



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

**Case reference** : **MAN/00BY/LDC/2021/0005**

**Property** : **The Altrium, London Road, Liverpool  
L3 8JA**

**Applicant** : **The Altrium Management Company Ltd**

**Representative** : **LMP Law**

**Respondent** : **Leaseholders at the Property**

**Type of application** : **Dispensation with Consultation  
Requirements under section 20ZA  
Landlord and Tenant Act 1985.**

**Tribunal member(s)** : **Judge J White  
Mr S Wanderer (valuer)**

**Date of decision** : **6 April 2020**

---

**DECISION**

---

## **The Decision**

- (i) The Tribunal grants this application to dispense with the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 in relation to works to remove and replace external cladding to the Property as set out in the schedule of works contained in the tender Report from Thomasons dated 4 May 2020.**
- (ii) In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

## **The Background**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act. Those requirements (“the consultation requirements”) are set out in the Services Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. On 21 January 2021 the application was made by Atrium Flat Management Company Limited and relates to premises known as The Atrium, London Road, Liverpool L3 8JA (“the Property”). The Applicant is the management company under the long leases of the residential apartments within the Property. They have instructed Revolution Property Management to act as managing agents. The Landlord is Grey GR Limited Partnership. The Respondents to the application are the long leaseholders of those apartments.
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 removal and reinstatement of external cladding found to be unsafe. The Applicant says the cladding was found to be extremely flammable and therefore steps have been taken to remove and begin replacement. We note from a schedule of the proposed works which was attached to the application that they briefly comprise the following main headings:
  - (i) removal of unsafe cladding;
  - (ii) supply and installation of new compliant cladding panels and associated carrier system;
  - (iii) supply and installation of new compliant breather membrane;
  - (iv) supply and installation of new cavity barriers ; and
  - (v) supply and installation of new EPDM application to all windows.
5. Each of the Respondents has been given notice of the application and afforded the opportunity to view the Applicant’s supporting. They have also been provided with a copy of the case management directions issued by the Tribunal on 26 February 2021. The Applicant sent a bundle of documents to

each Respondent as directed by the Tribunal. The Respondents were given 14 days to notify any objections. No such notification has been received.

6. We have determined this matter following a consideration of the Applicant's bundle, 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, we are 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 we understand it to comprise a 7 storey mixed-use building close to the centre of Liverpool. The Property comprises a commercial unit to the ground floor with some 27 residential apartments above.

### **The Evidence**

8. The Applicants case is set out in a Statement of Case with supporting evidence, including a model Lease, tender report, correspondence with the Respondents.
9. The Managing Agents have sent updates to the Respondents on various dates between 9 August 2019 and 1 May 2020, setting out the extent of works and progress in relation to tendering. They have not at any stage start consultation in regard to the nature, extent or cost of the work.
10. In December 2019 unsafe cladding panels were removed from the Property. It was decided to remove the cladding rather than the short-term measure of appointing fire marshals. The cost was covered by funding as set out below.
11. On 4 May 2020 Thomason Partnership Limited provided a tender document (" the Report") to appraise the four tenders for works required to introduce cladding panels to the external facades of the Property. They recommended that TEAM LTD be appointed to undertake the works for a contract sum of £97,828.50 plus VAT. TEAM had indicated that due to volatility in pricing due to COVID their price would only remain for a limited period. The Tender submission comparisons are contained in Appendix A of the Report. TEAM's bid and schedule is contained at page 113-121 of the Report [127-135]. The Report provides a cladding screening test of category 3 which means that the old cladding had no flame retardant properties.
12. On 12 August 2020 the Applicant was awarded £171,917.42 (inclusive of VAT and £15,000 contingency) from the Private Sector ACM Cladding Remediation Fund. It includes a deduction of £16,768 which was previously awarded for pre tender support for the removal of cladding. The approval was subject to a number of conditions.

13. On 7 December 2020 work began to replace the cladding. It is due to continue in April 2021.

### **The Law**

14. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(1) Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long-term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

15. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson et al* [2013] UKSC 14. In summary the Supreme Court noted the following

- (i) The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
- (ii) The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- (iii) Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- (iv) The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- (v) The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
- (vi) The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- (vii) The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the noncompliance has in that sense caused prejudice to the tenant.
- (viii) The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- (ix) Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

## **The Determination**

16. The works proposed are clearly Qualifying Works triggering consultation requirements in accordance with S20ZA (2) of the Act. The amount exceeds £250 for any qualifying tenant as set out in the Leases.
17. The consultation requirements of S.20 of the Act and the Regulations ensure that leaseholders are informed about major works and have the opportunity to comment on decisions. Dispensation from the consultation requirements may be given where the Tribunal is satisfied that it is reasonable to dispense with the requirements. The Tribunal has determined that it is reasonable and no prejudice as referred to in the *Daejan* case above has been identified for the following reasons:-
  - (i) No lessee has objected to the application and consequently not identified any prejudice.
  - (ii) The works are urgent, in particular the removal of the cladding that has been found to not meet the safety requirements for limited combustibility.
  - (iii) The Applicant has instructed a specialist to tender for the works. The Report provides some assurance as to quality and value for money. They have chosen the contractor with the lowest tender.
  - (iv) The Applicant has successfully obtained government funding for both removal and reinstatement of cladding. This provides full funding for the works and consequently the Respondents will not need to bear the cost of the work, as long as the Applicant complies with the funding requirements. These requirements provide further assurance as to the quality of the works inasmuch as they provide for a further layer of independent oversight of the scheme.
  - (v) Though the Applicant refers to continuing safety concerns, it is less clear that any delay in reinstatement of cladding has any safety implication. However, there may be other prejudice caused by delay of works such as saleability of the apartments, increased cost of the work and loss of funding. Reinstatement of cladding is clearly necessary.
18. For these reasons, the Tribunal grants dispensation from the consultation requirements of S.20 the Act in respect of the work to remove and reinstate external cladding as set out in the tender from TEAM Limited and undertaken in accordance with the funding requirements.
19. The Applicant states that, as a not for profit company, they want to ensure there is no economic loss, in the event the funding is not paid or recouped. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs, that may become payable in connection with the works, are reasonable or payable.

**Judge J White**  
**6 April 2021**

## ***RIGHTS OF APPEAL***

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.