FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BN/LDC/2021/0021**
HMCTS code (audio,video,paper)	:	**P:PAPERREMOTE**
Property	:	**Britton House, 21 Lord Street, Manchester, M4 4FQ**
Applicant	:	**Adriatic Land 8 (GR2) Limited**
Applicant's Representative	:	**JB Leitch Limited**
Respondents	:	**Various Long Residential Leaseholders (see Annex A)**
Type of Applications	:	**Landlord and Tenant Act 1985 – s 20ZA and s 20C**
Tribunal Members	:	**Judge J.M.Going** **C.R.Snowball MRICS**
Date of decision	:	**19 April 2022**

DECISION

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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, the parties submissions and statements and a separate application and the response, all of which the Tribunal noted and considered.

The Decision

The Tribunal decided :-

(1) that those parts of the statutory consultation requirements relating to the Works (being both the Cladding Works and the Interim Works as hereinafter more particularly referred to) which have not been complied with, are to be dispensed with, conditional upon the Applicant keeping the Respondents updated in writing, via its dedicated online portal or otherwise, not less than every 6 weeks, as to key milestones, the broad progress of the Works, and their cost, the applications for government or other sources of funding, and any warranty, insurance, or related claims, from now until completion of the Works, and

(2) to refuse the application from those Respondents seeking an order under section 20C of the 1985 Act.

Preliminary

1. By an Application dated in 15 April 2021 ("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 works at the property ("Britton House") to its terrace, metal cladding, grey render and brickwork in order to comply with fire safety requirements as more particularly referred to in paragraph 12 of its Statement of Case (the "Cladding Works") as well as the installation of heat detectors and smoke detectors to extend the fire alarm system as more particularly referred to in paragraph 18 of the same Statement of Case (the "Interim Works") (which Cladding Works and Interim Works are together referred to as the "Works"). The Applicant considered that the Works should be carried out urgently, confirming that the consultation process had begun but not been completed in respect of the Cladding Works and had not begun in respect of the Interim Works.

2. The Tribunal issued Directions on 10 February 2022 confirming (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. If any party wishes to make representations at an oral hearing before the Tribunal, they should inform the Tribunal Office in writing within 42 days from the date of these Directions". The Directions set out the timetable to be followed by the parties and stated that "The Tribunal will aim to determine this matter in April 2022.... on a determination on the papers received, unless any of the parties request a hearing".

3. The Applicant had provided written submissions and its statement of case together with various reports advice and documents 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 any Respondent who opposed the application must within 21 days of receipt of the Application and Applicant's case send any statement with other documents that they wished to seek to rely upon both to the Applicant and the Tribunal.

5. On 10 March 2022 Jessica Pigg, a Respondent on behalf herself and approximately 44 other leaseholders (those "Respondents applying for a 20C order") submitted an application to the Tribunal (the "section 20C application") for an order under section 20C of the 1985 Act to prevent the costs incurred, or to be incurred, by the Applicant in connection with these proceedings from being recovered as part of the service charges.

6. No other statements in reply to the Application have been received and none of the parties have requested a hearing.

7. The Tribunal convened on 12 April 2022.

Background

8. The Tribunal has not inspected Britton House but understands that it is a 21-storey residential building variously referred to as between 58 and 65 metres high, built approximately 15 years ago from a concrete framed construction, with 165 flats on levels 1 to 19, and car parking on the ground and lower ground floors. The external elevations are clad with a mixture of brickwork at the lower level and render systems and metal cladding to the upper levels.

9. Official copies of the registered title from the Land Registry confirm that the Applicant as the registered proprietor of a long 999-year term leasehold title.

10. It is understood that each Respondent owns an apartment within Britton House, and is due, under the terms of comparable long-term leases ("the lease provisions") where a sample copy has been provided,

to pay as part of the service charges a percentage of the costs of inter alia the replacement renewal repair and maintenance of the Building, and the landlords obligations as regards it's structural parts, foundations, main structural frame, and exterior as well as its common parts.

Facts and Chronology

11. Because of the extent of the paperwork, which is on record and which the parties have access to, it would be superfluous and counter-productive to attempt to relate its full detail in this decision.

12. The Tribunal has highlighted only those issues which it found particularly relevant to, and to help explain, its decision-making.

