FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00BN/LDC/2021/0065**
Property	**:**	**Vulcan Works 2 Malta Street, Manchester, M4 7BH**
Applicant	**:**	**Artisan H1 Limited**
Representative	**:**	**Residential Management Group Ltd**
Respondent	**:**	**Various Residential Long Leaseholders**
Representative	**:**	**(None)**
Type of application	**:**	**Landlord & Tenant Act 1985 – Section 20ZA**
Tribunal member(s)	**:**	**Tribunal Judge L. F. McLean** **Tribunal Member I. R. Harris MBE BSc FRICS**
Date of determination	**:**	**28th October 2022 on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Date of decision	**:**	**31st October 2022**

© CROWN COPYRIGHT

DECISION

Decisions of the Tribunal

(1) The Tribunal grants unconditional dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 (together, "the Consultation Requirements") in relation to the works at Vulcan Works 2 Malta Street, Manchester, M4 7BH ("the Property") which are described in the Applicant's application dated 5th October 2021 as being design, supply, install and commission of the life safety systems (installation of a new fire alarm system) which were undertaken in May 2020.

The application

1. The Applicant applies to the Tribunal for unconditional retrospective dispensation from the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 (together, "the Consultation Requirements") in relation to qualifying works.

2. The application is not opposed by any of the Respondents.

Background

3. The Applicant is the registered proprietor of the Property.

4. The Respondents are the various residential long leaseholders of the Property, and the Applicant is their landlord.

5. According to the Applicant's statement of case, the Property comprises a five-storey building which arose from the conversion of a mill and the addition of a modern extension, within which are situated 126 flats in total.

6. The application stated that the Applicant had carried out design, supply, install and commission of the life safety systems (installation of a new fire alarm system) in the Property in May 2020 ("the Works").

7. In the event that the total cost of the Works, as remitted through the Respondents' leasehold service charge demands, was due to exceed the statutory limit of £250 for any leaseholder imposed by Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003, this would mean that the Respondent had been required to comply with the Consultation Requirements set out therein unless the Tribunal grants dispensation in relation to the same.

8. The Applicant submitted an application dated 5th October 2021.

9. On 22nd July 2022, the Tribunal issued directions to the parties for the filing and serving of the Applicant's bundle within 21 days, with the filing and serving of any Respondent's statement of case within 21 days thereafter; and the Applicant was given permission to file and serve a final reply within 14 days after that. The Tribunal notified the parties that it considered that the application was suitable for determination on the papers provided by the parties and without a hearing.

10. None of the Respondents submitted any written responses in accordance with the above directions.

11. The Applicant submitted a bundle comprising 256 pages which the Tribunal has read. The members of the Tribunal considered the Applicant's written submissions and documents filed in support, by way of a virtual meeting held on 28th October 2022. The Tribunal also considered the related proceedings MAN/00BN/LDC/2022/0020 & 0021 (Albion Works, Blocks D & E, 12 Pollard Street, Manchester M4 7AQ) at the same time.

Grounds of the application

12. The Applicant's grounds of its application were set out in its statement of case. In summary, these were:-
    a. The Works were required to be undertaken urgently to ensure the health and safety of residents at the Property and should not be delayed by the timescales set out in the Consultation Requirements;
    b. While the Applicant had been investigating the need for the Works to be carried out, it had been required to pay for a "waking watch" at a cost of thousands of pounds every week;
    c. The Applicant's related company (Artisan H2 Ltd) had in any event obtained a number of competitive estimates for similar works to be carried out at the nearby Albion Works buildings, and considered that it was in the Respondents' best interests to avoid the consultation procedure to prevent additional disproportionate expenditure in relation to the waking watch;
    d. The Applicant had also in any event written to the lessees of the Property in an effort to provide information to the Respondents about the Works;
    e. The Applicant does not believe that the Respondents had been prejudiced by not undertaking the full stipulations of the Consultation Requirements.

Issues

13. The only issue the Tribunal needed to consider was whether or not it is reasonable to dispense with the Consultation Requirements in relation to the Works. 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 in due course (under Section 27A of the Landlord and Tenant Act 1985).

