MHCLG Current Guidance Statement dated 9th January 2020. No evidence that a system was required. Contractors were not given a specification and each provided a quotation based on their own standard design; consequently quotes had varied from £44750 to £141021 plus VAT.
32. Leaseholder owners had been denied the opportunity of submitting a quotation or recommending a Company who they had worked with.
33. The Respondent submitted with their evidence a report from **Batty France Consultancy on Compliance with MHCLG Current Guidance** by Ashley Richard France, MRICS, dated 9th January 2020
34. This report recommended further intrusive investigations, having visually inspected the Property from ground level.
35. The report recommended replacing the timber decking with incombustible manufactured alternative.
36. The Fire Review showed that fire risks were predominantly tolerable, and there were no substantial or intolerable risks.
37. The Respondent said that this report had not been mentioned at the AGM; Watson pointed out that no leaseholders attended the AGM.
38. The Respondent submitted with their evidence a report from **Angel FP Ltd** by Amanda Jagger, dated 27th August 2020. The report stated that a new fire procedure was to be implemented due to the building no longer being on a stay put policy. Weekly testing and periodic servicing of the fire detection and alarm system was to be implemented on completion of the installation of the new fire alarm system.
39. The Respondent submitted with their evidence a lengthy **letter to Watson on behalf of a number of leaseholders dated 22 September 2020** containing a number of enquiries. Watson had responded to the enquiries in red.

40. Watson stated that the current fire strategy is a stay put policy which would change to evacuate when there is a full working and commissioned fire alarm; they estimated that would be commissioned by 13th October; the new policy was ready and waiting for issue. Watson had shared intrusive survey with West Yorkshire Fire and Rescue Service on 18 August. They did not say what the Fire Service response was.
41. At 3.2.1 of the letter Watson said that there was no building wide fire alarm system in the property, only a fire alarm system in the commercial unit, a sprinkler system in the bin store, and individual smoke detectors in individual apartments. This seemed to contradict the Aarhus Fire Protection report at page 21 of the Respondent's bundle (and page 105 of the Applicant's bundle), which referred to removal of "the existing Gent system panel and loop devices"; it was not clear whether that was in the residential or the commercial part of the building, or both.
42. Watson said in the replies that the development would be subject to a review by the West Yorkshire Fire and Rescue Service following the installation of the Fire Alarm.
43. The Respondents also submitted with their bundle at page 57 the MHCLG advice note from January 2020. Paragraph 11 of the advice note deals with Short Term Interim Measures when an external wall system of the building does not meet an appropriate standard of safety, and the need for the immediate implementation of short term interim mitigating measures. At 11.17 the advice note refers to the competent person assessing whether a "stay put" policy was still appropriate for the building, in discussion with the local fire and rescue service. At 11.19 the advice note states that where the competent person decides to temporarily change a stay put strategy to one of simultaneous evacuation, it would need to be managed, which would be likely to require the presence of a waking watch, and some sort of fire alarm system to alert residents of the need to evacuate.

ADDITIONAL SUBMISSIONS MADE BY BOTH PARTIES

44. In additional representations made by both parties, Watson indicated that they had arranged the fire alarm system to safeguard the lives of all residents following the identification of deficiencies with the cladding and insulation and because the development did not have a communal fire alarm in place.
45. When they obtained the quotes they had not carried out the intrusive surveys and consequently had not commenced a consultation process because they would know it was necessary until they knew of any defects but obtained quotes as a precautionary measure because their experience on other developments was that if issues were identified the Fire Service would likely immediately impose the need for a waking watch, at considerable cost to leaseholders, or the need to immediately close the building. Waking watch would have cost in the region of £36 k per month, and a s20 application would have delayed matters by two to six months.
46. Discussions were held between Watson and Chris Smith of West Yorkshire Fire Rescue Service on 19th August 2020 resulting in a requirement to have a

new Fire Risk Assessment completed and deployment of a new integrated fire alarm or a waking watch following confirmation from the Fire Engineer. Further discussions took place between Chris Smith and Rob Hindle of WHP on the 20th August 2020. Fire Prevent Ltd were appointed on the 20th August 2020.