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

8 June 2005	The first version of The Regulatory Reform (Fire Safety) Order 2005 ("FSO") came into force and was superseded by the second version on 31 March 2006 which remains in force.
2005 - 2007	Britton House was constructed.
14 June 2017	72 people died and more than 70 others were injured in the Grenfell Tower fire in London.
20 January 2020	The Ministry of Housing, Communities and Local Government ("MHCLG") issued the document "Advice for Building Owners of Multi-storey Multi-occupied Residential Buildings" ("the MHCLG guidance").
11 March 2020	The Government announced ("inter alia") that £1 billion would be available for owners to apply for the removal of non-ACM combustible Cladding.
26 May 2020	The Government's Building Safety Fund for remediation of non-ACM Cladding systems ("BSF") registration prospectus was published and confirmed various deadlines in order to be able to access funding, including the need to register expressions of interest between 1 June and 31 July 2020 and to submit a full funding application based on a tender price before December 2020. It also confirmed a 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".
5 June 2020	Livingcity Asset Management Ltd ("Livingcity") the Applicant's managing agents registered Britton House with the BSF.

July 2020	The Government published its BSF application guidance, with it confirmed that the application portal would open on 31 July 2020. The deadline dates previously referred to were extended with it stated "to maximise the amount you receive from the fund you must be able to submit a full cost funding application by 30 June 2021, including a construction tender price. Projects must start on site by 30 September 2021…".
17 September 2020, 15 October 2020, 14 January 2021	Thomasons, an independent multidisciplinary civil and structural engineering consultancy produced reports which refer to site investigations finding combustible plastic cavity trays and foil backed expanded foam insulation board in the brickwork, combustible expanded foam in the grey render and metal cladding panels. Its detailed recommendations in conjunction with Design Fire Consultants ("DFC") were based on undertaking works needed to comply with Approved Document B of the Building Regulations ("ADB").
2 & 16 September 2020,2 October 2020 to 14 January 2021	DFC provided fire engineering assessments of the external wall construction of Britton House. The scope was "limited to risk of fire spread by the external walls of the building". That assessment using ADB as its benchmark found that the protection of compartment floors, party walls, openings and resistance of fire spread over the walls was not adequate, with remediation required to (inter alia) various aspects of the brickwork, grey render, metal cladding and the terrace. DFC considered that the risk of fire spread via the external wall construction sufficiently high that "Interim measures are required until the hazard has been removed or remediation has been implemented". It also advised that the interim measures should include the implementation of a waking watch, as soon as possible, and discussion of its findings with the fire rescue service and residents to agree immediate, interim and remediation measures, again as soon as possible.
1 October 2020	The National Fire Chiefs Council ("NFCC") updated its "Guidance to support a temporary change to a simultaneous evacuation strategy in purpose-built block of flats" where a "stay put" policy had, prior to the Grenfell tragedy, been part of the original design but is no longer considered appropriate owing to significant risk issues such as combustible external façades. The Guidance "underscores the.... NFCC's firm and long-held expectation that building owners should move to install common fire alarms as quickly as possible to reduce or remove the dependence on waking watches. This is the clear expectation for buildings where remediation cannot be undertaken in the "short term". This approach should, in almost all circumstances, reduce the financial burden on

	residents where they are funding the waking watches." "Where a competent person has carried out the assessment of the External Wall System (EWS), the findings of that assessment should be considered in the Fire Risk Assessment for the premises alongside the general fire precautions and full range of interim measures to determine what actions need to be taken where this assessment suggests the EWS poses a risk". "An appropriate common fire alarm and detection system will generally provide more certainty that a fire will be detected and provide warning to occupants of the building at the earliest opportunity".
15 October 2020	Livingcity Asset Management Ltd ("Livingcity") the Applicant's managing agents issued the first notice under the Consultation Regulations in respect of all the necessary remedial works required to the EWS to comply with the MHCLG guidance stating that this may include remedial works to the cladding, render, insulation, fire breaks, cavity barriers, balconies/terraces and other constituent elements of the EWS, which notice invited observations and proposals of persons from whom the landlord should try and obtain an estimate for carrying out the proposed works.
21 October 2020	Thomasons issued a RIBA stage 2 feasibility and budget costs report including reference to estimated budget costs of £3.1 million+ VAT + fees.
On or around 19 November 2020	Livingcity received an email understood to be from approximately 20+ leaseholders challenging the notice stating that a suitable description of the works had not been provided, a full specification had not been available and would not be available before the expiry of the time set by the notice for response, thereby limiting the right to recommend alternative contractors and that the notice had been issued prematurely and that if the application to the BSF failed the section 20 process should be restarted.
3 December 2020	The Applicant, via its appointed asset manager Home Ground issued a "Frequently asked questions" document by way of response to the building's self-appointed Cladding Action Group ("BHCAG").
January/ February 2021	Quotations for the installation of a fire alarm system to facilitate simultaneous evacuation were obtained. Commercial Fire Systems Ltd quoted £147,031.21, Solid State Security Ltd £145,900.86, Zen Engineering Ltd £128,734.90, and SRC Fire Safety Ltd £165,231.16, in each case plus VAT.
3 February 2021	Livingcity applied on behalf of Britton House to the Waking Watch Relief Fund ("WWRF").

