



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

Case reference	:	LON/00AB/LDC/2021/0072P
Properties	:	(1) Lemonade Building, 3 Arboretum Place, Barking IG11 7PX (2) Bath House, 5 Arboretum Place, Barking IG11 7PS (3) 87 Axe Street, Barking IG11 7FS
Applicant	:	Barking Central Management Company (No. 2) Limited
Representative	:	JB Leitch Limited, Solicitors
Respondents	:	The leaseholders of the Properties as listed in the application
Type of application	:	Dispensation from compliance with statutory consultation requirements
Tribunal members	:	Judge P Korn Mrs S Redmond MRICS
Date of decision	:	18th June 2021

DECISION

Description of hearing

This has been a remote hearing on the papers. The form of remote hearing was **P**. An oral hearing was not held because the Applicant confirmed that it would be content with a paper determination, the Respondents did not object and the tribunal agrees that it is appropriate to determine the issues on the

papers alone. The documents to which we have been referred are in an electronic bundle, the contents of which we have noted. The decision made is described immediately below under the heading “Decision of the tribunal”.

Decision of the tribunal

The tribunal dispenses with those of the consultation requirements which have not already been complied with in respect of the qualifying works which are the subject of this application, conditional on the Applicant doing all of the things that are set out in bullet points in paragraph 18 below.

The application

1. The Applicant seeks dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“**the 1985 Act**”) from the consultation requirements imposed on the landlord by section 20 of the 1985 Act in relation to certain qualifying works for three separate blocks within the development known as Barking Central Phase 2.
2. The Applicant is the named manager in the Respondents’ leases, which are all tripartite leases (i.e. there are three named parties to each lease). The Applicant’s managing agents are Block Management UK Limited (“**BMUK**”).
3. The addresses of the three blocks are respectively: Lemonade Building, 3 Arboretum Place, Barking IG11 7PX (henceforth to be referred to as “**Lemonade**”), Bath House, 5 Arboretum Place, Barking IG11 7PS (henceforth to be referred to as “**Bath**”) and 87 Axe Street, Barking IG11 7FS (henceforth to be referred to as “**Axe**”).
4. Lemonade is a detached mixed-use block comprising commercial/retail use at ground level and 136 residential flats on the 2nd to 18th floors with a single stair core. Bath is a detached mixed-use block comprising commercial/retail use at ground level and 96 residential flats on the 1st to 8th floors with two stair cores and two lift cores. Axe is a detached block comprising 40 residential flats over 8 floors with a single staircase.
5. The qualifying works which are the subject of this application comprise (a) works to replace the façade of each building, (b) works to address deficiencies in the internal compartmentation of each building and (c) the installation of a ‘L5’ automatic fire alarm system.

Applicant’s case

6. The Applicant states that, in the wake of the Grenfell Tower fire, it has come to its attention that there are significant fire safety concerns at all three Properties that must be urgently addressed.

7. The cladding materials on each block were initially inspected in 2019 in conjunction with the then fire risk assessment and Government-issued advice notes. Following the introduction of the 'EWS1' process in December 2019, in the aftermath of Grenfell, BMUK arranged for the Properties to be reinspected. At those inspections each of the Properties only achieved a B2 rating under the EWS1 process, which meant that they had not achieved an adequate standard of safety and that therefore remedial measures were needed – both interim measures and longer-term measures.
8. Detailed façade surveys were carried out at each of the Properties between October and December 2020, and copies of the assessment reports have been provided. In the light of the findings, the Applicant was advised that all of the Properties required the implementation of a 'waking watch' scheme as a mitigating measure pending the carrying out of the necessary fire safety works. However, the Applicant was also advised that the need for the waking watch could be reduced or even eliminated by installing a comprehensive L5 fire alarm system. In addition, it was advised that the cost of installing such a fire alarm system might qualify for the recently announced Government funding called the 'Waking Watch Relief Fund'. The Applicant intends to apply for such funding as soon as it is possible to do so.
9. The cost of installing a fire alarm system at Lemonade and at Bath was above the consultation threshold, whereas at Axe it was below that threshold. Consequently, at Axe works were commenced immediately and the alarms were installed and commissioned. In relation to Lemonade and Bath, a section 20 notice of intention has been served and BMUK are awaiting quotations.
10. The Applicant has also established, in the light of fire risk assessments obtained, that there are deficiencies with respect to compartmentation within buildings such that if a fire were to break out the flames and associated smoke and fumes could spread between floors. Internal works are seen as essential to remedy this problem. The Applicant has therefore commissioned detailed compartmentation surveys. The survey for Axe has been carried out and quotations are being put forward by the project management company. The Applicant has received a final report for Lemonade and the relevant works have been put out to tender. The survey for Bath has been completed but a final report is awaited. The cost of the works is expected to exceed the consultation threshold.
11. The Applicant is not currently able to say with any accuracy how much the works to the façade and the compartmentation works will cost, as there is significant further work to be done by the various professionals appointed by the Applicant before a full specification can be drawn up ready for tender. It has, though, received a budget from Oander Ltd (following an inspection) for the compartmentation works excluding

