



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

**Case Reference** : **MAN/13UB/LDC/2021/0072**

**Property** : **Cestria Building, George Street,  
Chester CH1 3ER (See Annex)**

**Applicant** : **Gorse Stacks Development  
Limited**

**Representative** : **Savills**

**Respondents** : **The Residential Leaseholders of the  
Property (see Annex)**

**Type of Application** : **Landlord and Tenant Act 1985  
- section 20ZA**

**Tribunal Members** : **Judge Bennett**

**Date and venue of  
Hearing** : **Determined without a hearing**

**Date of Decision** : **4 August 2022**

**DECISION**

## DECISION

**Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works required to undertake the EWS1 process. This includes the intrusive inspection required to complete a fire safety assessment of the building.**

## REASONS

### Background

1. On 25 October 2021, an application was made to the First-tier Tribunal (Property Chamber) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application was made by Gorse Stacks Development Limited and relates to premises known as Cestria Building, George Street, Chester CH1 3ER (“the Property”). The Applicant is the landlord of the Property. The Respondents to the application are the long leaseholders of those apartments. A list of the Respondents is set out in the Annex hereto.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern the instruction of an intrusive inspection at the Property to complete a fire safety assessment of the external walls of the building. Works will involve opening up sections of cladding to determine the materials of the cavity barriers, which will need to be overseen by a building surveyor.
5. I gather that the Applicant has made the leaseholders aware of the work required by sending letters to leaseholders providing them updates at different stages of the process. The Applicant appears to have issued a letter responding to queries regarding an EWS1 form, a further letter informing leaseholders of the need for an intrusive inspection at the Property and letters informing the leaseholders of a provisional inspection date and estimated costs for this inspection. The Applicant has also provided the leaseholders with a progress update surrounding their application to the Tribunal. Each of the Respondents have been given notice of the application and afforded the opportunity to view the Applicant’s supporting evidence. They have also been provided with a

copy of the case management directions issued by the Tribunal on 18 February 2022.

6. The Applicant complied with direction 1 on 18 February 2022, therefore the directions required any Respondent who opposed the application to notify the Tribunal of their objection by 11 March 2022. No such notification has been received and I have determined this matter following a consideration of the Applicant's case, but without holding a hearing. Rule 31 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 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). In this case, the Applicant has given its consent and the Respondents have not objected. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing: although the Respondents are not legally represented, the application is unopposed and the issues to be decided are readily apparent.
7. The Tribunal did not inspect the Property, but I understand it to comprise of a block of 42 apartments for residential use with 1 commercial unit on the ground floor.

### **Grounds for the application**

8. The Applicant's case is that an EWS1 form is required by some mortgage lenders to provide assurances about the safety of external wall systems. Currently, the managing agent Savills do not hold an EWS1 form for the Property. The Applicant states that a Chartered Fire Engineer attended the site of the Property on 13 July 2021 to complete a fire safety assessment of the external walls, to obtain information to issue an EWS1 form for the building. However, the Applicant was advised that there was limited façade information, which was not sufficient and therefore the Chartered Fire Engineer recommended that a further intrusive survey would be required to obtain this information. The Applicant advises that undertaking this intrusive survey will involve opening up sections of cladding to determine the materials of the cavity barriers, and that due to the nature of the works, they should be overseen by a qualified Building Surveyor and contractor who can remedy the works afterwards.
9. The Applicant submits that all leaseholders were contacted in writing to inform them of the EWS1 process and associated costs involved. Furthermore, that leaseholders were informed that the proposed costs would exceed the threshold set under section 20 of the Act and due to the urgency of the works, Savills were looking to apply to the First-Tier Tribunal for dispensation. The Applicant advises that the cost for the Chartered Fire Engineer to re-attend the site would be £13,800, in addition to the Building Surveyor's professional fees of £3600.
10. The Applicant highlights that they believe the works need to commence urgently to complete this fire safety assessment of the external walls and ensure the safety of the building. Savills believe that leaseholders

are in support of the EWS1 process. The Applicant submits that as they do not hold an EWS1 form, a number of leaseholders are unable to sell their apartments, which Savills believes is causing unnecessary stress and financial burden for some residents.

## **Law**

11. Section 18 of the Act defines what is meant by “service charge”. It also defines the expression “relevant costs” as:

*the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

12. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

*Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either—*  
*(a) complied with in relation to the works ... or*  
*(b) dispensed with in relation to the works ... by the appropriate tribunal.*

13. “Qualifying works” for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3) of the Act and regulation 6 of the Regulations).

14. Section 20ZA(1) of the Act provides:

*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.*

15. 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:

- give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
- obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those

estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;

- make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
- 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 if that is not the person who submitted the lowest estimate.

