



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

**Case Reference(s)** : **MAN/00DA/LDC/2021/0055**

**Property** : **Cartier House, Block H, Clarence Dock, Leeds  
LS10 1HY**

**Applicant** : **Adriatic Land 8 (GR2) Limited**

**Applicant's  
Representative** : **JB Leitch Limited**

**Respondents** : **Various Residential Long Leaseholders**

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

**Tribunal Members** : **Tribunal Judge C Wood  
Tribunal Member P Mountain**

**Date of Decision** : **22 July 2022**

---

**DECISION**

---

## **Order**

1. The Tribunal determines that it is satisfied that it is reasonable in the circumstances to grant dispensation to the Applicant from the consultation requirements under s20 of the Landlord and Tenant Act 1985 in relation to the “Cladding Works” (as hereinafter defined).
2. **Background**
3. By an application dated 21 May 2021, (“the Application”), the Applicant, Adriatic Land 8 (GR2) Limited, acting by its managing agents, Liv Group Limited, (“LIV”), applied to the Tribunal under Section 20ZA of the Landlord and Tenant Act 1985, (“the 1985 Act”), for dispensation from the consultation requirements of Section 20 of the 1985 Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987), (together “the Consultation Requirements”), in respect of the works set out in paragraph 12 of the Applicant’s Statement of Case dated 21 May 2021, and defined as the “Cladding Works”.
4. The Respondents are the individual residential leaseholders of apartments at the Property.
5. Directions dated 7 April 2022 were issued to the parties, in response to which the Applicant submitted its Statement of Case together with its attachments, including, without limitation, a sample lease, (“the Lease”).
6. No submissions have been made by any of the Respondents.
7. The directions provided that, in the absence of a request for an oral hearing, the Application would be determined upon the parties’ written submissions without a hearing. No request for a hearing of the Application was received from any of the parties.
8. A paper determination of the Application was made on Tuesday 19 July 2022.
9. No inspection of the Property was undertaken by the Tribunal.

## **Evidence**

10. The Applicant has responsibility for the management of the Property in accordance with the Lease. Its management obligations are discharged by LIV.
11. The Property is a 10-storey mixed use building with an eight-storey residential block with 98 flats adjacent to a four-storey office block above a two storey commercial space at ground and first floor. The height of the topmost storey is approximately 30m.

12. In its Statement of Case, the Applicant summarises its grounds for the Application as follows:
  - 12.1 in the absence of consultation in accordance with the Consultation Requirements, or, dispensation under section 20ZA of the 1985 Act from the requirement for consultation, the liability of each of the Respondents to contribute to the cost of the Cladding Works would be limited to £250;
  - 12.2 the Applicant's decision to effect the Cladding Works by means of a Design & Build contract is not compatible with compliance with the Consultation Requirements;
  - 12.3 the Respondents have suffered no prejudice because of the Applicant's failure to fully carry out a consultation process. The Applicant has made application for funding from the government's Building Safety Fund scheme, ("BSF scheme"), in the hope that it will secure at least a proportion of the costs of the Cladding Works;
  - 12.4 it believes that it has complied with the section 20 consultation process as far as it possibly can considering the circumstances; and,
  - 12.5 if dispensation is not granted, the Applicant may lose funding from the BSF resulting in a significant increase in service charge payable by the Respondents.

### **Law**

13. Section 18 of the 1985 Act defines "service charge" and "relevant costs".
14. Section 19 of the 1985 Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
15. Section 20 of the 1985 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".

16. "The appropriate amount" is defined by regulation 6 of the Regulations. As "...an amount which results in the relevant contribution of any tenant being more than £250".

17. Section 20ZA(1) of the 1985 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."

### **Reasons**

### **Procedure**

18. The Tribunal refers the Applicant and its representatives to Rule 3 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, ("the Rules"), and, in particular, to the obligations under Rule 3(4)(a) and (b) of the Rules to "help the Tribunal to further the overriding objective", and to "co-operate with the Tribunal generally".

19. By a series of emails dated June 2022, the Applicant's representatives confirmed that, as no response had been received from any of the Respondents, it determined there was no reason for it to submit a further statement to the Tribunal.

20. Having regard to the time which has elapsed between the date of the Applicant's Statement of Case and the date appointed for the paper determination of the Application, and the Applicant's failure to provide further information to the Tribunal and to the Respondents as set out in the Statement of Case, the Tribunal considers that the consequence of their decision not to submit a further statement is a failure to fulfil their obligations to the Tribunal under Rule 3(4)(a) and (b).

21. As a result of this decision by the Applicant, as at the date of its determination the Tribunal was not made aware of any of the following:

21.1 the costs of the Cladding Works;

21.2 whether the Applicant's application to the BSF scheme was successful, in whole or in part; and,

21.3 the extent to which the Respondents have been kept advised of progress of the Cladding Works.