February 2021	The Government announced a further £3.5 billion extension of funding to the BSF.
2 March 2021	Livingcity sent an email to leaseholders advising that funding for the Interim Works, based on the cheapest quote in the revised tender had provisionally been agreed and reserved by WWRF.
15 April 2021	The section 20ZA application was made to the Tribunal to dispense with the section 20 consultation requirements in respect of both the Cladding Works and the Interim Works.
May 2021 Updated again in April 2022	In revised and updated BSF fund application guidance the deadlines were again referred to with it now said “we recognise however that meeting these deadlines may not be possible in all circumstances, for instance where applicants find that they do not have sufficient time to complete a robust and satisfactory procurement process in order to meet the June deadline. In these cases, if more time is needed to be able to complete the required steps… this will be permitted on a case-by-case basis, providing applicants continue to provide delivery partners with realistic but ambitious project delivery timetables…
17 December 2021	Livingcity’s covering letter to the Respondents including the service charge budget for 2022 stated “following a successful application, funds were obtained from the …. WWRF to pay for the installation of the extended fire alarm throughout the residential areas of the building which was commissioned on 1 June 2021”. The budget notes also confirmed that “the application for the …BSF has now progressed substantially and Britton House has passed technical eligibility for funding …”.
14 February 2022	The Secretary of State outlined new measures and proposals for legislation aimed at removing cladding costs from leaseholders with its stated “in the small number of cases where building owners do not have the resources to pay, leaseholders will be protected. The cap will be set at.. £10,000 for homes outside London…”
February 2022	Emails between some of the Respondents and Livingcity refer to a common understanding that “all works as part of the remediation project at Britton House are expected to be covered by the BSF once the agreement is signed by Home Ground.

Submissions

(i) The written submissions referred to various matters as detailed as in the timeline.

14. The Applicant with its Statement of case explained that Livingcity had instructed Thomasons, who in turn appointed DFC to identify the external wall construction details and to provide an opinion as to whether they complied with the FSO, using the ADB as the benchmark. Copies of the DFC report and the Thomason reports identifying required remediation works were included with papers. It was confirmed that Britton House had been registered with the BSF and that in order to adhere to its timescales it was initially required to submit a full cost application by 31 December 2020. That deadline was subsequently extended by MHCLG to 30 June 2021. The deadline for work to begin was initially 31 March 2021 and thereafter extended by MHCLG to 30 September 2021.

15. The Applicant stated in April 2021 that "It is anticipated that the fire remedial works fall under the scope of the BSF, should the application be successful. However, the Applicant intends to instruct Envirosips Ltd via Thomasons and via a Negotiated Design & Build tender process with a single contractor. Envirosips will be appointed due to the urgent nature of the cladding works owing to the safety of the premises and the residents because they are able to comply with the deadlines imposed by the BSF despite the challenges faced in obtaining tenders/instructing professionals in the industry given the current cladding crisis".. "If the Applicant is eligible for full or partial funding it is unknown when this will be decided, and the contractor will need to be in place to commence works at short notice with the cost of the works agreed. The Applicant is therefore proceeding with the instruction of Envirosips… in order to ensure that the contractor is available to begin works in readiness for the revised BSF deadlines or even before, if the Applicant can proceed earlier. It is widely known contractors for cladding remedial works are in short supply and will continue to be further in 2021 as there are a multitude of buildings in the UK which require substantial works to their exterior wall systems. Such works are likely to take place at same time to be in compliance with the terms of the BSF if successful." "… The Applicant is conscious that, without an order for dispensation, it must obtain further tenders and fully consult with leaseholders… Given the current pressures on the industry it is likely to be increasingly difficult to promptly obtain tenders and instruct professionals… all working towards the same MHCLG deadlines".

