FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BN/LDC/2020/0055**
HMCTS code (audio,video,paper)	**:**	**P:PAPERREMOTE**
Property	**:**	**Bracken House, 44-58 Charles Street, Manchester, M1 7BD**
Applicant	**:**	**Grey GR Limited Partnership**
Applicant's Representative	**:**	**Pinsent Masons LLP**
Respondents	**:**	**The various Respondents referred to in Annex 1.**
Respondents' Representative	**:**	**As to 98 of the Respondents, Mansfield Solicitors and Advocates Ltd**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 20ZA**
Tribunal Members	**:**	**Judge J.M. Going** **J. Faulkner FRICS**
Date of decision	**:**	**14 March 2021**
Date of Determination	**:**	**25 March 2021**

DECISION

Covid -19 pandemic: description of hearing:

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face to face hearing was not held because no one requested the same, and all the issues could be determined on the basis of the papers. The documents that the Tribunal was referred to were in the Application, those supplied with it, and Applicant's bundle, the parties submissions and statements, all of which the Tribunal noted and considered.

The Decision

Those parts of the statutory consultation requirements relating to the works which have not been complied with, are to be dispensed with, conditional upon the Applicant: –
(a) if reasonably practicable, providing all leaseholders with a copy of the final specification of works and final agreed price with Everlast (along with details of the principal terms of the intended contract), prior to entering into a contract.
(b) if reasonably practicable, inviting all leaseholders to provide any comments upon the final specification and contract price/terms within a window being not less than 7 clear days from such notification.
(c) having regard to any comments made by the leaseholders prior to entering into a binding contract.
(d) keeping leaseholders updated not less than monthly as to the broad progress of works, the applications for government or other sources of funding, and any warranty, insurance, or related claims, from now until completion of the works.
(e) paying the reasonable costs of (1) Mansfield in relation to investigating and challenging this Application, and (2) the Miller report.
(For the avoidance of any doubt it is confirmed that if it is not reasonably practicable for the Applicant to fully comply with sub paragraphs (a)(b) and (c) above because of the contract having already been entered into prior to its receipt of this Decision, the Applicant will nonetheless still be obliged to send to the Respondents a copy of the final specification of works, price and principal terms of that contract, and invite observations).

Preliminary

1. By an Application dated 2 December 2020 ("the Application") the Applicant applied to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for the dispensation of all or any of the consultation requirements provided for by section 20 of the 1985 Act with regard to work to replace the façade of the Block, works to replace windows, works to replace a lift, the provision of a new bin store, works to existing external fire escape and works to ground floor entrance ("the works") serving the various apartments at the property ("Bracken House"). The Applicant considered that the works should be carried out urgently.

2. The Tribunal issued Directions on 31 December 2020, which confirmed (inter-alia) that "It is considered that this matter is one that can be resolved by way of submission of written evidence leading to an early determination or by a hearing if requested by the parties. If any party wishes to make oral representations before the Tribunal please inform the Tribunal's Office in Manchester by letter or e-mail within 28 days from the date of these Directions. (This does not affect the right of any party to request a hearing at any time before the Tribunal makes its determination.)"

3. The Applicant had provided written submissions and its statement of case with the Application and, as part of the Directions, was mandated to send copies to each Respondent within 14 days.

4. The Directions also confirmed that the Respondents could on or before 21 days of receipt of the Application and enclosures send both to the Applicant and the Tribunal any statement that they wished making response to the Applicant's case.

5. A statement in reply was issued on behalf of the leaseholders of 98 units within Bracken House by Mansfield Solicitors ("Mansfield"). There was also a brief email from the leaseholder of one further flat.

6. None of the parties have requested a hearing.

7. The Tribunal convened on 12 March 2021.

Background

8. The Tribunal has not inspected Bracken House, but understands that it is 9 storeys (and over 24 m) high, with 114 flats on the 1st to 8th floors. There is a commercial unit on the ground floor with separate office space and a basement below. It was originally an office building (possibly built in the mid to late 1960s) and converted into its current residential use between 2015 and 2017.

9. Official copies of the registered title from the Land Registry have confirmed that the Applicant is the registered proprietor of the freehold.