47. Wheatley FM were instructed to install the most cost effective wireless alarm system on the 20th August 2020 to avoid the costs of a waking watch. The works were completed on 21st October 2020.
48. A copy of an email to Watson dated 6 January 2021 from the Applicant's Fire Engineer Richard Coggon of Fire Prevent Ltd stated: . "A Waking Watch would have had to be provided if the fire alarm system had not been installed to complete a simultaneous evacuation of the building".
49. The representations indicated that leaseholders were not contesting that a fire alarm system was required, but the fact that the s20 process was not followed. Had they been consulted, in March 2020 when the quotes were being obtained, leaseholders could have had time to agree with Watson on the quote they wanted, and would have had more time to budget for greatly increased service charge budgets.

THE DETERMINATION

50. The Tribunal has jurisdiction under section 20ZA to dispense with consultation before works have been carried out, as well as retrospectively when works have been carried out and completed, as here.
51. The only issue for the Tribunal to consider is whether or not it is reasonable to dispense with the consultation requirements. The application does not concern the issue of whether any service charge costs resulting from any such works are reasonable or indeed payable and it will be open to lessees to challenge any such costs charged by the Applicant under section 19 of the Act.
52. This was confirmed by HHJ Huskinson in the Upper Tribunal who considered the jurisdiction for prospective dispensation under s20ZA in the case of **Auger v Camden LBC [2008]**. The Upper Tribunal confirmed that the Tribunal has broad judgment akin to a discretion in such cases. The dispensation should not however be vague and open ended. The exercise of discretion to grant dispensation requires the clearest of reasons explaining its exercise
53. Dispensation was considered in depth by the Supreme Court in **Daejan v Benson [2013] UKSC14** which concerned a retrospective application for dispensation. Lord Neuberger confirmed that the Tribunal has power to grant a dispensation on such terms as it thinks fit, providing that the terms are appropriate in their nature and effect.
54. At paragraph 56 Lord Neuberger said it was "clear" that a landlord may ask for dispensation in advance for example where works were urgent, or where it only becomes apparent that it was necessary to carry out some works whilst contractors were already on site carrying out other work. In such cases it

would be “odd” if the (LVT) could not dispense with the Requirements on terms which required the Landlord, for instance (i) to convene a meeting of the tenants at short notice to explain and discuss the necessary works, or (ii) to comply with stage 1 and/or stage 3, but with (for example 5 days instead of 30 days for the tenant to reply.

55. Lord Neuberger also confirmed that conditions could be imposed as to costs, aside from the Tribunal’s general powers to award costs, (which at that time were limited), drawing a parallel to the Court’s practice to making the payment of costs a condition of relief from forfeiture.
56. The correct approach to prejudice to the tenants is to consider the extent that tenants would “relevantly” suffer if an unconditional dispensation was accorded. The Tribunal needs to construct what might happen if the consultation proceeded as required - for instance whether the works would have cost less, been carried out in a different way or indeed not been carried out at all, if the tenants (after all the payers) had the opportunity to make their points.
57. Had the consultation taken place there would undoubtedly have been questions raised by the leaseholders as to the specification adopted for the fire alarm system selected, and the leaseholders would have had more warning that they were about to incur significant expense. Whilst Watson may not have wished to unduly alarm residents before full facts were known, the impact of post Grenfell investigations on apartment buildings throughout the country is well documented in the press and media and all managing agents of residential blocks in the country have to work on their communication strategies surrounding the issues which have enormous impact upon leaseholders emotionally and financially.
58. Communication by Watson could have been better. The Tribunal recognises that Watson will undoubtedly have gathered experience from their management of blocks in the last three years of the enormous expense on waking watch, which is irrecoverable from third parties and produces no long term improvement to the building. It was prudent to seek quotes for fire alarm systems before it was apparent it was needed, but a consultation process would have been useful even if it had been explained to residents the installation would not be carried out if no issues were found on the intrusive survey.
59. The email from Mr. Coggon to Watson of the 6th January 2021 is perhaps the first independent evidence provided to the Tribunal that the immediate installation of the fire alarm system was necessary to comply with regulation and fire risk assessment, and those leaseholders making representations to the Tribunal seem to not take issue that the system was necessary, only that they were not consulted in mar
60. The works have been completed, so dispensation from consultation is not required to enable the Applicant to proceed with the works. It is however necessary for the Applicant to avoid the statutory restriction to £250 per property for the works.

