



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

**Case Reference(s)** : **MAN/OOBY/LDC/2019/0027**

**Property** : **Flats 12 (a k a flat 8) & 15, The Spectrum,  
74 Duke Street, Liverpool L1 5AT**

**Applicant** : **Grainger Pearl Limited**

**Representative** : **Womble Bond Dickenson**

**Respondents** : **1. Patrick & Lucia Loughrey  
2. Mark Asten**

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

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

**Date of determination** : **19 September 2019**

**Date of Decision** : **20 September 2019**

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**DECISION**

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## **Application**

1. Grainger Pearl Ltd applies 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 work to improve the fire compartmentalisation and stopping between flats and across all Common Parts or Structural Parts of the Property.
2. The Respondents are the individual Residential Leaseholders of flats at the Property.

## **Grounds and Submissions**

3. The application was received by the Tribunal on 18 June 2019.
4. The Applicant is the Lessor and Freeholder of the flats at the Property.
5. On 25 July 2019 the Tribunal made directions relating to service of the application and arrangements for a response. It was directed that in the absence of a request for an oral hearing the application would be determined upon the parties' written submissions without a hearing.
6. The Property is stated to be a 5-storey residential block comprising of 34 flats of which 32 have been retained by the Applicant and are let out on short residential tenancies. The first Respondents and second Respondent are the only long leaseholders with the exception of a commercial unit let on a 999-year lease, which because of its commercial nature is not impacted by this application. There is also a basement car park providing 18 car parking spaces.
7. The Applicant stated in its statement of case that "Following the Grenfell Tower disaster ....., the Applicant commissioned Safety Management UK Ltd, to undertake an inspection of The Spectrum and produce a report detailing the adequacy of the existing compartmentalisation to ensure compliance with the current regulatory framework."
8. The subsequent report detailed a number of significant inadequacies in respect of fire safety and provided recommendations to improve fire separation and compartmentalisation such as:  
  
"works suitably to fill a firestopping system gaps around the various pipes, boarding within ceiling voids, walls of service risers, compartment walls, entrance door to the lift lobby in the basement, areas within the basement and car park."
9. The Applicant proposes to use the specialist contractor Gunite (Gunfire) which has been selected from an existing EU Procurement Rules compliant framework. The Gunite quotation excludes associated building works relating to exposing elements, removing obstructions and making good. The Applicant has therefore "made a provisional allowance to cover general builders works and proposes to obtain quotations from a number of different contractors for this work. Allowing for contingencies and VAT the works are estimated to cost £70,830.

10. The Applicant states that the works are urgently needed to provide adequate fire safety protection for the occupants and the Property and contends that “there will be little if any prejudice to the Respondents if the application is granted.”
11. In accordance with directions the Applicant has provided copies of the Respondents’ Leases, a statement of case, copies of the Safety Management UK Report, the Gunfire Quotation, and its Investment Committee’s report and decision.
12. No statement of case has been received from the Respondents. None of whom have indicated that they wish to participate in these proceedings.
13. Neither the Applicant nor a Respondent requested a hearing.
14. The Tribunal convened without the parties to determine the application on 19 September 2019.

## **Law**

15. Section 18 of the Act defines “service charge” and “relevant costs”.
16. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
17. 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 ..... the First Tier Tribunal  
This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.
18. “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.”
19. 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**

20. We considered the written evidence submitted by the Applicant.
21. 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.

22. 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.
23. In considering whether or not it is reasonable to dispense with the consultation requirements, 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 or was an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation. The prescribed procedures are not intended to act as an impediment when urgent works are required.

Our conclusions are:-

24. It is not necessary for us to consider the extent of the service charge payable by the Respondents that has resulted from the work. If disputed when demanded an application may be made to the Tribunal under Section 27 Landlord and Tenant Act 1985.
25. We find from the evidence provided on behalf of the Applicant that these works are essential and that there would be an unacceptable and evident risk of the occupants if the fire safety deficiencies identified are not remedied quickly. We therefore accept that it is necessary for these works to commence as quickly as possible to avoid any potential adverse impacts on the health and safety of occupiers and visitors to the Property. We have no hesitation in finding that it is reasonable for these works to proceed without the Applicant first complying with the Section 20 consultation requirements. The balance of prejudice favours permitting such works to proceed without delay.
26. Although no formal consultation has taken place, we are satisfied that as the Freeholder retains 32 out of 34 flats within the block it is reasonable to assume that it is also in its best interest to ensure that the works are undertaken competently and in the most cost-effective manner. The respondent leaseholders have been informed of the position. We have not identified a specific prejudice to Leaseholders in the circumstances.
27. In deciding to grant dispensation, we have also had regard to the fact that no objections were raised by the respondent leaseholders. No one has suggested that these works are not required. No leaseholder has suggested that they will be prejudiced if we grant dispensation. It is therefore not necessary to consider whether dispensation should be granted on terms.
28. We conclude 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) whether prospective or retrospective.

29. 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.

**Order**

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

**N Walsh  
Deputy Regional Valuer  
19 September 2019**