10. It is understood that each Respondent owns an apartment within Bracken House, and is due, under the terms of comparable long-term leases ("the lease provisions") where a sample copy has been provided, to pay a percentage of the costs of the maintenance repair and renewal of the structure, foundations and exterior as well as its common parts and common services, including the lifts, fire fighting equipment and any other amenities that the Applicant as the landlord deems reasonable and necessary for the benefit of the occupants of Bracken House. The lease provisions also oblige the Applicant to comply with all fire regulations (imposed by statute or otherwise) and any requirements of insurers in that regard.

Chronology

11. The following core facts and events are confirmed by, or referred to, in the papers. None have been disputed, except where specifically referred to.

15 December 2014	A planning certificate of lawfulness for a change from office use to residential was issued.
6 February 2015	A planning application was made on behalf Wilma Developments Ltd for over cladding the building.
18 February 2015	A building regulation application was made.
2015 – 2017	The block was converted to residential use.
14 June 2017	72 people died and more than 70 others were injured in the Grenfell Tower fire in London.
13 July 2017 – 21 August 2017	Land Registry entries show that sales of just over 70 of the flats in Bracken House were completed.
24 November 2017 – 24 January 2018	The sales of a further 40 flats were completed.
22 December 2017	The freehold was transferred from Wilma Developments Ltd to the Applicant
18 February 2018	The Applicant's agents reviewed the site with Manchester Fire and Rescue Service ("FRS") and Manchester City Council ("the Council").
18 July 2018	A letter was sent by the Applicant's managing agents Inspired Property Management ("IPM") to the Respondents following a review of the safety of the lift which had raised concerns as to its adequacy as a firefighter's lift.
18 July 2018	IPM served a Stage 1 notice under the consultation requirements in respect of the then anticipated lift works.
3 October 2018	White Hindle and Partners Ltd ("WHP") Building Project Consultants and Chartered Surveyors, who had been engaged to inspect the cladding, issued their report. That confirmed that some of the outer panels were combustible,

	and noted various instances of poor construction, a lack of proper cavity barriers, and insulation, some of which was unbranded, that was not fire rated "and of grave concern". They summarised their conclusions by stating "we recommend the full system is removed as quickly as possible and a new Building Regulations Compliant system installed. We do not believe the existing installation is or has ever been compliant with building regulations." The report stated that after a tendering exercise, based on the Council's reports as backed up by WHP's own inspection, Everlast were found to be the most cost-effective contractor and were recommended by WHP.
4 October 2018	IPM sent a letter to the Respondents with an update which inter-alia referred to the Council's Building Control taking over responsibility for the cladding project due to their concerns at the previous sign off by third-party building control company. It was stated that "until cladding is removed and all other work completed the Manchester Building Control will not sign off the building as being habitable without the provision of a waking watch… If waking watch was not provided, all residents would be asked to evacuate the building until work was completed. This would not be covered as an insured peril and the apartment owners would therefore be liable for any alternative accommodation charges incurred"…. "We arranged for an independent assessment of the cladding to be completed by third party consultant WHP… A copy of the full report is available for review on the tenant's web portal"
25 October 2018	IPM served a revised Stage 1 notice in respect of the change specification for the proposed lift works.
15 November 2018	IPM served a further Stage 1 notice in respect of cladding works.
October 2018 – February 2019	The Applicants statement refers to structural engineers being appointed to investigate, that in December, a further inspection by the FRS raised concerns with respect to internal compartmentation, and thereafter, the adequacy of the lift, and in February an asbestos management report being produced in anticipation of works.
12 February 2019	IPM served a Stage 3 statement of estimates in relation to the cladding works showing Everlast as the cheapest contractor. A response to the 1 observation received after the stage 1 notice was provided.
21 February 2019	IPM served a Stage 1 notice of intention in respect of a new automatic fire detection and warning system, compartmentation and lobby works, the bin store works, and the external fire escape staircase works.
3 April 2019	TECL Fire Protection ("TECL") issued their fire compartmentation survey. Their report with photographs extends to over 450 pages and lists hundreds of instances