61. The observations raised by the lessees that made them did not challenge that the works should be carried out, although they may have wished to propose alternative providers or consider the specification, and they were denied the opportunity to do this.
62. The Tribunal is satisfied that the works were necessary and that it was imperative to order them on an urgent basis after WHP report confirmed that the cladding was unsafe, in lined with the MHCLG Guidance Note from January 2020, and that despite reservations above about communication generally, it would be reasonable to grant dispensation in this instance. For leaseholders to spend monies on an enhanced and fully integrated fire alarm system which will be for the long term benefit and improvement of the building, and more importantly for intermediate and long term safety of residents, is clearly preferable to spending much larger sums on a waking watch whilst works are being carried out.
63. Clearly the Applicant needs to share with the Leaseholders the outcome of the review with the West Yorkshire Fire and Rescue Service as to the adequacy and safety of the current system now it is installed and the evacuation plans updated, and whether they agree with the interim measures, as specified in the MHCLG Advice Note at 11.3.
64. This judgement does not address whether the costs of the works are either payable, under the terms of the lease, or reasonable in terms of amount and quality of works, and any leaseholder who has concerns in any of those respects has a right to apply to the Tribunal pursuant to s27A Landlord and Tenant Act 1985.

J Murray LLB
Tribunal Judge
9 February 2021

Annex A

Leaseholders

All Property Management Ltd	Mr T J Ndlovu
Mr B P Ashmore	Mr A G Ness
Mr & Mrs B P Ashmore	Mr & Mrs D Oldham
Ashmore Childrens' Settlement	Mr D A Oldham
Miss P C Asple	Mr & Mrs G Olive
Mr B & Mrs D Azoor	Miss I M Pearson
Bricklane Residential REIT Plc	Mr D C Pearson
Mr P Brocklebank	Mr & Mrs Picano
Mr R Camm	Mrs H Puntis
Mr D L Chapple	Mr A Reid
Mr M Davis	Mr M J Renier
Ms M Day	Mr R Rezaei
Mr C & Mrs C Etherington	Mr S Richardson
Mr J A Eyles	Mr I H Shah
Mr L W Clugston & Ms M Fegan	Mr G T Simpson
Mr R N Fenton	Mr P M & Mrs S E Stewart
Mr P A Garrott	Mr A Naji & Ms A Vahedi
Mrs T Gee	Mr M Vertigans
Mr D T Brier & Miss Z Gillings	Mr D J Walker
Mr R D & Mrs C S Lawson	Mr J G B Watson
Mr & Mrs Littlecott	Miss L C L Welford
Miss C S Lo	Mr M Wiltshire
Mr C Megson	Mr D Wood
Mr S M Brady & Mr S Mo	Golf Café Bar
Mr S J Nash	Mr L A Hartley
Mr P Murphy, Mr O Peck & Mr D Hampson	Mr A N Hasan
Miss H Constantinou & Miss R C Lock	
Mr B Brier & Miss A Mallikarachchi	
Roberts-Harry Property Developments Ltd	
Mr G, Mrs A L, Mr J W & Miss A Starkie	