Relevant Law

14. The relevant sections of the Landlord and Tenant Act 1985 read as follows:-

20 Limitation of service charges: consultation requirements

(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.

20ZA 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.

15. The decision in the binding legal authority of *Daejan Investments Ltd v Benson* [2013] UKSC 14 confirms that the Tribunal, in considering dispensation requests, should focus on whether leaseholders are prejudiced by the failure to comply with consultation requirements.

Evidence and Submissions

16. The Applicant relied on evidence which was included in the bundle of documents and which accompanied its statement of case.

17. The Applicant's Statement of Case indicates that the Works were required to the Property due to several risk factors in the condition of the Property, which posed an unacceptable risk of fire spread. A combined Health, Safety and Type 1 Fire Risk Assessment provided by Osterna Ltd following an inspection on 29th August 2019 identified various areas of fire risk. The Tribunal were also made aware in related proceedings MAN/00BN/LDC/2022/0020 & 0021 that Assessments provided by Thomasons dated 29th January 2019 (including external wall assessments prepared by Design Fire Consultants dated 28th January 2019) in relation to the nearby Albion Works buildings identified that the existing "stay put" strategy should be changed to an "evacuation" strategy. The risk assessment for the Property similarly identified that the existing "stay put" strategy should be changed to an "evacuation" strategy due to issues with fire compartmentation and combustible external wall cladding, and as such the fire alarm system had to be upgraded; with a waking watch to be introduced in the meantime. The subsequent cost of the waking watch at the time the Works were completed was estimated to be around £24,000 over a 6-week period, the costs of which would be sought from leaseholders through their service charges.

18. The Applicant's Statement of Case states that its agent wrote to all Respondents in respect of the Works on 20th May 2020. Having obtained estimates from 4 different proposed contractors in relation to the nearby Albion Works, the Applicant approached the lowest-priced of these (Snychro) to provide an additional estimate for the Works to the Property, which came in at £21,767 plus VAT. The Applicant has not stated whether it received any observations in response to the letter.

Determination

19. The Tribunal is satisfied that the Applicant appears to have had good reason to undertake the Works and to do so urgently, and this is a primary consideration.

20. The Tribunal is satisfied by the Applicant's evidence and submissions that it would have incurred disproportionate costs in continuing to provide the waking watch, had it complied with the Consultation Requirements in full – indeed, that the additional cost of the waking watch would almost have exceeded the total cost of the Works.

21. The Tribunal also takes into account that no Respondent has challenged the Applicant's assertions in any regard.

22. Against that, the Tribunal is mindful that there will always be some inherent prejudice to leaseholders whenever consultation requirements are not complied with – if for no other reason than that the requirements are put in place for a specific purpose intended by Parliament. The main purpose of the Consultation Requirements is to reduce the risk of works being carried out needlessly or at greater cost than is reasonable (*Daejan Investments Ltd v Benson* [2013] UKSC 14). However, the Respondents are required to at least raise an outline basis of how they would be (or have been) prejudiced by non-compliance, and to set out what they would have done differently if the Consultation Requirements had been fully complied with (*Aster Communities v Chapman* [2021] 4 WLR 74; *Wynne v Yates* [2021] UKUT 278 (LC)), which they have not done in this instance.

23. Accordingly, the Tribunal determines that it is reasonable to grant dispensation from the Consultation Requirements in respect of the Works. Although the average cost per flat of the Works is less than £250, the Tribunal is mindful that it does not know whether some of the Respondents might be required to contribute more than others to the relevant costs due to the way in which the service charges for the Property are computed and apportioned).

24. The Tribunal considered whether there would be merit in attaching conditions to the grant of dispensation. However, it decided not to do this, as the Works had already been completed, and the Tribunal did not want to set conditions for dispensation which the Applicant might be incapable of complying with after the fact.

25. In reaching this decision, the Tribunal reiterates that it remains open to the Respondents to apply to the Tribunal for a determination as to whether the costs of the Works were reasonably incurred and/or whether the Works were of a reasonable standard.

Name: **Date: 31st October 2022**
Tribunal Judge L. F. McLean
Tribunal Member I. R. Harris MBE BSc FRICS

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).