	of works which were deficient and where fire stops had been compromised. There are innumerable comments of seals not having been installed to the manufacturer's specification, needing to be removed and reinstalled. Unsurprisingly the report concluded with the words "the building is deemed critical in TECL's view and the sooner works can begin the better".
April 2019	The Applicant's statement refers to Everlast being instructed to draw up a comprehensive specification of works.
21 May 2019	Jeremy Gardner Associates produced a fire engineering review of the block as a whole, taking into account the cladding and compartmentation issues making various recommendations to achieve a reasonable standard of fire safety.
By August 2019	It was decided because the nature and extent of the works had changed substantially, an overall design team be brought together to produce a revised specification
December 2019	A planning application was submitted to the Council. It had been discovered that the existing cladding did not have planning approval.
December 2019 – October 2020	The delays in the consideration of the application, are explained in the Applicant's statement by changes in Council's personnel dealing with the application, the effects of the covid-19 pandemic, a new planning officer advising that the application had been missed and that the Applicant had to "essentially start the planning process afresh" the requirement for an acoustic assessment, and last-minute objections by the Council's in-house architect to the rivet system proposed for fixing the new cladding.
26 May 2020	The Government's Building Safety Fund for remediation of non-ACM cladding systems ("BSF") prospectus was published and confirmed various deadlines, in order to be able to access funding, including the need to "submit a full funding application based on a tender price before December 2020". It also confirmed an apparent requirement that any government funded works commence on site prior to April 2021, and that the fund would be managed on a "first-come first-served basis".
10 July 2020	IPM served a new Stage 1 notice for the works to be let as a single contract. The Applicant's statement confirms that no leaseholder nominated a contractor in response to that notice and that there was but 1 response from Eric Yip (who the Applicant understood, whilst not a leaseholder, to represent a number of the leaseholders)
14 August 2020	Mr Yip sent a response to the Notice, "on behalf of Bracken House leaseholders group", asking "1. Has a contractor been confirmed 2. Can you provide us with a precise schedule of work? i.e. start date, duration anticipated finish date, etc 3. Scaffolds might become a security issue.

	4. The group would like to send an individual surveyor on site to understand the detail of the works and who will be the contact person. 5. Please notify the commence(ment) date".
6 October 2020	The Council grant planning permission in respect of the revised planning application, noted as having been made on 8 April 2020.
22 October 2020	IPM wrote to the Respondents with an update on progress (including the application to the BSF). The letter provided the Applicant's comments in response to Mr Yip's email.
2 December 2020	The Application was made.
17 December 2020	The Government announced an extension of the deadline for commencing any BSF funded works to 30 September 2021.

Submissions

12. The Applicant with its Statement confirmed various costings and stated that it had ensured each component part of the works had been put out to tender, mostly by Everlast who had overseen the tender process for subcontracted works.

13. It was said that WHP put the cladding works, as initially specified, out to tender in September 2018, and found Everlast to be the most cost-effective contractor.

14. Details of various separate tenders undertaken in respect of the cost of replacement windows (where 2 companies quoted), the bin store works (where 5 contractors returned prices), the entrance lobby works (with prices from 5 contractors), the lift works (3), escape stairs works (2), and the compartmentation works (where again 2 contractors returned prices) were provided. In each case it was confirmed that the Applicant intends to appoint the contractor which provided the lowest quote.

15. The Applicant in its statement referred to a total anticipated cost of the project, including professional fees, excluding legal fees, being £5,075,85.66, but with, of necessity, some contingency and provisional sums built into the figure.

16. The Applicant submitted that it had undertaken significant consultation, that the works are sufficiently urgent and that the constraints associated with potential funding are that it will not realistically be able to fully comply with the consultation requirements, which in essence would mean starting afresh. It stated that this is a very complex project with a specification for works which has continually changed over a period of time for a wide variety of reasons.

17. Various reasons were given to justify the urgency of works and as to why full consultation could not be achieved. The Applicants stated "as an obvious first point, all of the works are safety critical". It stated that "there is currently

a waking watch in place (fire marshals who patrol the building, raise alarm, facilitate evacuation in the event of a fire pending arrival of the fire service). The cost of that service is extremely high – in the 2019 service charge year, the cost of the waking watch was £483,000. It is in everyone's interest for the cost of the waking watch to cease as soon as the FRS will permit this. Every month of delay increases the waking watch cost by circa £45,000". It also referred to the constraints of its application to the government's Building Safety Fund, and the perceived need to be able to act very quickly to comply with any conditions, when the outcome of that application is known. It also pointed out that "as a matter of commercial reality, there is a substantial demand for contractors that undertake cladding and compartmentation works in particular" and "if the Applicant has to recommence consultation and delay the works, it is likely to lose the ongoing support and readiness of at least some of the contractors currently selected".