## **Conclusions**

16. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. They also ensure that leaseholders are protected from paying for inappropriate work, or from paying more than would be appropriate for necessary work. It is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.
17. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for swift remedial action to ensure that occupiers of the Property are not placed at undue risk and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before major works begin. It must consider whether this balance favours allowing the works to be undertaken immediately (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in carrying out the works which that will require). The balance is likely to be tipped in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.
18. In the present case, works to obtain sufficient information regarding the safety of the external wall systems at the Property should be undertaken as soon as possible. This is appropriate not only to identify any unknown risks at the Property and to enable an EWS1 form to be completed, but also to prevent leaseholders from suffering unnecessary stress and financial burden, if they are consequently struggling to sell their apartments. As there have been no objections or concerns raised

by the leaseholders, I have no hesitation in finding that the balance of prejudice favours permitting such works to proceed without delay.

19. Nevertheless, the fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that I consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. I make no findings in that regard.

Signed: L Bennett  
 Judge of the First-tier Tribunal  
 Date: 4 August 2022

**ANNEX**  
**(List of Respondents and Properties)**

<b>Respondent</b>	<b>Property</b>
Mr Hasan & Ms Tahreem Abbas	2 & 3 Cestria Building, George Street, Chester CH1 3ER
Hannah Webster	4 Cestria Building, George Street, Chester CH1 3ER
Mr & Mrs Folkes	5 Cestria Building, George Street, Chester CH1 3ER
Mr Kirdant	6 Cestria Building, George Street, Chester CH1 3ER
Mr & Mrs Brennan	7 Cestria Building, George Street, Chester CH1 3ER
Miss Davies	8 Cestria Building, George Street, Chester CH1 3ER
Ms Margaret Henry	9 Cestria Building, George Street, Chester CH1 3ER
Mr Thompson	10 Cestria Building, George Street, Chester CH1 3ER
Ms Ruth Curtis	11 Cestria Building, George Street, Chester CH1 3ER
Mrs Preedy	12 Cestria Building, George Street, Chester CH1 3ER
Mr Jones	14 Cestria Building, George Street, Chester CH1 3ER
Mrs Putt	15 Cestria Building, George Street, Chester CH1 3ER
Derek Tebay	16 Cestria Building, George Street, Chester CH1 3ER
Mr & Mrs Flitton	17 Cestria Building, George Street, Chester CH1 3ER
Mr Dickenson	18 Cestria Building, George Street, Chester CH1 3ER
Mr & Mrs Coopeer	19 Cestria Building, George Street, Chester CH1 3ER
Mr Thompson	20 Cestria Building, George Street, Chester CH1 3ER
Julie Annette Cabuk	21 Cestria Building, George Street, Chester CH1 3ER
Mr Whitwam	22 Cestria Building, George Street, Chester CH1 3ER

Mr Bowden	23 Cestria Building, George Street, Chester CH1 3ER
Mr Smith	24 Cestria Building, George Street, Chester CH1 3ER
Annette Mather	25 Cestria Building, George Street, Chester CH1 3ER
Ms Somauroo	26 Cestria Building, George Street, Chester CH1 3ER
Ms Dykes	27 Cestria Building, George Street, Chester CH1 3ER
Mr Burtonshaw-Gunn	28 Cestria Building, George Street, Chester CH1 3ER
Mr Thompson	29 Cestria Building, George Street, Chester CH1 3ER
Mr Flower	30 Cestria Building, George Street, Chester CH1 3ER
Mr Welland	31 Cestria Building, George Street, Chester CH1 3ER
Mr Stanley	32 Cestria Building, George Street, Chester CH1 3ER
Ms Rebecca Barnes	33 Cestria Building, George Street, Chester CH1 3ER
Mr & Mrs Kitchen	34 Cestria Building, George Street, Chester CH1 3ER
Mr J Chen	35 Cestria Building, George Street, Chester CH1 3ER
Mr D Barratt	36 Cestria Building, George Street, Chester CH1 3ER
Mr S Paine	37 Cestria Building, George Street, Chester CH1 3ER
Mr & Mrs Cooper	38 Cestria Building, George Street, Chester CH1 3ER
Mr Harris & Mr Sykes	39 Cestria Building, George Street, Chester CH1 3ER
Mr & Mrs Barratt	40 Cestria Building, George Street, Chester CH1 3ER
Ms Vo & Mr Stevenson	41 Cestria Building, George Street, Chester CH1 3ER
Ms Van-Rij	42 Cestria Building, George Street, Chester CH1 3ER
Mr Balmer	43 Cestria Building, George Street, Chester CH1 3ER
Mr Tibbett	44 Cestria Building, George Street, Chester CH1 3ER