

SAFETY FIRST: JB LEITCH SECURE ANOTHER DISPENSATION FOR SAFETY

JB Leitch have secured urgent dispensation at the First-tier tribunal for fire safety measures to be implemented at a modern mixed use development in Manchester. Legal Director Phil Parkinson discusses the case and its implications. The issue of fire safety remains a high priority following the recent findings of the first phase of the Grenfell Inquiry and the government's response. However, many landlords and managing agents have already set diligent plans to ensure residential blocks, mixed use developments and commercial premises provide a safe environment for tenants to live, work and play.

Background:

In order to both minimise delay and mitigate further risk, landlords can seek to bypass the customary consultation process required under section 20 of the Landlord and Tenants Act (1985) by applying to the First-tier Tribunal (FTT) for dispensation in relation to major works where the works are urgent and the leaseholders will not be significantly "prejudiced" – or financially at a loss as a consequence.

Specifically "Section 20" stipulates that landlords need to consult the leaseholders before carrying out major works which will cost any individual leaseholder more than £250 in any annual period. If consultation is not undertaken the landlord cannot recover more than a capped amount of £250 from each leaseholder towards the cost of the works and recoverable under the service charge - unless the FTT dispense with consultation, when the leaseholders will be obliged to meet the full costs, on top of the service charge obligations set out in the lease.

A Balanced Approach:

Although media coverage has tended to provide an arguably subjective view on the matter of cost attribution for fire safety works in recent months, it should be noted that the process of applying for urgent dispensation can be borne primarily out of an immediate need to protect both tenant's safety, the building as an asset or the landlord having to bear the significant shortfall from the capped contribution. On a case specific basis, the FTT can also add the particular conditions it deems appropriate regarding costs. It should be noted that applications are openly considered and balanced on factors such as requirement and urgency.

Specifically, Section 20ZA(1) indicates: “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”.

A Case in Point:

JB Leitch has a strong track record in both fire safety matters and tribunal applications, and another recent and successful case typifies where the firm’s areas of specialism have successfully enabled a client to apply for, and receive, urgent dispensation for works comprising the installation of fire safety systems. JB Leitch represented Vie (Manchester) Management Company Limited (the applicant) who manage the distinctive Vie Building in Water Street, Manchester. The building is a contemporary mixed use scheme containing 207 apartments, a single commercial unit, underground car parking and 2 live/work units. In November 2019, the application to the FTT was made on the basis of securing dispensation from consultation centred on the reasonableness of conducting urgent fire protection measures following a series testing which identified including compartmentation, rewiring of smoke vents and installing a new fire detection system.

Following discussion with Greater Manchester Fire & Rescue Service, the applicant arranged for fire marshals to patrol the property on a 24/7 basis, but were also keen to carry out all of the recommendations in order to return to a “stay put” policy and remove the need for marshals. However, from the respondents’ perspective, (comprised largely of tenants at the Vie Building) the common theme wasn’t related to the urgency or necessity of works, but rather concern about where ultimate liability for the cost of the works should fall. The tribunal noted that the applicant had secured a “without prejudice loan” to begin the works, even though contractors had not yet been selected – and therefore the costs identified - The applicant would proceed on the basis that this loan would have to be repaid and that the cost of the works will ultimately be borne by the respondents as service charge payers. In conclusion, the tribunal successfully granted dispensation, adding “that essential works to ensure that the Property has adequate fire safety measures should be undertaken as soon as possible: this is appropriate not only to minimise risk to the health and safety of the occupiers of the Property, but also to minimise the cost of stop-gap protection in the form of on-site fire marshals.

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What Does the Decision Tell Us?

It is evident that this case highlights that health and safety was the key priority for the tribunal, with the issue of cost allocation under the service charge deemed another matter to be decided in the future. With JB Leitch securing the dispensation by reiterating the measures already taken by the applicant, such as notifying each respondent of the intention to undertake the works, the reasonableness and urgency of enacting the recommendations made satisfies perhaps the most fundamental point – the decision made may save lives.

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