18. Mansfield by way of reply submitted that the Tribunal should refuse the Application stating that "despite the short timeframe the leaseholders have been able to find, credible, independent expert analysis that exposes serious flaws both in the approach taken to the works by the design team and the Applicant. It is clear that inter alia they have failed to consider a range of alternative construction methods and materials and failed to have an open competitive tender. The result is a price for the works that is extremely high and must therefore be considered innately prejudicial to the leaseholders".

19. Mansfield stated "the sums claimed are in any event enormous and therefore a full competitive tender is essential in order to avoid the obvious prejudice of the leaseholders paying significantly more".

20. A report from Keith Miller, a Forensic Consultant and Chartered Architect with Smithers Purslow, whose letterhead refers to Engineering Surveying and Architecture, ("the Miller Report") dated 3 February 2021 was submitted and relied upon. That, inter- alia, stated the belief that there was a more cost-effective solution to the wholesale replacement of the cladding, that it may be possible to negotiate a derogation from the firefighting lift specifications, that air pressurisation and water mist fire suppression systems should be considered, and that the leaseholders have an opportunity to have a quantity surveyor review the value of the works.

21. Mansfield submitted that "the consultation thus far has been piecemeal… There have been months of inactivity and a persistent failure to communicate with the leaseholders… There has then been a persistent and significant failure to inform or engage coupled with a failure to progress matters appropriately. This has created a clear sense of uncertainty with the leaseholders and loss of confidence in the Applicants."

22. Mansfield particularly quoted various extracts from the Miller Report setting out his view that "in this case, the tender process is flawed, the leaseholders are being asked to fund the cost of the works which could have turned out to be much less, if a conventional tender process had been followed"…. and whereby he stated "unless the process of obtaining competitive tenders is adopted by the landlord, and alternative approaches are not

considered, then the leaseholders may have difficulty in obtaining for redress against those who took on the work in connection with the provision of the flats".

23. Mansfield submitted that whilst "it is agreed in broad terms that the works need to be done.... It is not agreed that the works are so urgent they mandate a requirement to dispense with the consultation process".

24. Both the Applicant and Mansfield alluded to and provided a full copy of the Supreme Court's judgement in the case of *Daejan Investments Ltd v. Benson and others (2013) UK SC 14* ("*Daejan*") which is more particularly referred to later.

25. The Applicant made a further and detailed statement in reply, including comments on Miller Report, maintaining a number of its assumptions were wrong.

26. The only other response to the Application, other than that from Mansfield, was a short email from the owner of flat 81, in which he stated his opposition to dispensation "for the reasons... 1. I have no idea why such massive amount of renovation/repairs works are required at a property which was deemed legally fit for sale at the time of my purchase. 2. I disagree such kind of works, as massive and outrageously costly as indicated now, are the responsibility of the leaseholders..."

The Law

27. Section 20 of the 1985 Act and the Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") specify detailed consultation requirements ("the consultation requirements") which if not complied with by a landlord, or dispensed with by the Tribunal, mean that a landlord cannot recover more than £250 from an individual tenant in respect of a set of qualifying works.

28. 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 go through a 4 stage process: –

- Stage 1: Notice of intention to do the works

Written notice of its intention to carry out qualifying works must be given to each tenant and any tenants association, describing the works in general terms, or saying where and when a description may be inspected, stating the reasons for the works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the work should be sought, allowing at least 30 days. The Landlord must have regard to those observations.

- Stage 2: Estimates

The Landlord must seek estimates for the works, including from a nominee identified by any tenants or the association.

- Stage 3: Notices about estimates

The Landlord must supply leaseholders with a statement setting out, as regards at least 2 of those estimates, the amounts specified as the estimated cost of the

proposed works, together with a summary of any individual observations made by leaseholders and its responses. Any nominee's estimate must be included. The Landlord must make all the estimates available for inspection. The statement must say where and when estimates may be inspected, and where and when observations can be sent, allowing at least 30 days. The Landlord must then have regard to such observations.

