



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

Case Reference : **MAN/00BN/LDC/2022/0005**

Properties : **Block 1.301-357, 3 Stillwater Drive, Manchester,
Block 2.501- 572, 3 Stillwater Drive, Manchester,
Block 1.1-55, The Frame, 2A, The Waterfront,
Manchester, Block 2.1-47, The Cube, 2B, The
Waterfront, Manchester**

Applicants : **Sportscity 2C Management Limited
Sprtscity 4 Management Limited**

Representative : **Property Management Legal Services
Limited**

Respondents : **Long Residential Leaseholders**

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

Tribunal Member : **Judge L Bennett**

Date of determination : **19 December 2022**

Date of Decision : **19 December 2022**

DECISION

Application

1. Sportscity 2C Management Limited and Sportscity 4 Management Limited, applies to the Tribunal under Section 20ZA of Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987), in respect of Fire Safety Works (the Works) carried out at various properties noted above (the Properties).
2. The Respondents are the Residential Long Leaseholders at the Properties.

Grounds and Submissions

3. The application was received by the Tribunal on 14 January 2022.
4. The Applicants are the resident management companies with responsibility for the buildings.
5. The Tribunal did not carry out an inspection but understands that The Sportcity Living development is a development comprising circa 350 flats across a number of blocks. The freeholder of the development is Manchester City Council. There are then three leases, each of 250 years, to AMEX Developments Limited (presently held by Countryside Properties (UK) Limited). Various flat leases are then granted out of those head leases. Those leases are tripartite leases between a management company, landlord and leaseholder.
6. On 18 May 2022, a Tribunal Judge made directions requiring the service of documents by the Applicants on each of the Respondents. The directions provided that in the absence of a request for a hearing the application would be determined upon the parties' written submissions.
7. In response to directions the Applicants has provided a statement explaining why the application was made to the Tribunal together with supporting documents.
8. **Building Safety Problems**

Broadly, there are problems with the internal and external fire safety at this development. There are, for example, missing cavity barriers, poor compartmentalisation and the cladding is of a sort which would serve as fuel in the event of a fire. The fire risk assessments provide more details (Annex 3 to Statement of Case)

Each of the applicants has made an application to the Building Safety Fund. The Fund has accepted those applications in part and the acceptance letters are attached as Annex 4 to Statement of Case.

In simple terms, the Fund has granted funding for the cladding works. It has *not* granted funding for the internal safety works nor for the balcony works. Those works will need to be funded by the leaseholders through the service charges in the usual way. The applicants have sought to force third parties to contribute to these costs but their claims have been dismissed: see [2020] EWHC 1591 (TCC)

9. **Scope of the Dispensation**

Dispensation is sought in respect of all those items of work which will *not* be funded by the Building Safety Fund. This is dealt with in Annex 5 to the Statement of Case,

- (a) the tender for internal works;
- (b) the tender for external works;
- (c) emails from Peter Knight to Paul Christopher which describe what items are *not* eligible for funding from the Building Safety Fund.

The order sought is that dispensation is granted in respect of any costs of, or associated with, works referred to in either the internal or external tender documents which are *not* funded by the Building Safety Fund.

10. **Reasons for granting Dispensation**

The applicants wish to use the same contractors for all the works (*i.e.* those funded by the Fund and those to be funded from service charges). They consider that this has various advantages, primarily that there will be saving on the cost of access (scaffolding and cherry pickers) from having all works done at the same time and by the same contractors.

Moreover, they want flexibility as to *when* they place the contracts, so that they can ensure that the works which are to be funded by the Building Safety Fund are let at or around the same time as the other works.

There is no prejudice (in the sense identified in *Daejan Investments Ltd v Benson* [2013] UKSC 14) to the leaseholders in taking this approach. The applicants, as leaseholder-owned companies, have no interest in procuring more extensive or more expensive works than are absolutely necessary. An order for dispensation does not prevent a leaseholder from challenging the works after the costs have been incurred and the works completed. Nor does it establish any contractual liability to pay. It simply gives the management companies flexibility as regards the process by which the works are to be completed.

11. **Submissions and Responses from Participating Respondents**

The 6 email responses can be found at pages 1028 – 1042 of the Applicants' bundle.

Response on behalf of the Applicants

The Respondents have raised queries regarding the non-funded works.

So far as the value of the non-funded works are concerned, the First Applicant anticipates that such non-funded works will be valued at £185,319 (inclusive of VAT), and the Second Applicant anticipates that the value of the non-funded works will be £364,436 (inclusive of VAT).

- 12. The Tribunal convened without the parties to make its determination on 19 December 2022.

Law

- 13. Section 18 of the Act defines “service charge” and “relevant costs”.

14. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
15. Section 20 of the 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 a 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 Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as “..... an amount which results in the relevant contribution of any tenant being more than £250.00.”
17. Section 20ZA(1) of the 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."

Tribunal’s Conclusions with Reasons

18. 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 Applicants have given their consent and none of the Respondents have objected nor requested a hearing. Moreover, having reviewed the case papers, I am satisfied that this matter is indeed suitable to be determined without a hearing. Determining this matter does not require me to decide disputed questions of fact.
19. It is not necessary to consider at this stage the extent of any service charges that may result from the works payable under the terms of the Respondents’ leases. If and when such is demanded, and if disputed, it may properly be the subject of a future application to the Tribunal.
20. Having considered the submission made by the Applicants I accept that the works are urgent and necessary. Using the same contractor to carry out all the works (funded and non-funded) will result in cost savings. All works can be undertaken simultaneously. This will also minimise the disruption to leaseholders. The Applicants have kept the leaseholders informed on a regular basis with regards to the works.
32. In **Daejan Investments Ltd v Benson [2013] UKSC 14** it was determined that a Tribunal, when considering whether to grant dispensation, should consider whether the tenants would be prejudiced by any failure to comply with the Consultation Requirements. Balancing the need for urgent action against dispensing with statutory requirements devised to protect service charge paying

leaseholders, I conclude that the urgency outweighs any identified prejudice. The safety of the leaseholders is paramount. Dispensation from consultation requirements does not imply that any resulting service charge is reasonable.

Order

33. The Applicants are dispensed from complying with the consultation requirements in respect of any costs of, or associated with, works referred to in either the internal or external tender documents which are *not* funded by the Building Safety Fund.

Laurence J Bennett
Tribunal Judge
19 December 2022

