



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

**Case Reference** : **MAN/OOBR/LDC/2019/0035**

**Property** : **The Works, 33 Withy Grove, Manchester M4 2BJ.**

**Applicant** : **Salford Quays Company limited (Ryan Booth)**

**Representative** : **The Works (Manchester) Management Company Limited**

**Respondents** : **Leaseholders – see annex A**

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

**Tribunal Members** : **Niall Walsh (Deputy Regional Valuer)  
Laurence Bennett (Deputy Regional Judge)**

**Date of determination** : **27 November 2019**

**Date of Decision** : **2 December 2019**

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**DECISION**

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## **Application**

1. The Works (Manchester) Management Company Limited applies, as managing agents of the building, to the Tribunal under Section 20ZA of Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) in respect of fire safety works, particularly relating to preliminary investigatory works at The Works, 33 Withy Grove, Manchester M4 2BJ. (the Property).
2. The Respondents are Leaseholders of the apartments at the Property.

## **Grounds and Submissions**

3. The application was received by the Tribunal on 3 September 2019.
4. The Applicant is the current Landlord, Salford Quays Company limited (Ryan Booth).
5. On 16 September 2019 Deputy Regional Valuer Walsh made directions which provided that in the absence of a request for a hearing the application would be determined upon the parties' written submissions.
6. The Property is a 10-storey residential apartment block comprising of 38 apartments. The building, which was completed in 2005, is of concrete frame construction with a single lift and fire escape. The external façade is predominantly brick but also contains areas of zinc cladding.
7. The Applicant stated in the application form that "pursuant to the Regulatory Reform (Fire safety) Order 2005 Greater Manchester Fire and Rescue Service (GMFRS) have served an enforcement order dated 23 January 2019 on the building management company". GMFRS's order states that the measures to be taken specifically include:  
  
"Make and give effect to fire safety arrangements for the effective planning, organisation, control and monitoring of the preventative and protective measures Specifically steps must be taken to ensure that there is an adequate system of detection and warning for relevant persons who are at risk from potential internal and external fire spread".
8. The Applicant advises that following initial investigations and to enable the necessary steps to be taken to ensure compliance with the Fire Safety Order 2005, further investigations are now required to "design a solution" to address the fire safety deficiencies both internally and to the exterior of the building.
9. The cost of the building envelope investigations is estimated to be £10,563 + VAT. The estimated cost of the internal investigations is £12,650 + VAT. The associated follow up design and project work following these investigations is budgeted to be a further £17,144.60. These total estimated costs equate to £45,000 inclusive of VAT, which exceeds the £250 statutory consultation threshold limit per Leaseholder.

10. In conclusion the Applicant states that “the reason for this [application] is that there is currently a risk to life due to failures in the compartmentalisation in the façade which have been identified. Further investigations and design work is necessary in order to develop a plan to address the issues and instate a long-term fire strategy in the building.”
11. The Tribunal did not receive submissions from a Leaseholder in accordance with directions.
12. The Tribunal convened without the parties to make its determination on 27 November 2019.

## **Law**

13. Section 18 of the Act defines “service charge” and “relevant costs”.
14. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
15. Section 20 of the Act states:-  
**“Limitation of service charges: consultation requirements**  
Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited..... Unless the consultation requirements have either:-
  - a. complied with in relation to the works or
  - b. dispensed with in relation to the works by ..... a leasehold valuation tribunal.This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.
16. “The appropriate amount” is defined by regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as “..... an amount which results in the relevant contribution of any tenant being more than £250.00.”
17. Section 20ZA(1) of the Act states:-  
"Where an application is made to a 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."

## **Tribunal’s Conclusions with Reasons**

18. We considered the written evidence submitted in support of the application.  
  
Our conclusions are:-
19. It is not necessary for us to consider at this stage the extent of the service charges that would result from the works payable under the terms of the Respondents’ leases. If and when such is demanded and if disputed, it may properly be the subject of a future application to the Tribunal.

20. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the Section 20 consultation requirements. These requirements ensure that tenants are provided with the opportunity to know about works, the reason for the works being undertaken, and the estimated cost of those works. Importantly, it also provides tenants with the opportunity to provide general observations and nominations for possible contractors. The landlord must have regard to those observations and nominations.
21. The consultation requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works. 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.
22. It follows that, for the Tribunal to decide to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed. In considering whether or not it is reasonable to do so, the Tribunal must consider the prejudice that would be caused to tenants by not undertaking the consultation while balancing this against the risks posed to tenants by not taking swift remedial action. 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.
23. In the present case, there can be no doubt that the works are necessary to meet acceptable health and safety standards for the occupiers of the Property and to comply with and address the outstanding Enforcement Notice. We have no hesitation in finding that it is reasonable for these works to proceed without the Applicant first complying with section 20 consultation requirements. The balance of prejudice favours permitting such works to proceed without delay.
24. In deciding to grant dispensation, we have had regard to the fact that no objections were raised by the Respondent Leaseholders. We accept from the details of the investigatory work proposed, the obvious health and safety consequences of failure to devise a clear and coherent strategy to address the current fire deficiencies within the building. These deficiencies have been documented in LKK Group's Building envelope report which states:

“It is clear from the above findings that the original build process did not follow good practice or building regulations during the construction of the envelope. There are a number of issues that we have discovered such as a lack of fire breaks and combustible products that require replacement or mitigation.”
25. This conclusion is reinforced by the GMFRS Enforcement Order dated 23 January 2019 and supports the Applicant's contention that “GMFRS have indicated that if the required investigations and design work are not carried out within a few weeks the GMFRS may prohibit the use and occupation of the building”.
26. While the Applicant has not attempted to comply with the statutory consultation requirements, it has nevertheless provided some key information to Leaseholders as to the nature of the investigatory works and their estimated cost.

27. We therefore conclude that it reasonable in accordance with Section 20ZA(1) of the Act to dispense with the consultation requirements, specified in Section 20 and contained in Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987).
28. Nothing in this determination or order shall preclude consideration of whether the Applicant may recover by way of service charge from the Respondents any or all of the cost of the work undertaken or the costs of this application should a reference be received under Section 27A of the Landlord and Tenant Act 1985. We make no findings in that regard.

### **Order**

29. The Applicant is dispensed from complying with the consultation requirements in respect of the work specified in the application.

Annex A The Works M4 2BJ

Mr Abid Khan  
Mr Antony Tonkin  
Gheorghe Lupascu & Su Gyeong Song  
Mr Barry Greenbank  
Ms Clare Broadbent  
Mr Colin Brookes  
Mr David P Atkinson  
Ms Denise Gregory  
Mr Derek Taylor  
Ms Diana Baynes  
Dr Kochhar  
Mr Matthew S Goodchild  
Mr Michael Collins  
Mr & Mrs L Green  
Mr Nuaman Sheikh  
Mr Paul Dinsdale  
PW Grice  
Mr Ryan Newey  
Mr Taz Gazanfer  
Mr Tim Bolderson  
Mr Toby Whitaker