professional fees, and the budgeted figure is £200,000 for each of Lemonade and Bath and £70,000 for Axe.

12. The Applicant states that the works are urgent, for the reasons referred to above, that the project is a complex one and that there is significant pressure on human and other resources given the number of blocks around the country facing the same issues.
13. The Applicant has registered with the Ministry of Housing, Communities and Local Government for funding for the façade works under the Building Safety Fund, and its understanding is that its applications are progressing. It further understands that full tenders for the façade work need to be submitted by 30th June 2021 and that – as a condition of funding – work will need to start on site by 30th September 2021. The Applicant anticipates that it will be very challenging to meet the September deadline.
14. The fire alarm works for Lemonade are expected to cost in the region of £125,000, based on estimates provided. The Applicant has not yet received any cost estimates for these works for Bath. It will apply to the Waking Watch Relief Fund for a contribution towards the cost of the fire alarm works.
15. As regards consultation to date, on 11th January 2021 the Applicant served a notice of intention on the Respondents in relation to all of the proposed works on all three Properties. As part of the process, leaseholders were invited to propose contractors. There was one nomination in relation to the façade works at Lemonade and the Applicant states that the nominated contractor will be invited to tender once the specification has been prepared.
16. The Applicant has also issued very regular updates to leaseholders, and it intends to continue doing so throughout the period of the works. On 12th January 2021 the Applicant organised a meeting with leaseholders, held remotely, and at the meeting a considerable number of questions were raised and answered.
17. The Applicant submits that the works are all sufficiently urgent, taking into account also the constraints associated with potential funding, that it is not realistic to try to comply with the consultation requirements in their entirety. In addition, in relation to the fire alarm works, any delay means that leaseholders have to continue to pay the high cost of the waking watch.
18. The Applicant has, as part of its submissions, volunteered to do the following in substitution for further compliance with the formal consultation requirements:-

- if reasonably practicable, provide all leaseholders with a copy of the final specification for each part of the works;
- provide all leaseholders with details of the tenders for each part of the works and provide a short period for comments (that period being not less than 7 days unless this would not be reasonably practicable);
- have regard to any comments made by leaseholders at any time prior to entering into a binding contract; and
- keep leaseholders updated not less than monthly as to the broad progress of the works and the applications for funding until the completion of the works.

Responses from the Respondents

19. There have been two objections from Respondents to the application, one from Mohammad Mirza (Apartment 1205 in Lemonade) and the other from Paul Rea (Apartment 205 in Lemonade).
20. Mr Mirza submits that the Applicant has a conflict of interest with the developer of his block and states that he has no confidence in the Applicant's ability or willingness to pursue any remedies that may be available against the developer or the owner of the block in relation to inherent defects. Mr Rea objects that BMUK's witness statement offers no evidence as to what compartmentation works are required or even that the additional intrusive survey referred to in the report by Ark Sustainability Ltd has taken place.
21. In response to Mr Mirza's objection, the Applicant states that it is untrue that there is any conflict of interest. Its appointed managing agent, BMUK, has no connection to the developer and was not appointed by the developer. In any event, the objection in question does not in the Applicant's submission constitute evidence that leaseholders have suffered any prejudice. The Applicant also comments that it has so far followed the spirit of the section 20 consultation process and that it intends to continue to do so. Specifically as regards claims against third parties, the Applicant is considering its position.
22. In response to Mr Rea's objection, the Applicant states that BMUK's witness statement did not purport to contain further information regarding additional intrusive investigations but confirms that further investigations will be carried out as per the recommendations in Ark Sustainability's report.