16. The Applicant referred to the detail of the Consultation requirements and the advice given by the Supreme Court in the case of *Daejan Investments Ltd v. Benson and others (2013) UK SC 14* which are both referred to in more detail later. It submitted that the Respondents had suffered no prejudice caused by the Applicant not fully carrying out the consultation requirements and concluded that if dispensation were not

granted Britton House might lose funding under the BSF resulting in a significant increase in service charges due to be paid by the Respondents. It was also confirmed that there had been regular updates via its online portal and to BHCAG as well as regular "virtual" meetings with the residents to ensure that they were kept up-to-date with relevant matters.

17. The Respondents applying for a 20C order stated:-

"Explicitly, *(we)* are not objecting to the Dispensation Application as *(we)* seek the Cladding Works to be completed as soon as possible.

(*We)* have been informed by Livingcity ... that the Cladding Works have been accepted for funding via the ...BSF... As a result, the costs of the Cladding Works will be met by the BSF and there is no valid expectation that costs will be required to be charged to leaseholders via the service charge. If costs for the Cladding Works are not being charged to leaseholders via the service charge it is not necessary for the *Applicant* to undertake a consultation process under Section 20 of the LTA85 .... As a consequence, the Dispensation Application is also unnecessary, and leaseholders should not be required to pay for an unnecessary application."

"The *Applicant* has stated that the Dispensation Application has been made on the grounds of urgency due to the nature of the Cladding Works required. However, a Section 20 Process ... was abandoned but could have easily been completed, if not twice over, before 10 February 2022 (the date of the Directions..) and as a result the Dispensation Application would not have been required.. It therefore cannot be said that an application in February 2022 is now urgent.

It is *(our)* understanding, on the basis of conversations with Livingcity, that the costs of completing a Section 20 Process would have been significnatly lower than the costs associated with the Dispensation Application (should that be disputed).

*(We)*also understand that the Section 20 Process that was commenced was being pursued in parallel to the Dispensation Application Workstream. This has therefore resulted in a duplication of costs for leaseholders. The costs of the abandoned Section 20 Process have either already been charged, or are expected to be charged imminently, to leaseholders via the service charge.

The Dispensation Application also covers the Interim Works...which removed the need for a waking watch. The Interim Works were completed in June 2021 and were fully funded by the..WWRF. The... full costs ... were received into the service charge account on 17 November 2021. Livingcity have since issued credit notes for the costs of the Interim Works ...reflecting the position that leaseholders will not be charged for the costs of the Interim Works. As a result a Section 20 Process is irrelevant and the Dispensation Application is unnecessary.

The *Applicant* has pursued the Dispensation Application to protect its position in respect of the costs of the Cladding Works and the Interim Works and to ensure that all such costs can be passed onto leaseholders

through the service charge… it is reasonable, fair and just that the *Applicant* pays its own costs to protect its own position..

It is *(our)* position that the Dispensation Application is either unnecessary, a duplication of Workstreams (and therefore costs) or both."

There was also a request that the Tribunal also order that the Applicant be liable for the £100 application fee paid by the Respondents applying for a 20C order.

18. In response the Applicant referred to various of the lease provisions in support of its contention that those provisions, when interpreted by reference to various stated cases, provide a contractual entitlement for the recovery of the Applicant's costs in respect of the Application. The Applicant also submitted that it "ought not to be deprived of that contractual right unless it is clearly just and equitable to do so", and that there had been no unreasonable conduct on its part in reasonably making the Application. "The application for dispensation was made on the basis that the Cladding Works are urgently required, the design and build procurement route does not fit with the strict requirements under the section 20 consultation and because the Applicant wanted to ensure that it had the best possible chance of complying with the BSF requirements. At the time that the Application was made, the Interim Works were to be instructed urgently so as to relieve the waking watch. The (Respondents) state that it is since transpired that the Waking Watch Relief fund provided funds for the Interim Works, however the (Applicant) maintains that its application was made in the leaseholders' best interests." "The (Respondents) confirm that they do not oppose the application on the basis that they would like the Cladding Works to be carried out as soon as possible, which.. indicates that the(y) do not challenge the necessity of the application."

The Law

19. 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.

20. 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.

21. 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."

22. 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.

23. Section 20C states that: –

"(1) a tenant may make an application for an order that all or any of the costs incurred, or to be incurred by the landlord in connection with proceedings before… the First-tier Tribunal… are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

… (3) the court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."

24. A thorough analysis of the correct approach to a section 20C decision is set out in the case of *Church Commissioners v Derdabi LRX/29/2011* which also contains useful references to various earlier cases.

The Tribunal's Reasons and Conclusions

25. 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).