- Stage 4: Notification of reasons

The Landlord must 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, unless, either the chosen contractor submitted the lowest estimate, or is the tenants' nominee.

29. Section 20ZA(1) states that: –

"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."

30. The Supreme Court in *Daejan* set out detailed guidance as to the correct approach to the grant or refusal of dispensation of the consultation requirements, including confirming that: –

- The requirements are not a freestanding right or an end in themselves, but a means to the end of protecting tenants in relation to service charges;
- The purpose of the consultation requirements, which are part and parcel of a network of provisions, is to give practical support to ensure tenants are protected from paying for inappropriate works or paying more than would be appropriate;
- In considering dispensation requests, the Tribunal should therefore focus on whether the tenants have been prejudiced in either respect by the failure of the landlord to comply with the requirements;
- The financial consequences to the landlord of not granting of dispensation is not a relevant factor, and neither is the nature of the landlord;
- The legal burden of proof in relation to dispensation applications is on the landlord throughout, but the factual burden of identifying some relevant prejudice is on the tenants;
- The more egregious the landlord's failure, the more readily a Tribunal would be likely to accept that tenants had suffered prejudice;
- Once the tenants have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the tenant's case;
- The Tribunal has power to grant dispensation on such terms as it thinks fit – provided that any such terms are appropriate in their nature and their effect, including a condition that the landlord pays the tenant's reasonable costs incurred in connection with the dispensation application;
- Insofar as tenants will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require a landlord to reduce the amount claimed and compensate the tenants fully for that prejudice.

The Tribunal's Reasons and Conclusions

31. The Tribunal began with a general and careful review of the extensive papers, in order to decide whether the case could be dealt with properly without holding an oral hearing. Rule 31 of the Tribunal's procedural rules 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).

32. None of the parties (the majority of whom were legally represented) requested an oral hearing, and, having reviewed the papers, the Tribunal was satisfied that this matter is suitable to be determined without a hearing. The issues to be decided have been clearly identified in the papers enabling conclusions to be properly reached in respect of the issues to be determined, including any incidental issues of fact. The Tribunal was assisted by the clarity and comprehensive nature of the written submissions submitted by the parties' legal representatives. The Tribunal is also, as explained below, persuaded of the urgency of the present situation.

33. The Tribunal has every sympathy with all the parties, and particularly the individual flat owners staring at costs of tens of thousands of pounds, exacerbated by multiple factors, stemming from the use of dangerous materials and a catalogue of poor workmanship, together with woefully inadequate systems for ensuring compliance with the building regulations.

34. The Tribunal's jurisdiction is however limited, and its focus has to be specific.

35. Before turning to a detailed analysis of the evidence, the Tribunal reminded itself of the following considerations: –

- The only issue for the Tribunal to decide is whether or not it is reasonable to dispense with the statutory consultation requirements.
- In order to grant dispensation the Tribunal has to be satisfied only that it is reasonable to dispense with the requirements: it does not have to be satisfied that the landlord acted reasonably, although the landlord's actions may well have a bearing on its decision.
- The Application does not concern the issue of whether or not service charges will be reasonable or payable. The Respondents retain the ability to challenge the costs of the works under section 27A of the 1985 Act.
- The consultation requirements are limited in their scope and do not tie the Applicant to follow any particular course of action suggested by the Respondents, and nor is there an express requirement to have to accept the lowest quotation. As Lord Neuberger commented in *Daejan* "The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are done by, and what amount is to be paid for them".
- Albeit, as Lord Wilson in his dissenting judgement in the same case also noted "What, however, the requirements recognize is surely the more significant factor that most if not all of that amount is likely to be recoverable from the tenant."

- Experience shows that the consultation requirements inevitably, if fully complied with, take a number of months to work through, and very rarely less than three months, even in the simplest cases.
- The Office of the Deputy Prime Minister in a consultation paper published in 2002 prior to the making of the regulations explained "the dispensation procedure is intended to cover situations where consultation was not practicable (e.g. for emergency works)…."

36. Having carefully considered the evidence before it, and using its own knowledge and experience, the Tribunal concluded as follows.

37. The works are urgent for a number of compelling reasons. The first, and most important, is the inherently dangerous state of a building occupied by many individuals. The various expert reports have uncovered a catalogue of defects which taken together present a clear, present, and continuing danger to life and limb. No one could argue otherwise following the tragic events at Grenfell Tower.