The relevant legal provisions

23. Under Section 20(1) of the 1985 Act, in relation to any qualifying works *“the relevant contributions of tenants are limited ... unless the consultation requirements have been either (a) complied with ... or (b) dispensed with ... by ... the appropriate tribunal”*.
24. Under Section 20ZA(1) of the 1985 Act *“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”*.

Tribunal’s analysis

25. We note that the Applicant sent out notices of intention and that therefore this is not a case in which the landlord/manager has made no attempt to consult with leaseholders.
26. As is clear from the decision of the Supreme Court in *Daejan Investments Limited v Benson and others (2013) UKSC 14*, the key consideration when considering an application for dispensation is whether the leaseholders have suffered any real prejudice as a result of the failure fully to comply with the consultation requirements.
27. In this case, there is persuasive evidence to indicate that the works are urgent. Each Property only achieved a B2 rating under the EWS1 process, which means that they did not achieve an adequate standard of safety and therefore remedial measures are needed. Detailed façade surveys were carried out at each Property and the Applicant was advised that all of the Properties required the implementation of a ‘waking watch’ scheme as a mitigating measure pending the carrying out of the necessary fire safety works, which indicates that the short-term health and safety risk is sufficiently serious that some interim measures are needed.
28. There is persuasive evidence before us that the need for the waking watch, which is stated to be a relatively expensive short-term option, could be reduced or even eliminated by installing a comprehensive L5 fire alarm system and that the delay in installing this system is costing leaseholders money.
29. In relation to the compartmentation works, fire risk assessments obtained by the Applicant indicate that there are deficiencies with respect to compartmentation within buildings such that if a fire were to break out the flames and associated smoke and fumes could spread between floors. The Applicant has provided persuasive evidence that

this is an urgent matter and then it might well not be safe to wait until the Applicant has gone through a full consultation process.

30. In relation to the façade works, the Applicant states that it has registered for funding under the Building Safety Fund, that full tenders for the façade work need to be submitted by 30th June 2021 and that as a condition of funding work will need to start on site by 30th September 2021. We accept that this looks like a very challenging timetable and that this is an additional good reason for not delaying the process.
31. In addition to serving notices of intention on leaseholders, the Applicant has kept the leaseholders informed by issuing very regular updates to leaseholders and by holding a meeting with leaseholders. It states that it intends to continue providing updates to leaseholders and has offered to commit itself to doing the things that are listed in paragraph 18 above.
32. As regards the responses from the Respondents, they comprise two objections to the application. Mr Mirza submits that the Applicant has a conflict of interest with the developer of his block and states that he has no confidence in the Applicant's ability or willingness to pursue any remedies that may be available against the developer or the owner of his block. However, he has offered no evidence to support these assertions – which are denied by the Applicant – and nor has he shown how granting dispensation in respect of these works in these particular circumstances would cause prejudice to the leaseholders. Similarly, Mr Rea – in his own very brief comments – has not explained in what way he feels that leaseholders would be prejudiced by the granting of dispensation. Indeed, it is significant that a large number of leaseholders were engaged enough to have raised questions with the Applicant and that they were apparently sufficiently satisfied with the answers that there are only two, somewhat weak, objections to the granting of dispensation.
33. The tribunal has a wide discretion as to whether it is reasonable to dispense with the consultation requirements, and on the facts of this case in the light of the points noted above we consider that it is reasonable to dispense with those of the consultation requirements which have not already been complied with.
34. As is clear from the decision of the Supreme Court in *Daejan v Benson*, even when minded to grant dispensation it is open to a tribunal to do so subject to conditions, for example where it would be appropriate to impose a condition in order to compensate for any prejudice suffered by leaseholders. Whilst there is no compelling evidence that the leaseholders will suffer prejudice in this case due to the shortening of the consultation process, nevertheless the Applicant has presented its case on the basis of an offer to do the things set out in paragraph 18 above. As those of the Respondents who have not objected to the

application may only have been satisfied with the application on the assumption that the Applicant will indeed do the things that are set out in paragraph 18 above, we consider it appropriate to make the dispensation conditional on the Applicant doing those things.

35. Accordingly, we grant dispensation from compliance with those of the consultation requirements which have not already been complied with, on condition that the Applicant does the things that are set out in paragraph 18 above.
36. For the avoidance of doubt, this determination is confined to the issue of consultation and does not constitute a decision on the reasonableness of the cost of the works.

Costs

37. There have been no cost applications.

Name: Judge P Korn

Date: 18th June 2021

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.