26. None of the parties 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 of the written submissions. The Tribunal is also, as explained below, persuaded of the urgency of the present situation.

27. The Tribunal has every sympathy with all the parties, and particularly the individual flat owners staring at costs of thousands of pounds, exacerbated by multiple factors, stemming from the use of dangerous materials, and what the Secretary of State described in a letter dated 10 January 2022 to the Residential Property Developer Industry as a broken system.

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

29. 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, 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)....”

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

31. The Works were and, insofar as they have not been completed, remain 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 total number of flats increases the number of people at risk.

32. Expert reports have identified a catalogue of issues 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.

33. The Tribunal finds that whatever the reasons for any delays to date, they do not eradicate the continuing dangers.

34. There are also a number of other compelling reasons as to why the Works should continue to be regarded as urgent. These include a set of circumstances where time may be of the essence in order to satisfy shifting criteria relating to deadlines set as regards possible sources of funding from the Government or others, insurance, the need to mitigate losses, the salability or otherwise of the flats and the need for the homeowners to get on with their lives. Unnecessary delay profits no one.

35. 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.

36. As the Upper Tribunal has made clear in the case of *Wynne v Yates [2021] UKUT 278 (LC) 2021* there must be some prejudice to the leaseholders beyond the obvious facts of not being able to participate in the consultation process, or of having to contribute towards the costs of works.

37. The Tribunal finds that evidence of any actual relevant prejudice is, at best, very weak: it is clear that the Respondents have been aware of the core issues for many months: despite the Stage 1 notice in respect of the Cladding Works there is no evidence of the Respondents nominating an

alternative contractor or contractors at any point; there is no evidence that the Respondents dispute the extent of the present defects; and there is evidence of the Applicant having regard to the Respondents' observations.

38. As *Daejan* confirms the factual burden of identifying some form of relevant prejudice falls on the Respondents, and the Tribunal finds the Respondents have not identified any relevant prejudice, within the context of the regulations, in the Applicant's actions to date.

39. Indeed, none of the Respondents has objected to the Application, except to the extent of the submissions made in the section 20C application that it may now be superfluous or duplication. The Tribunal is not surprised that there has been no suggestion or evidence from any of the Respondents that the Works are or were unnecessary or inappropriate. The Tribunal is clear that the Works are and have been much needed for the safety of the residents.

40. 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.

41. In this case the Tribunal finds that the Applicant has made out a compelling case as to why dispensation should be granted. 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.

42. 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.

43. 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 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.

44. For the reasons stated, the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements 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 Britton House, insofar as they have not already been completed.

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

46. 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.

47. 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 or potentially at their expense. The Tribunal considers it reasonable and appropriate that the Respondents should be kept informed of progress. As such the Tribunal decided to attach a condition to that effect.

The Section 20C application

48. The Tribunal went on to consider the application that the Tribunal make an order under section 20C of the 1985 Act so that the Applicant be precluded from including within the service charges the costs incurred by the Applicant in connection with the present proceedings.

49. The Tribunal reminded itself that the issue is not whether the Applicant might or might not be entitled to recover costs under the terms of the lease provisions nor whether such costs are reasonable. Both those issues are more properly considered under a section 27A application.

50. As HHJ Rich said in *Tenants of Langford Court v Doren Ltd (LRX /37/2000)* "In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise ...." .

51. HHJ Rich also said in the case of *Schilling v Canary Riverside Development PTE Ltd (LRX/26/2005*) "so far as an unsuccessful tenant is concerned it requires some unusual circumstances to justify an order under section 20C in his favour". In similar vein, Martin Rodger QC commented in *The Leasehold Valuation Tribunal for the London Rent Assessment Panel v SCMLLA [2014]UKUT58(LC)* "an order under section 20C interferes with the parties contractual rights and obligations, and for that reason ought not be made lightly or as a matter of course, but only after considering the consequences of the order for all those affected by it and all other circumstances".

52. The Tribunal finds that the Applicant was clearly acting in the leaseholders' best interests by seeking to secure funding from both the WWF and BSF and to keep to the timeframes set by both. The Tribunal does not agree with the submission that the Application was or is unnecessary. The Tribunal found that it was prudent and entirely reasonable for the Application to be made particularly at a time when

eligibility for funding from the BSF remained in question. Sadly, it has always been and remains the case that government funding will not necessarily cover all of the potential costs.