This was information which the Tribunal considers would have been useful (albeit not essential) to its determination.

## **Partial compliance**

22. The Tribunal notes an illogicality in the Applicant's submissions in support of its Application. Specifically, as set out in paragraphs 11.3 and 11.4 above, the Applicant refers to the absence of prejudice to the Respondents by reason of its failure "...to fully carry out the consultation process..." and its belief that "...it has complied with the section 20 consultation process as far as it possibly can considering the circumstances".
23. A dispensation application under s20ZA of the Act 1985 presupposes that no compliance has been made with the consultation requirements. Partial compliance, as suggested by the Applicant, is of no relevance to the Tribunal in its determination of the Application. Either there has been a consultation (in which case no dispensation is required), or there is no consultation in accordance with the Consultation Requirements (in which case dispensation is required).

## **Dispensation**

### **General**

24. In determining whether it is reasonable to grant an application under s20ZA of the 1985 Act, the Tribunal should consider the rationale for a consultation exercise, namely, to ensure that leaseholders are protected from:
  - 24.1 paying for inappropriate works; or
  - 24.2 paying more than would be appropriate.
25. In this case, the Tribunal is satisfied that the Cladding Works are appropriate works.
26. The Tribunal has no information regarding the costs of the Cladding Works but, for the purposes of its determination, assumes from the information provided that:
  - 26.1 the costs of the Cladding Works may impose a liability of at least £250 on each of the Respondents; and,
  - 26.2 a successful application to the BSF scheme will financially benefit the Respondents.

### **Application**

27. It appears to the Tribunal that the Applicant's grounds for dispensation are as follows:
  - 27.1 that the "mechanics" of a Design and Build contract for the Cladding Works are "not compatible" with compliance with the Consultation Requirements; and
  - 27.2 that there was an urgency to award the contract because of the time limits and/or other requirements of the BSF scheme.

## **Design & Build Contract**

28. The Applicant provides little explanation for its claim as set out in paragraph 27.1 above. In paragraph 34 of the Statement of Case, the Design & Build contract route is described as a process which “...requires for the instruction of a single main contractor who will autonomously appoint relevant specialists to assist with the design and construction of the Cladding Works” but does not explain why that is incompatible with compliance with the Consultation Requirements.
29. The report from Richard Boothroyd & Associates dated 24 March 2021, (“RBA Report”), sets out the tender process for a Design & Build contract as follows:

“Two-stage tendering – a tender process that comprises two separate stages. Stage 1 requests only preliminary costs + overheads & profit %. Construction costs are not requested at Stage 1. This initial stage can involve multiple contractors (usually not exceeding 5) and enables a level of competition to be introduced before a contractor is selected to move forward with to the next stage. At stage 2, as the design is developed, construction costs are negotiated with the preferred contractor, often adopting an open book basis before a fixed price lump sum contract is agreed.”
30. It is not apparent to the Tribunal why such a process as described above would be “incompatible” with the Consultation Requirements.
31. Again, in paragraph 34 of the Applicant’s Statement of Case, they refer to the Design & Build contract having been entered into but provide no information as to the timetable or any other reasons why it was decided not to undertake a consultation exercise.
32. The Tribunal is not satisfied therefore that it is reasonable to grant dispensation from the Consultation Requirements by reason only of the Applicant seeking to affect the Cladding Works by way of a Design & Build contract.

## **Building Safety Fund**

33. Again, the Tribunal has limited information regarding the Applicant’s application to the BSF scheme, and, in particular, how the timetable for applications/commencement of works impacted on the Applicant’s decision not to undertake a consultation process in compliance with the Consultation Requirements.
34. The Tribunal notes that a successful application to the BSF scheme, whether to fund the whole or a part of the costs of the Cladding Works, would be of financial benefit to the Respondents.

35. The Tribunal also notes that it is generally in the interests of leaseholders in such circumstances for the necessary remediation works to be commenced and completed as quickly as possible, including, without limitation, in the interests of safety, the ability to sell/re-mortgage their flats and to stem the costs of mitigation measures such as “waking watch” costs. The Tribunal notes that the information provided by the Applicant shows that all of these were relevant issues in the case of the Property and the Respondents.

### **Prejudice**

36. The Tribunal noted that no response to the Application had been received from any of the Respondents.
37. The Tribunal did not identify a specific prejudice to the Respondents by reason of the Applicant’s failure to undertake a consultation in accordance with the Compliance Requirements.

### **Determination**

38. For the reasons set out in paragraphs 34, 35 and 37, the Tribunal concludes that, in accordance with Section 20ZA(1) of the 1985 Act, it is reasonable to dispense with the Consultation Requirements.
39. Nothing in this determination 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 Cladding Works or the costs of this Application should an application be received under Section 27A of the 1985 Act. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.