38. The Tribunal does not agree that Mansfield's comment "that it would be desirable for the works to be done in the relatively near future" sufficiently recognises the urgency. Mansfield has submitted that "there has been a significant lack of urgency on the part of the Applicant thus far. It is curious therefore that urgency only emerges when the Applicant seeks to avoid consultation".

39. The Tribunal finds that whatever the reasons for any delays to date, they do not eradicate the continuing dangers. It is no surprise to the Tribunal that the Council refused to issue habitation certificates until and unless there was a waking watch.

40. There are also a number of other compelling reasons as to why the works should continue to be regarded as urgent. These include the need to bring the waking watch costs to an end as soon as possible, and a set of circumstances where time may be of the essence in order to satisfy shifting criteria relating to insurance, possible sources of funding from the Government or others, and the need to mitigate losses. Unnecessary delay profits no one.

41. Applying the principles set out in *Daejan* the Tribunal has focused on the extent, if any, to which the Respondents have been or would be prejudiced by a failure by the Applicant to complete its compliance with the consultation requirements.

42. The factual burden of identifying some form of relevant prejudice falls on the Respondents.

43. The Tribunal finds that evidence of any actual relevant prejudice is, at best, very weak: despite the various Stage 1 notices there is no evidence of the Respondents nominating a contractor or contractors at any point; there is no evidence that the Respondents dispute the extent of the present defects; there is evidence of competitive tendering in respect of each of the individual

component parts to what is now a composite contract; there is evidence of the Applicant having regard to the Respondents' submissions.

44. The Tribunal is satisfied that the Respondents have been given ample opportunities over many months to make representations about the different component parts of the proposed works to the Applicant. The Tribunal finds that the Respondents have not identified how the process has prevented them from objecting to the works or identifying alternative contractors.

45. The Tribunal finds the Respondents have not properly identified any relevant prejudice, within the context of the regulations, in the Applicant's actions to date.

46. The Tribunal thereafter considered the position going forward. It has had to weigh the balance of prejudice between, on the one hand, the need for swift remedial actions, and on the other hand the legitimate interests of leaseholders in being properly consulted before major works begin.

47. In this case the Tribunal finds that the Applicants have made out a compelling case as to why dispensation should be granted. It has been clearly demonstrated that the Respondents have been aware of the core issues, been allowed considerable time, and had various opportunities to nominate their own contractors and make observations.

48. The Tribunal is also persuaded of the practical need for flexibility in proceeding with a multifaceted and complex building project, and the commercial realities of having suitable contractors available, when required. To restart and complete the consultation requirements will inevitably involve delay.

49. The majority of the Respondent's submissions relate to matters which ought more properly to be considered under an application under section 27A of the 1985 Act. As the Applicant has commented "an attempt to challenge the value of the works does not form part of an application for dispensation".

50. The Tribunal broadly agrees with the comments made by the Applicant in response to the Miller report, and certainly notes that it contains no evidence of actual costings. No evidence has been provided that any re-tendering process will necessarily lead to an overall cheaper outcome.

51. Insistence on continuing the consultation requirements has to be seen in the context of both the ongoing monetary costs, and the ongoing risks of further delay - in order to implement a process which in large part will duplicate what has gone before.

52. The Tribunal has concluded, on the basis of the evidence before it, that far greater prejudice is likely to accrue if dispensation is not granted. Indeed, quite apart from the paramount safety concerns posed by the inherent dangers, with ongoing costs of the waking watch at a stated rate of almost £45,000 per month, and the potential unsalability of the flats until the necessary works are

completed, the Tribunal is convinced that there is an imperative that there should be no ongoing unnecessary delays.

53. Having decided that it is reasonable that dispensation be granted, the Tribunal then turned to question of what, if any, conditions should be attached.

54. The Tribunal has power to grant dispensation on such terms as it thinks fit – provided that any such terms are appropriate in their nature and effect.

55. The Tribunal understands that it must be of great concern to the Respondents, and a potential cause of friction, if they do not know what is going on, or what is being done, ultimately at their expense.