53. The Tribunal, particularly after having found both that the Application for dispensation should be granted and that it was a reasonable application to make, and after having regard as to what is just and equitable in all the circumstances, decided that it should refuse to grant an order under section 20C. It also decided that there should be no order to repay the £100 section 20C application fee.

Generally

54. It is emphasised that nothing in this Decision should be taken as an indication that the Tribunal considers that any service charge costs resulting either from the Works, or the costs incurred or to be incurred by the Applicant in respect of the Application 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.

Mr JM Going
Tribunal Judge
19 April 2022

Annex A – Respondents

ACAJ Ltd
ADL Investments Ltd GRODT Holdings Ltd
APM Capital Ltd & Mrs MP Mehta
Chapter Titles Ltd
Close Property Services Ltd
Dr Saxena & Mrs Saxena
Gatehouse Bank plc
IB Properties Ltd
Irwell Properties Ltd
K Zhang & H Zhang
LY Wong & SH Chi Sing
MCR Real Estate Ltd
MHPM Property Ltd
Miss C Hodgkins
Miss K Nicolson
Miss Nip & Mr Nip
Mr & Mrs A Sanders
Mr & Mrs Al-Sened
Mr AR Nazokkar & Mr A Nazokkar
Mr Atkins & Ms Jolin
Mr Cook & Ms Rahman-Cook
Mr K Bhatia & Mr R Bhatia
Mr Malcolm & Ms Coltman
Mr Keung & Ms Hung
Mr SMAR Fehmi & Mr MA Fehmi
Mr Smith & Ms Ahcheun-Smith
Mr Owadally & Ms Khan
Mr Squires & Mr Parr
Ms A Broadbent & Ms S Broadbent
Mr Wahdan & Ms Alsavw
Mr Yu & Mr Pang
Mr Zhou & Ms Pan
Mr Chan & Ms Chan
Mrs R Nahaboo
Mr Henry & Ms Taylor
Mr Hester & Mr Griffiths
Mr AR Nazokkar
Mr I Stephenson
Mr N Remington
Mrs M Parmar
Ms S Humphreys

Mr & Mrs Beech
Mr & Mrs Bell
Mr & Mrs Bunyon
Mr & Mrs Chandler
Mr & Mrs Collins
Mr & Mrs Cooke
Mr & Mrs Cooper
Mr & Mrs Devereux
Mr & Mrs Eaton
Mr & Mrs Howard
Mr & Mrs Kapur
Mr & Mrs McGrane
Mr & Mrs McGrane
Mr & Mrs Millett
Mr & Mrs Nahaboo
Mr & Mrs Page
Mr & Mrs Peet
Mr & Mrs Porteous
Mr & Mrs Ridout
Mr & Mrs Rintoul
Mr & Mrs Sharma
Mr & Mrs Stepien
Mr & Mrs Waters
Mr & Mrs Wong
Mr Abdulridha
Mr I Hinchley
Mr T Fairclough
Mr T Kerrison
Mr M Cushway
Mr CN Bishop
Mr B Skyrme
Mr MS Morris
Ms S Everett
Ms S Younus
Ms SD Woods
Mr & Mrs Alonso
Mr Li & Mr Chou
Ms D McCulloch
Mrs SA Khan
Miss J Bright
Miss J Wang

Mr P Bayliss
Mr P Bridge
Mr P Clegg
Mr P Kalia
Mr P Robertson
Mr P Sozou
Mr P Stewart
Mr P Veitch
Mr R Jiskoot
Mr R Wylds
Mr S Atkins
Mr S Edwards
Mr S Smith
Mr S Whittle
Mr J Eatough
Mr J Gregson
Mr J Impey
Mr J Muthiah
Mr J Thorne
Mr K Al-Sacid
Mr K Althawadi
Ms B Janossy
Mr G McIntosh
Ms CP Wong
Ms J Clarke
Ms J Hopkins
Ms K Fulford
Ms K Tang
Ms L King
Ms M Osborne
Ms R Huruni
Ms R Lau
Ms S Lu
Ms S Tate
Mr K Doran
Mr M Cave
Mr N Withey
Mrs M Moustafa
Mr Y Cui
Vy Tran
Mr Gowraiah

Mr D Luo
Mr F Dahlawi
Mr F Dyson
Mr G Dolton
Dr A Jibril
Dr L Pang
Dr R Kislov
Mr J Dickins
Mr HI Chan
Mr HM Chan
Mr I Beech
Ms C Ang
Ms C Wong
Miss C Dixon
Mr Collins
Mr A Ross
Mr K Frost
Mr T Heath
Ms J Pigg