56. The Applicant set out in paragraph 36 of its statement of the grounds for the Application that it would volunteer, in lieu of further compliance with the requirements, to : –
"(a) if reasonably practicable, provide all leaseholders with a copy of the final specification of works and final agreed price with Everlast (along with details of the principal terms of the intended contract), prior to entering into a contract.
(b) if reasonably practicable, invite leaseholders to provide any comments upon the final specification and contract price/terms within a window being not less than 3 clear days from such notification.
(c) to have regard to any comments made by the leaseholders prior to entering into a binding contract-including any responses to this statement of case.
(d) to keep leaseholders updated not less than monthly as to the broad progress of works and the application for government funding from now until completion of the works with the first update in December 2020".

57. The Tribunal found that such conditions (subject only to minor modifications, including extending the window for further comments, if reasonably practicable, to 7 rather than 3 days) are reasonable and appropriate, and will help mitigate any potentially relevant prejudice to the Respondents. As such they have, as so amended, been incorporated within its Decision.

58. Notwithstanding that dispensation is being granted, the Tribunal has found that it was reasonable for the Respondents to incur costs in considering the Application, and making representations to the Tribunal as to whether a truncated process should be allowed. The Tribunal has therefore decided that it is reasonable to impose a further condition, that the Applicant pay both Mansfield's reasonable costs, and the reasonable costs of the Miller report.

59. For the reasons stated, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements upon the terms confirmed in the Decision, and in respect of the works which relate to fire prevention measures and are urgently required for the health and safety of the occupants and users of Bracken House.

60. It is however emphasised that nothing in this decision should be taken as an indication that the Tribunal considers that any service charge costs resulting from the works will be reasonable or indeed payable. The

Respondents retain the right to refer such matters to the Tribunal under section 27A of the 1985 Act at a later date, should they feel it appropriate.

Tribunal Judge J Going

Annex 1

Mr Kin Lo Kwan
Mr Lam Po Yu
Mr Siu Shan Cheung
Mr Chung Wai Wilson Wong
Mr Edalat G Abdi
Mr David Stanbrook & Ms Karen A Fielke
Mr Ali Shakery
Mr John Storey
Kingsmaid Limited
Chung Pak Hin
Power Living Limited
Wai Hong Stephen Chung
Muin Uddin F Ahmed Shariff
Mr Richard Rotti
Mr Michael Hanson-Lawson
Ms Michelle Buschl
Mr Lai Wai Man
Chung Lan Kwan
Ms Tsui Ping Peggy Tang
Ms Man Suen Juliana Lee
Chunping You
Ka Man Angel Chan
Mr Hing Lun Alan Tsang
Sau King Chan
Chan Fook Cheung Elvis
Chun Yan Edith Chong
Hung Bun Yung
Fan Kim Kwan
See Hong Wong
Chor Kee Tsang
Xiao Zhang
Man Yee Chan
Ching Ping Chau
Hung Yuk Wong
Humphrey Chan
Xiaojie Wang
Po Wai Chiang
Kuen Chu So
Fong Hang Keung & Chan Suk Lan

Wen Hui Huang & Peihua Huang
Lai Ming Man
Wing Yin Kwok & Hin Anne Yeung
Yuen Man Patricia Chan
Ma Jin Feng
Ka Ming Leung & Sin Yee Chan

Shuk Wa Li
Leung Kwok Hung & Yuen Ching Tang
Yuen Yi Cheung
Zhitao Mai
Cheng Tai Ming
Sio Kuan Cheng & Siu Ying Ho
Kwok Ming Jacob So & Mei Lan Ho
De Bao Hk Limi
Nao Kanamaru
Leung Kwok Wai Toby
Shum Wang Fai
Wang Ronnie Wong
Hing Hau Lau & Wai Ho Dong
Man Yuk Poon & Kwok Kei Tsang
Tak Chao Lam
Yee Man Eveline Chan & Tou Lok Ip
Chan Sau Chan
Yufan Lin
Fock Wing Fai
Tong Siu Kuen
Chan Ching Chi
Wai-Kin Mullar Wan & Jenny Wing-Kum Ng
Diu Kwok Yung
Yeung Shing Joseph & Luk Wei Kwang
Ka Sing Choi
Yuk Fung Angel Zao
Wing Fung Mak
Ka Yin-Micko Wu
Hsiao Hui Hsu
Cheuk Chung Kwan
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